

**Town of Duluth  
Planning Commission  
Meeting Minutes  
December 28, 2017**

The meeting was called to order at 7:00 pm by Chair Jo Thompson.

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

Absent: Liz Strohmayer.

Also present: Sue Lawson, Planning Director; Rolf Carlson, Town Board liaison to the Planning Commission; and Dave Mount, Town Board Supervisor.

The agenda was approved as presented.

Sue introduced Les and Ryan Grumdahl. They are attending the meeting to discuss the possibility of locating a commercial project in SMU-6 on a twelve acre parcel located on the corner of McQuade and Old North Shore Road. The road setback is 85 ft from McQuade and Old North Shore Road and 125 ft from the expressway. On the north end of the property between it and the expressway is a MNDOT right-of-way. There is also a stream going through the property. The lot is about 320 ft wide at its narrowest point. The Grumdahls would like to build in the northwest part of the parcel near McQuade. The lot size meets zoning requirements. Sue had made a list of commercial uses from Table 5.3 that are currently allowed in SMU-6. She also provided the definitions for the various commercial uses defined by the Ordinance. The Ordinance matrix does not have an overall category of commercial use. She also provided excerpts from the CLUP -- visions, policies and strategies that might apply to the situation.

Les said that they have been searching for a new place for their windows and siding business for a couple of years. They have outgrown their current location on London Road in Duluth. Other sites they have looked at don't fit their needs as well as this one does. They need to build a structure that will meet current and future needs. This site is ideal because they do a lot of business in the area, it is close to Highway 61 and they live nearby. They feel that it would be a great addition to the area and would not have much impact. They would be open from 8 to 4:30, 5 days week. The building would include a showroom area, offices and storage. There would be nothing industrial at the location.

Ryan said that their current location on London Road is in a residential area. They need a place to load trucks. After loading the trucks their crews are gone for the day. Over time it has become apparent that no one wants to build a house on that parcel, probably because of the road noise. He said that he grew up in the Township and he believes that a business there would be a good addition to the Township.

Les said that their family has a vision for an assisted living facility at some point. The location would be a good spot for that as well.

Les said that they anticipated a 48 by 100 ft building with a 30 by 40 ft show room. It would be just under 6000 sq ft. They currently have only 2400 sq ft of storage. They are a retail operation, not a wholesaler. They get a load of windows about once per week by semi delivery. The siding is delivered directly to the job site. He said that they use pickup trucks with trailers. Some would be inside the storage building and some outside. There would not be a separate garage.

John noted that if they needed space for semis and trucks with trailers to maneuver, there would be a large impervious surface area. He asked how many people they would expect to visit the showroom on a daily basis.

Les said that it depended on the time of the year. During the prime retail season, April to October, he would estimate 2 to 3 customers per day.

Ryan said that they envision an entrance off of McQuade and an exit on Old North Shore Road for trucks so they would not have to back up or maneuver, but could just drive through. At that part of the Old North Shore Road it is a dead end, so there would be minimal impact on that road.

Wayne said that he would consider their business service-oriented. It would not fit waterfront commercial. Nor would it fall under highway commercial because they are not dealing with the traveling public. As far as neighborhood commercial goes, he said that he didn't know what percent of their business would be considered neighborhood. He knows that the church and parsonage have used their company and that there is some need in the area that they satisfy.

Sue said that there are parcels available in the McQuade Road area there that are not yet being used as commercial. There are also some areas available behind the Lighthouse Motel area on Homestead between Highway 61 and the scenic highway.

Wayne said that the strip behind the motel and chiropractic office has a creek bisecting it with Highway 61 to the north and railroad tracks to the south so it is only partially accessible and only accessible from Homestead. Beyond that is an SCO-8b area which is basically Tom's Logging Camp. There is a commercial zone at the intersection of McQuade and Lismore Roads but that area is already committed. There is a small commercial area at the intersection of Bergquist and Shilhon Roads where the old French River store is, but that, too, is committed. There are no other straight commercial zones in the Township. The SCO-8a area in the McQuade Road area from Talmadge to the old lumber yard is totally built out with the exception of the lumberyard.

Les said that he has lived in the Township since 1979. He knows a lot of people in the Township and has done a lot of work for folks in township. They also do a lot of work up the shore. These two areas account for about 30% of their work. So not only does the property meet their needs, it's a perfect location for their business. Many customers do pre-shopping on the internet. When those customers contact them, they usually visit the customer at the customer's site. Walk-in traffic at the showroom would not be that frequent.

Jo noted that the business has already been a part of the community. It is not an issue of whether it is an acceptable business. It could be considered a neighborhood business. She thinks it is similar to the Sundbergs' business or Johnston Masonry which are already located in the Township. In the CLUP it says that we want these kinds of businesses but we don't provide areas for them. The Town essentially established commercial areas where commercial enterprises already existed. There was not a good vision for where additional businesses like these would be located.

Sue said that the vision in the CLUP talks about home-based businesses. This business doesn't fit that category because they would not live there and they would have more than 5 employees. She read points from the CLUP:

#### Vision

- There is a balance of locally compatible commercial uses and low impact tourism activities.
- The commercial and industrial sector has experienced some growth but only in a limited and well managed way.
- New commercial services exist that serve the basic needs of residents and are located in the same commercial districts as in 2001, along Scenic Highway 61 and in strategic neighborhood locations throughout the Township. It is now possible for residents to meet their basic commercial needs for groceries, gas and services here in Duluth Township.

- New commercial developments are locally based or compatible with local commercial needs. Some are mixed use developments. All these developments are designed to be well integrated into and compatible with the design character and the natural landscape of each commercial district. There are no strip malls.

Policies: General Land Use- North Shore Corridor

- Encourage the preservation or protection of areas unsuitable for development due to environmental, economic, or community constraints.

Policies: Commercial and Light Industrial

- Encourage limited development of new light industrial uses that emphasize high technology and green technology.
  - Identify new areas suitable for light industrial use considering surrounding land uses; and evaluate current sites to determine if they are still functioning as light industrial sites.
- Provide opportunities for limited commercial growth within existing or in newly designated commercial areas.
- Encourage the provision of goods and services that meet the basic commercial needs of the community.
- North Shore Corridor - Identify and reevaluate commercial development priorities in the North Shore corridor that maintain consistency of development type and intensity across jurisdictional boundaries.

Strategies: Shoreland District

- Allow new commercial development and redevelopment at commercial nodes. Review existing commercial nodes for access, size and adequate performance. Designate commercial nodes in the Shoreland District. Make more intensive redevelopment conditional upon compliance with community design preferences. Limit the floor area of commercial facilities and require compliance with design standards. Limit impervious surface coverage.

Sue said that McQuade has always been a commercial area. The Homestead Road commercial area was added in 2002.

Wayne said that there seemed to be the most concern over growth in the shoreland area. As the Commission thinks about what makes sense for locating commercial opportunities, it is not clear to him where shoreland ends and ridge/rural begins. The CLUP talks about encouraging the provision of goods and services that meet the basic commercial needs of the community and providing opportunity for limited commercial in existing or newly developed commercial areas. He thinks there needs to be a dialog on where it makes sense for this to happen. Item 10 under Ridge/Rural District Strategies, says “Allow new commercial development and redevelopment only at commercial nodes. Review existing commercial nodes for access, size and adequate performance. Designate commercial nodes in the Ridge/Rural District.” Some of what has been zoned commercial around the Homestead Road and farther up is locked in by railroad tracks and Highway 61. There is no other access. When the Homestead commercial area was developed, they created a driveway to access the inner part of the property. But there are a lot of limitations to it. The Commission needs to think about what should be along the Highway 61 corridor. He thinks that the site on McQuade and Old North Shore Road should be considered ridge/rural because it is further from the shore. There is a lack of properties to do these kinds of things on. There are 5 or 6 owners of commercially zoned parcels at the McQuade Lismore intersection and only one at the Tom’s Logging Camp location.

Wayne said that with the McQuade Harbor and the other businesses in that area, there is already increased traffic. Does it make sense to extend commercial in that area? It would be in close proximity to existing commercial

enterprises. Would it be spot zoning? He doesn't think so. Development is happening in that corner of the Township.

Sue said that sprawl is something that should be considered. An example of sprawl is Hwy 65 as it comes north out of the Twin Cities. Here there is the City of Duluth, then going north there is the gas station and the furniture store and then there is no commercial development until you reach Two Harbors. To what degree does the Town need to consider not just what is in the Town but what surrounds it? This business would not be seen from the expressway as far as she can tell. Another thing one could consider is how would you go about developing a town center along the highway and where would you locate it? The CLUP was written in 2002 and reviewed in 2012. It could be that it's time to look at it again.

For this project, she said, one option is to look at existing commercial uses that are permitted in the zoning district. The business cannot be considered highway commercial, but maybe neighborhood commercial. There are other uses for the area that would be allowed under a conditional use. They are not necessarily applicable, but might give the Commission some ideas. The Commission could name a new use and add it to Table 5.3, also determining what kind of permits would be needed. Another option is to rezone the area. If the Commission thinks this use fits an existing use that could be permitted with performance standards, they could do that, as well.

Wayne said that SMU-6a and SCO-8a and 8b have performance standards for different categories of uses, but SMU-6 has only conditional use. Given that, could the business be considered neighborhood commercial or would it require rezoning?

John asked what long-term consequences could result from rezoning this parcel. Should the Commission consider rezoning a larger area? He feels a little uncomfortable rezoning this 12 acres because our categories don't allow for the use. It seems backwards to him.

Wayne said that the last time there was a request to do something commercial on this parcel, there was a lot of opposition from neighbors, but that was probably because of the nature of the proposed business. It was a stone yard and masonry business. If the Commission were to allow this proposed project with a conditional use the neighbors would know what was coming in and would have a say in it. If the property were rezoned, it would be open to lots of commercial enterprises.

Jo asked how it could be a CU if it doesn't fit anything.

Wayne said that it depends on the interpretation of neighborhood commercial.

Jo said the key for her in the definition of neighborhood commercial is convenience.

Wayne said that he then believes that the Planning Commission needs to consider where in the Township straight commercial would fit. It is a category in the definitions, but not in the matrix. The only place it really exists in the Township is at the McQuade Lismore intersection because of preexisting commercial uses there. They need to look at ridge rural vs shoreland and determine where it might make sense to have it.

Jo said that if you look at the zoning map, SCO and SMU are still considered shoreline.

Sue said that the Shoreland Overlay is the area between the expressway and Lake Superior. The definition of commercial includes retail, sales, trade of products, goods and services. The Commission could define this proposal with a definition that includes it and other businesses like it.

Wayne said that he thinks it fits COM-3 but there is nothing available in existing COM-3 zones. If we are going to encourage a certain amount of local business, where are we going to put it? The Township is lacking in those opportunities.

Sue read the definition for COM-3: “This district is intended for concentrated, commercial development that promotes the efficient delivery of goods and services.” The definition of commercial use is: “The principal use of land or buildings is for the sale, lease, rental, or trade of products, goods, and services.”

Wayne that the Commission went through something similar when they dealt with the LIU on Ryan Road. In that case the business was straddling commercial and industrial. The Commission interpreted that to allow for that business and it has been a great improvement there. We need to think about what makes sense as far as location.

Jo said that the Dryco business was defined as a warehouse. They don’t have customers there. She said that this lot is a twelve acre lot. Do we want to limit what the uses can be on it or leave it open to subdivision or to commercial uses that the Commission has never dreamed of?

Wayne said that he has thought about other things that are desirable in the Township. Assisted living is one of these. It is not allowed in the Township except in commercial zones down on the shore. The use is not even allowed as a CU in MUNS-4 or SMU-6.

Sue said that such a use would be allowed if they approached it as a planned unit development. There have been proposals that haven’t worked out for various reasons besides Zoning Ordinance restrictions.

Jo said she felt the emphasis has been on a need for senior housing in the Township, not necessarily assisted living. They are not similar uses.

Dave said that it makes the most sense to locate those types of uses where there is sewer service.

John asked if it would be feasible to add another sub-use to commercial. A decision on this particular proposal cannot be made tonight. A new definition could be a start on making a decision.

Sue said looking at the current proposal under the Ordinance in place now, the Commission could decide on what kind of a use it is based on their description. If the Commission determines that it is a commercial use that does not fit into the zone district now, it could be defined and inserted into the matrix. Then look at which zone districts it could be allowed in and under what kind of a permit. Part of SMU-6 is on the shore. The Commission could develop a definition for commercial in SMU-6 that requires it to have x acres, x setbacks, etc. It could be very specific. It could be a commercial use that includes general merchandise sales and warehousing for example. The other option is to rezone. Sue said she didn’t know what kind of a timeline Les had in mind. A lot of work is needed to rezone on a broad scope.

Wayne said that a conditional use is more limited and more controlled.

Les said that they are on a fairly tight timeline. They don’t want to purchase property if they can’t use it.

John said that a definition under commercial, with conditions, works for him. But he agrees that the Commission needs to think about making the definition for commercial use a bit broader.

Jo said that she prefers a conditional use because the Commission can limit the types of commercial uses and can put conditions on them. She would rather not rezone the area because there are too many possibilities that could be opened up if it were made a commercial hub.

Sue said that the CLUP is 18 years old. There are a lot of considerations involved in placing a commercial area.

Jerry suggested that before the next meeting a small group should meet and look at the possibility of adding a new commercial definition and then adding it to the matrix.

Sue said that for the Grundahl's purposes, it would take two months, at a minimum, for the Commission to work through the process. They would need to make a decision on the definition and zone district requirements and then a hearing would be required.

It was decided that the group looking into it would be Jerry, Dave, Wayne, and Sue. They will try to have a draft proposal before the next meeting.

Jo said that that meant the best case scenario would be February.

Sue said that if the Commission made it a conditional use, that would require a hearing, also. A community participation report would be required, as well. The hearing could be in February if the Commission made a decision in January.

Les said that the property has been for sale for about 14 years. That is something to consider, as well. The site is clearly not that desirable for building a home, otherwise it would have sold by this time.

The November 16 minutes were approved with one change: Jo clarified line 60 from "older maps" to "data collected from old aerial photos."

### **Directors Report**

Sue said that she, Dave Mount, Val and Jo spoke with the MPCA about relieving the Town of its MS4 classification. The immediate answer was no. Dave is going to continue looking into it. The only reason the Town is an MS4 is because of the designation of Greenwood Road as part of a metropolitan area by the US Census reflecting that type of density.

Dave M said that Canosia Township was able to get an exemption and they fall under same definition. He is double checking.

Dave E said that it might be harder to get an exception because of being on Lake Superior.

Dave M said that the MPCA has not said anything regarding Lake Superior. Some of Canosia Township's roads drain into Pike Lake. He does not want to do anything that might endanger Canosia's status. It seems as though there is some language in the MS4 regulations that applies to Duluth Township that the Township is not aware of.

Sue said that St Louis County is doing a new comprehensive plan. They have had some meetings with townships and are gathering information. The County intends to acknowledge our CLUP for our area. Sue would also like to convey to the County the importance of County land and tax forfeit land in the Township.

The County is also updating Subdivision Ordinance 60 to incorporate Safe Routes to Schools.

Sue said that starting in April, the County intends to change the process regarding splitting properties. Any split will have to be reviewed by St Louis County Planning and Zoning before it can be recorded.

### **Old Business**

Dave M said that when the Commission's proposed Ordinance language regarding greenhouses in the Township came to the Board, the language did not seem clear to them. He volunteered to come to tonight's meeting to express the Board's concerns. It was not clear to the Board what separated the classes of greenhouses. They felt that the critical thing was the impact the greenhouse had off of the property. What potential characteristics are we trying to avoid? The Board considered three examples – the commercial greenhouse that had been on Clover Valley Drive, a farmstead greenhouse like Ernie's Acres, and residential, like those that exist in back yards. When the Board read the descriptions for those types of greenhouses, they didn't necessarily sort like that. To

have three categories of greenhouses, there have to be differences between the three types. It seemed to the Board that lighting and noise were the primary issues. There is the presumption that a commercial greenhouse would have a lot of lighting and noise. If a greenhouse was not lit outside of allowed times and had no mechanical noise, wouldn't that be okay? 24 hour lighting in a residential greenhouse would not be acceptable to neighbors any more than if it were a commercial greenhouse. Whether the operation is commercial or private, the use already exists in the Ordinance. He said that the idea of three types of greenhouses didn't make sense to the Board, but they agreed with the overall goal to provide tools to guide regulation.

Sue said that there is a scale factor that applies as well.

Larry said that the proposed Ordinance language limits lighting by time of day.

Dave M said that the proposed language only addresses that for farmstead greenhouses. It allows unlimited lighting for residential greenhouses. He said that performance standards don't speak to noise either. In general, the Board would like to have the language be as permissive as it can be while still accomplishing the goal of protecting the Township.

Larry noted that the whole thing was driven by what happened on Clover Valley Drive. How do we prevent something like that from happening again? The Commission felt the need to develop Ordinance language for future guidance.

Wayne said that in the Clover Valley Rd greenhouse case, the owner was absentee and that was part of the problem. The Town is agricultural in many areas. Many residents subsidize their income by growing food and marketing it. He would not want to limit the opportunity to do that.

Dave M said that a greenhouse like Ernie's Acres seems like the kind of business the Township wants. It is a positive thing in the right setting. However, the Township cannot foresee every possible greenhouse configuration. The language would have to include some combination of hours of lighting and operation and noise vs property boundary. The Ordinance doesn't have anything specific about noise, it only talks about excessive noise.

Jo said that in general, it would not be desirable to have commercial businesses in areas where there are not already commercial businesses.

Dave M asked if commercial greenhouses were a reasonable component of our Township.

Dave E asked if there was any difference between a commercial greenhouse and making and selling hay.

Jo said that having a greenhouse on your property seemed acceptable to her. It is different when someone is wholesaling vegetables.

Dave M pointed out that growing vegetables for wholesale is acceptable when they are grown outside.

Jo asked about Maly's greenhouse. What category would it fall under? They just have a couple of lights and fans.

Sue said that it is a small business that provides a service to the community. They don't have lights on 24/7. It is the scale that determines the impact.

The Commission agreed that Ernie's and Maly's are positive presences in the Township.

Dave M said that according to the proposed language, if he were to grow vegetables without a greenhouse and sell them that would be okay. But if he does the same thing in a greenhouse, it is not. So the commercial element is

not the difference. Lights, noise, and aesthetics are the concerns. Could greenhouses be defined by size? Light restrictions should be on all categories of greenhouses. A conditional use process would allow for greenhouse businesses like Ernie's. A conditional use allows limitations on a case by case basis. Maybe make a certain size a conditional use. And list things that would not be allowed under any circumstances.

Dave E said that classifying a greenhouse as a business brings in a lot of things that are not unique to a greenhouse.

Jo said that she thought the conditional use approach could work. She felt that there would still need to be three categories to distinguish types of greenhouses. She suggested that any greenhouse associated with a farmstead or residence where someone lives on site could be under performance standards. But those classified as commercial would be conditional use.

Rolf said that he thought it could be useful to think about greenhouses the way the Town has been considering short-term rentals.

Dave M said that outdoor floodlights can be annoying to neighbors, also.

Jerry said that the larger a greenhouse is, the more potential it has to impact the community. He thought that the permitting could be based on size, from permitted to performance standards to conditional use.

Sue asked where in the Township a greenhouse that required a conditional use would be allowed.

Dave M said that if it met the lighting and noise limitations, it would be okay.

Jo said that it is possible that someone could have a commercial greenhouse under these restrictions if they were strategic with the growing season and crop.

Dave M said that lights that are limited to an hour before sunrise and an hour after sunset and are out of the line of sight of neighbors might be okay.

Sue said that it has become apparent that having dark skies is something that is important to Township residents.

Wayne said that a common sense approach made the most sense to him. During winter limit lighting to 9 or 9:30 when people are going to bed. Setting it for one hour before and after sunset doesn't make sense to him. Why be so restrictive?

Dave E said that the hours should reflect when the lighting becomes a nuisance.

Jo said that lights after dark impinge on the rural lifestyle.

Dave M said that the issue was comparable to the gas station in Lakewood Township. Our CLUP says that we want a gas station in the Township. But would Town residents be willing to accept the lights that accompany a gas station like the one in Lakewood Township?

Wayne said that North Shore Community School is a similar situation. They have lights on all the time. If he lived next door, he would have a problem with that. The lights would be ok during normal operational hours.

Dave M volunteered to put some new language together, hopefully capturing the discussion, and bring it back to the Commission.

The next order of business was to determine what constituted "close by" for short-term rentals that did not meet the 50 ft setback.

Wayne said that reaction time to problems was the issue.

John said that the short-term rentals on Wildwood Road were fairly straightforward because the owners, who would be overseeing the rentals, were on-site during rentals. The issue with the latest was that not only was the owner not on site, but phone calls reporting problems would be relayed, creating a bigger lag in response time.

Sue said that it is not the responsibility of the Town police officers to enforce someone's permit. There was an STR not too long ago where the Town repeatedly had to step in as the enforcer.

Jo asked about a property that doesn't meet the 2 acre lot size, but the owner is right there. Response time is the important consideration, not the size of the lot.

Sue said that the Board wanted a recommendation from the Commission for what "nearby" meant. Her experience is that someone will tell you they can be there in 20 minutes, but they may not actually be able to be there that quickly. As John said, on the last STR CUP the Commission heard, if there was a problem, the rental company would be called and then they would call the contact in Two Harbors and then the contact would respond to the problem. It was hard to imagine someone getting to the rental in a timely manner.

Jo suggested ¼ mile. It is what is used for notification.

Dave E asked what the difference would be between one quarter mile and two miles. You can still get there quickly.

Dave M said that if someone is unresponsive, it won't make any difference.

John said that for him one quarter mile might be appropriate in a close area like Greenwood Beach.

Larry said that he thought it was more of an issue of an absentee owner.

Jerry felt that two miles was nearby.

Dave E agreed. In the Township, if you are within two miles you are still a neighbor.

The Commission agreed that if a rental cannot meet the required 50 ft setback or 2 acre lot size, then the owner will be required to live within 2 miles of the rental property.

Sue said that there is no update on the SMU-8 project. There has not been time to work on it. We have a good inventory of all the parcels. We can figure out how many would conform to lot width and lot size. We need to account for combined parcels in the database. Setback requirements would still need to be addressed. The limiting factors are privacy and fire. For wildland fires they recommend 30 ft between solid walled structures. The Commission may find that a lot is conforming but the structures on it are not.

### **Concerns from the Audience**

None.

The meeting adjourned at 9:40.