

**Town of Duluth  
Planning Commission  
Meeting Minutes  
November 16, 2021**

The meeting was called to order at 6:30 by Chair Liz Strohmayr.

In attendance: Angela Wilson, Pam West, Justin Osadjan, and Blane Tetreault.

Absent: Liz Strohmayr, Dave Edblom, and Dave Meyer.

Also attending: Sue Lawson, Planning Director and Michael Kahl, Town Board liaison to the Planning Commission.

The agenda was approved as presented.

The minutes from the October 28<sup>th</sup> meeting were approved unanimously.

Sue introduced John Christenson. He is a resident on Shilhon Road with property on Homestead Road. He provided comments on parts of the draft Ordinance.

Sue had compiled the comments from the Draft Ordinance October 19 Open House. She presented these in a PowerPoint presentation.

**Streams Shoreland Overlay**

One commenter said that it appears that 20% of the area of the Township is taken up by the Streams Shoreland Overlay. Some sections in the Township are taken up by more than 50% by the Overlay. This commentor felt that this overlay is too wide. Too much of the land in the Township is restricted by it.

Sue said that when she and Clint looked at the overlay for the rivers in the Township, it turned out to be about 10% at the 300 ft line of the overlay. They did not include tributaries to rivers in this calculation. The shoreland overlay for streams and rivers has been the same in the Ordinance since approximately 2002. The shoreland overlay is 300 ft. The setback for structures on a river or stream or recognized tributary is 200 ft. This means a structure can be within the overlay, but there are rules about other things you can do within the overlay, specifically clearing of vegetation.

Justin asked what it meant for the overlay to be 200 ft plus an extra 100 ft. Sue said that 200 ft is the setback for buildings and functions as a filter strip. Within the 200 ft setback there are stricter limits on allowed activities. In the 100 ft beyond the setback line, there are fewer restrictions.

John said that he and his wife own 30 acres on Shilhon Road which includes a section of the tributary to the Little Knife River. They have about 7 acres that are encumbered by the stream overlay. They would like to be able to use this part of the property for agricultural use. The area affected by the overlay is now filled with balsam fir which are dying from spruce budworm. They would like to take out the balsam fir and use the area for Christmas tree production. The State requires only a 50 ft buffer strip along trout streams. There are situations in the Township where people are using their property along streams or

rivers for agriculture and are closer to the watercourse than 50 ft. He, too, would like to be able to use his land along the tributary.

Sue said that her recollection is that the 50 ft setback for streams originated with agricultural land in the southern part of the State. She was not sure that the streams up here would be comparable to those in that area. She asked if removing 25% of the trees, as is allowed in the overlay, on a rotational basis over ten years, would work for his purposes. John said that they have about 500 ft of stream running through their property. A major issue is not being able to take a tree out of the setback area unless it's completely dead.

Angela asked if John could apply for a variance from the 200 ft setback to 50 ft. It seems like this could work. It would have to fit the situation. John would need to bring evidence and his arguments for a variance. Christmas trees would be considered an agricultural pursuit and agriculture is considered preeminent in the CLUP.

John said that the DNR shoreland regulations apply across the State. The DNR has a website that shows all streams in the State and their setbacks. For the stream on his property, the website shows that the setback is 50 ft for agricultural use.

Sue said that the Town is stricter on all setbacks from water than either the DNR or the County is. Setbacks have to fit waterways throughout the Township and cannot be specific to one waterway. If a 50 ft setback is allowed in one area, it changes things throughout the Township.

John suggested that there could be a setback specific to agricultural activity. Allowing only 5% soil disturbance in the Streams Shoreland Overlay is also prohibitive. If you were to plow in the filter strip, you would go well over the 5%. There are properties in the Township with streams crossing them that are being used for agriculture and where the Town's stated setbacks for streams are not being met. He understands that some of these are grandfathered uses, but where is that recorded? He said that it's an issue of fairness.

Sue said that grandfathered uses are not recorded. Nonconforming uses are not allowed to be extended: "Nonconforming uses shall not be enlarged, increased, moved, or extended to occupy a greater area of land than was occupied at the effective date of this Ordinance and amendments thereto..."

John said he would like to see a way towards legally using the overlay area on his property for "pick your own" Christmas trees. Traditionally, machinery is used to harvest Christmas trees. But the husbandry practices he is accustomed to are to cut the trees with a chainsaw or a hand saw, leave the root system in place for one year, and then pop it out and plant a new tree nearby.

Blane said that he was inclined to agree with Angela that a variance might be the approach and the harvesting and husbandry details would be pertinent for the variance application.

Angela said that she would be uncomfortable allowing a setback of 50 ft for agriculture even though Christmas trees don't involve some of the farming practices that are more disruptive to the soil.

John said that the Ordinance allows for removal of dead trees, but he would like to remove balsams before they are dead. As it stands now, you cannot cut any live vegetation within the 200 ft setback, even with a forestry plan in place.

Blane agreed with John that allowing balsam removal would be appropriately proactive in addressing wildfire concerns.

Blane made a motion to use the new proposed definition, “An area located along streams designated as Public Waters in this Ordinance and Zoning Map. The SSLO is measured starting from the ordinary high-water level along the stream. The area encompassed by the SSLO is determined as the structure setback plus an additional 100’, or, the landward extent of a flood plain designated by the Federal Emergency Management Agency (FEMA), whichever is greater” and adopt the new setback table replacing the 300 ft setback with the language “structure setback plus 100 ft” as presented.

Justin seconded.

Pam thought it would be better to leave the definition as it is at 300 ft from the OHWL but leave it open to variances.

Sue said that it’s in State Statutes that variances from dimensional standards can be considered.

Justin asked what the rationale was for reducing the SSLO from 300 ft.

Blane said that a tributary to a trout stream would likely be a much smaller stream and less impacted by activities near it because of its small size.

Pam pointed out that a “small” tributary can be substantially bigger in the spring or during storms.

Angela called the question. The motion failed with Blane voting in favor, Justin abstaining and Angela and Pam voting against the motion.

Angela moved to leave the definition as is, “an overlay 300 feet from the ordinary high water level of a river or stream designated by this Ordinance; or the landward extent of a flood plain designated by the Federal Emergency Management Agency” and to keep the setbacks as established. Pam seconded.

The motion passed with all voting in favor except Blane.

It was agreed to move “Removal of trees, shrubs and plants shall be accomplished through human means (i.e., hands, axe, saw, etc.)” from Article VI Section 4.B.4 to Section 4.A.3.

### **Livestock**

Sue said that regarding the comment on a math error in livestock units, it was not an error, but is correct as is. It was agreed to change the word “horse” to “equine” throughout Article VIII Section 6. An example of combining animal units was added after the table. The RR-1 zone district was added to the list of zone districts in which agriculture is considered preeminent.

### **Agri-tourism/Market Farms**

John made a comment proposing to add a use called “market farm.” He proposed a definition and suggested that it be permitted in at least the RR-1 and FFL-1 zone districts. The Commission agreed to the following definition

A farm existing to produce and sell agricultural products to the local region which may include some or all of the following seasonal activities: on-farm and/or off-farm sales of agricultural and related value-add products, on-site agricultural related events, food sales, and pick or cut your own operations.

and to allow the use as permitted with performance standards in FL-1, FL-2, FFL-1, RR-1, and SSUR-1 zone districts.

The Commission reviewed possible performance standards for market farms. They decided on 9 acres as the minimum lot size.

Pam said that she thought two festivals per year would be adequate. She said that she has been to farm festivals that are huge and would like to limit them because of that. Justin asked if requiring a separate permit to host a festival would be appropriate. The permit could require an estimate of the number of attendees, demonstrate adequate bathroom capacity, adequate parking, etc. It was generally agreed that renting the farm venue for events like weddings would not be an acceptable use. Blane said he would like to include festivals in the standards because if they are not mentioned, it becomes open to individual interpretation and could be interpreted more broadly. The Commission agreed to allowing festivals 4 times per year.

For retail sales, the following language was agreed to: “Retail sales and value-added sales, including agricultural, horticultural and silvicultural products are allowed. Retail sale products must be produced on the farm or be 50% locally sourced.”

The Commission added a standard that there must be sanitary facilities onsite sufficient to meet needs. John asked if sanitary facilities could be required only when open to the public. The Commission agreed to add that to the standard.

Angela asked about requiring access to a public road as a performance standard. It didn’t seem like an easement should be used for something like a farm market. Sue noted that Homestead Drive is a private road and the residents have control over it. Easement agreements usually detail what is allowed. Angela said that easements usually only address ingress and egress and most were written at the time a parcel was divided. They may be dated. Sue said the Town had no control over someone’s easement to get to a landlocked parcel.

Blane asked what it meant to be open to the public during seasonal hours. Someone could sell year around. You don’t want to leave it open to having a commercial enterprise like a store. How could we limit this if necessary?

Justin suggested adding cottage foods to the retail sales products allowed. The State uses that term to define home-processed food products made without a license. The Commission agreed.

Angela moved to accept the proposed changes, adding market farm as a use in the agreed upon zone districts and adopting the definition and performance standards as discussed and agreed to. Pam seconded. The motion passed unanimously.

### **Nonconformities**

Sue reviewed the new zone districts for the Greenwood Cliffs and Greenwood Beach. The proposed minimum lot sizes and widths for these districts better represent what is already there. If this is the case, is it necessary to have the language regarding nonconforming lots in the Shoreland Overlay Area? She said that she will check to see if State Statutes require that language.

### **HFSTRs**

Sue read the comments received on high-frequency short-term rentals. She showed a table of HFSTRs by zone district. Most of them are along the shore, and after that most are inland in the 9 acre minimum lot size zone districts. The number of HFSTRs went from 2 in 2014 to 11 in 2021, a 450% increase.

Angela said that she likes the idea of a HFSTR being the primary residence of the owner, but how are you going to prove that? Sue said that you can't prove it, but you can have the applicant sign an affidavit stating that it is their primary residence. This was one of the original reasons people had HFSTRS – as a way to keep their property safe when they're away for a period of time.

Angela said that the Planning Commission has been pretty generous in allowing short-term rentals. One suggestion was to restrict the number of nights someone could rent their home as a HFSTR. She said that she has experienced real estate agents encouraging home buyers to use HFSTR as a tool to help make their mortgage payment. If it were required that the home be the primary residence for 9 months of the year, it would leave 3 months for rental or 30 to 60 days out of the year. If you don't live there, you could not support yourself on the profit. If HFSTRs are allowed as business interests in the Township, there is a real concern that homeowners could be priced out of the market. Currently everyone who currently has an interim use for a HFSTR is allowed to rent well in excess of that number of days.

Blane thought that considering the comments and the CLUP, it would be in the best interest of the community to limit HFSTRs. He would prefer to not have properties in neighborhoods that are used solely for HFSTRs.

John asked, in this type of scenario, if you live on the property and put up a structure for short-term rental could you rent it for more than 60 days?

Sue said that having a secondary structure on your property that you rent out would be the same as having a subordinate residential dwelling only for the purpose of renting it out. Subordinate residential dwellings are currently only allowed for family members. Currently, a homeowner can rent out a room – this is considered a hosted rental. Also, only single-family dwellings are allowed to be used as short-term rentals.

Pam said that someone is allowed to own only one HFSTR in the Township. Would we want to limit the number of HFSTRs allowed in the Township? Blane asked if requiring the home be the primary

residence and limiting the rental days to 30 to 60 days a year would be just as effective. It was agreed that it would be.

Angela moved that the maximum number of rental days per year, with the year commencing on the start date of the interim use, be no more than 60 days. Pam seconded.

John noted that from an investor's standpoint, it might not stop buying properties for investments as short-term rentals, it would just mean they have to make their money in 60 days. He was concerned that this restriction could end up not changing anything. Duluth is very restrictive, but investors will just raise the price. He thought it made makes sense to allow someone who lives on a property to rent part of it out or to require they be resident for nine months of the year.

Angela said it may help, especially with homes that are inland that may be more affordable. It is in the Town's interest to preserve and invigorate neighborhoods.

Justin asked about having more than 60 allowable rental days on the shore. Sue said that even though the shore is more oriented towards tourism, it is also a residential area and not everyone wants a HFSTR in their neighborhood. She has had folks from the shore talk to her about the impacts of HFSTRs.

The motion to limit the maximum number of rental days per year to 60 days, with the year commencing on the start date of the interim use, passed unanimously.

Angela moved to add the phrase "that are occupied by the owner as a primary residence for at least 9 months of the year" to the end of the condition that "short-term rentals are only allowed in principal single-family residential dwellings." Blane seconded. The motion passed unanimously.

Blane asked why a HFSTR needed to be the principal dwelling? If someone had a cabin, couldn't they use it for a short-term rental if the owner lives on site? Sue said that it ends up being a problem. The Town has encountered the situation when someone has built a subordinate residence for family and when the family member no longer lives there, they want to use it as a short-term rental. It increases the density of the property and zone district and it is not the intention of a subordinate dwelling.

Angela noted that HFSTRs also impact the hospitality industry. The hospitality industry contributes to the community through taxes, jobs, etc.

### **Driveways**

Regarding comments that the Town might not want to regulate driveways, Blane said that he still thinks that a driveway can have as much of an impact on another property as, say, an accessory structure so thinks that it should be left as proposed. The Commission agreed.

### **Isolated Camping Sites**

A comment was received indicating that the number of isolated camping sites on 20 acre lot sizes should be limited. The Commission agreed to leave it as currently proposed.

### **Greenhouses**

John said that he had comments regarding greenhouses and greenhouse type structures. He felt that the definition of farmstead greenhouse was too restrictive. Restricting mechanical systems could mean that if you had a typical high tunnel, you would not be able to have automated irrigation in it or use roll-up sides. According to current language, you would need a land use permit for even a caterpillar tunnel over lettuce. He didn't think this was the intention. Modern high tunnels can have similar features as a warehouse greenhouse. He suggested differentiating them by size with 10,000 sq ft as the cutoff point.

Blane said the definitions and standards were related more to the intended end use of the greenhouse product. The main differentiating factor is wholesale vs. retail sales.

Sue said that you can have a 12 ft by 12 ft structure without a permit which would allow for row cover type tunnels.

The Commission agreed to add that mechanical systems and plumbing are allowed to the existing definition for farmstead greenhouse and not add any size criteria.

John suggested adding "unless those products are produced on the farmstead" to the last sentence of the definition of farm stand such that it reads "No commercially processed or commercially packaged foodstuffs shall be sold at a farm stand *unless those products are produced on the farmstead.*" Otherwise, it is possible that a product produced by the farm in a commercial kitchen could be precluded. The Commission agreed.

### **Agricultural Land**

John had also commented that agricultural land is defined too narrowly. It currently reads that it is land "planted with annually seeded crops or that is in a crop of pasture grasses or legumes." Under this definition, an apple orchard would not be included as agricultural land. Angela read the definition from the State Statutes: "Land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any land zoned by a local governmental unit for a use other than and nonconforming with agricultural use." It was agreed to use this definition.

### **Directors Report**

Sue said that the public hearing for the Proposed Ordinance is scheduled for December 2<sup>nd</sup>. The Proposed Ordinance will be made available to the public on November 19<sup>th</sup>. At the December 16<sup>th</sup> Commission meeting, the Commission will finalize the Proposed Ordinance and recommend it to the Town Board to adopt. The Board plans to look at it at a special meeting for that purpose in January. It would be good if Commission members came to that meeting.

There is a job announcement out for a Planning Assistant. Sue plans to leave in a year or so and needs to bring someone else along in the position.

The MPCA is currently deciding if the Town's MS4 for applies to the whole Township or just to the denser area on the shore. There are new requirements for renewing the permit so Val Brady and Jo

Thompson are working on that. The Town has been fortunate to have them working on stormwater for so many years. The Town is considering what to do about these responsibilities in the future.

**Old Business**

None.

**Concerns from the Audience**

None.

The meeting adjourned at 9:48.