

**Town of Duluth
Planning Commission
Meeting Minutes
May 26, 2022**

The meeting was called to order at 6:30 pm by Chair Angela Wilson.

In attendance: Angela Wilson, Pam West, Blane Tetreault, Justin Osadjan, Dave Meyer and Tony Mancuso.

Absent: Dave Edblom.

Also attending: Sue Lawson, Planning Director; Liz Strohmayer, Planning Assistant; and Tim Strom, Town Board liaison to Planning.

The agenda was approved as presented.

The April 28 minutes were approved as presented.

Sue said that in the Ordinance, *Community and Large-Scale Solar Energy Systems* are shown as a conditional use in Table 5.3 but the requirements for them are listed in Section 23 of Article VIII, Performance Standards. Under performance standards, there is no opportunity for input from the public, nor for the Commission to impose conditions on the use. It is, however, a simpler process. The definition for *Solar Energy, Community and Large-Scale Solar Arrays* from Article II is:

A commercial solar energy system that converts sunlight into electricity for the primary purpose of serving electric demands off-site from the facility, either retail or wholesale. Community-scale systems are principal uses and projects typically cover less than 10 acres.

It is possible that this was a clerical error and the requirements for the use were meant to be in Article IX, Conditional Uses. She asked if the Commission recalled what their intention was for this use. Was it a conditional use or allowed with performance standards?

Tony said that he wasn't here at the time of that discussion, but he thought the use should be a conditional use as it is defined in Table 5.3. He thought performance standards were fine for personal solar energy arrays, but not for commercial installations. He said that such a use could really impact neighboring residents.

Angela said that she did not recall that specific discussion, but that allowing it as a conditional use is consistent with what the Commission decided for other commercial applications and is more appropriate for a use of that scale.

Blane agreed that the use was meant to be a conditional use and hence, the requirements for it should be in Article IX, Conditional Uses. He feels it was most likely a clerical error.

Sue said that changing it would require amending the Ordinance.

Tim said that it might not be necessary to go through the amendment process, because the intention of the Commission would probably be recognized by a judge. But it would be taking a chance if it were challenged at some point. It would be cleaner to go through the amendment process.

Tony asked if it were possible to clarify it by just adding a note to the text of the Ordinance.

Tim said that an applicant may be inclined to interpret it to their benefit, i.e., that the use is allowed with performance standards. But the applicant would also be likely to recognize that it is cheaper to apply for a conditional use than to go to court. If it were challenged in court, it would be considered an ambiguity, not a typo. Our interpretation of our ordinance is that this use should require a conditional use and we are requiring a conditional use. It is part of the Planning Director's job to interpret the Zoning Ordinance.

Angela thought it would be best to fix it. She thought it was clear what the Commission's intention was. She made a motion that the Commission request that the Town Board amend the Zoning Ordinance to shift the language regarding *Community and Large-Scale Solar Energy Systems* from the Performance Standards Article, Article VIII, to the Conditional Use Article, Article IX.

Blane seconded.

Sue said that the Commission is responsible for holding the required public hearing, including posting and notification, for an Ordinance change.

The motion was approved unanimously.

Tony suggested that Commission members look at the one-megawatt installation that's adjacent to I35 at the corner of the freeway and Highway 230 near the Black Bear Casino to see what a one-megawatt solar project looks like.

At the previous meeting, the Commission had talked about the public hearing process and came to some agreements about how they would like the process to go. Sue handed out an outline of what the typical process would be for a public hearing. She said that one point that came up was whether or not the applicant could respond to a question that comes up during public testimony. She wanted to clarify the Commission's general position on how to handle this situation. Liz said the Commission had decided to deal with it on a case-by-case basis. One suggestion was to not allow interaction during the testimony and instead, after public testimony, a Commission member would ask the question of the applicant, thereby heading off potential interaction between an audience member and the applicant.

The Commission also agreed on the following procedural points:

- They preferred, generally, to have a discussion of the application before making a motion.
- They wanted to continue to split the question to address the necessary criteria.
- The chair can participate in discussions and make motions, as well as run the meeting.
- All are free to step in to hold people responsible to the Communication Agreement.

Angela said that she, as chair, will shut down conversations that are not civil. But all the same, if the Commission wants to hear more from an individual, it's ok. She doesn't want anyone to feel shut down by her or like they can't continue a conversation.

Director's Report

Sue said that permits are picking up with the start of summer.

Blane said he's seen a number of new driveways going in. Is there a way to know whether or not they've gotten permits? Sue said that land use permits have not previously been required for driveways, so permits may not have been needed for those Blane has seen. Liz said that she would look it up if someone had a question about it.

Blane asked what the process is if someone doesn't get a permit for a driveway. Sue said that she generally talks to the landowner and lets them know. An after-the-fact permit is 4 times the cost of the original permit. She works with folks to help them comply.

Old Business

None.

Concerns from the Audience

None.

The meeting adjourned at 7:26.