

**CITY OF DULUTH
PLANNING COMMISSION
OFFICIAL MINUTES**

February 15, 2010

PRESENT: Greg Lock, Chairman
Gary Canter
David Marshall
Jim Johnson
Kelvin Kelkenberg

ABSENT:

STAFF: Clifford Cross, Planning Director
Chris Collins, Senior Planner

I. CALL TO ORDER

The meeting was called to order by Chairman Lock at 7:00 p.m.

II. GENERAL BUSINESS

- A.** Introduction of staff reports and all other documents submitted to the Planning Commission at the meeting into the official record.
Chairman Lock called for a motion. Motion was made by Commissioner Canter, seconded by Commissioner Johnson. **Vote 5-0. Motion carries unanimously.**

III. NEW BUSINESS

- A.** T0127-10-Article 24 Overlay Map Amendment –a proposal to remove four parcels from Downtown Overlay District.

Chairman Lock called for a report from staff.

Mr. Cross reported for staff. Noted a requested amendment to Article 24 of the adopted overlay ordinance, which covers both the Buford Hwy Overlay District (BHOD) and Downtown Overlay District (DOD). Noted specifically a petition, or request, to review the subject parcels and to determine whether or not they should have been originally incorporated into the adopted overlay map. Stated that at direction of Mayor and Council, staff is reviewing this and bringing the request before the Commission, as this request is

a unique situation. Noted that subject parcels are located on the opposite side of what will probably never be a buildable parcel, as it currently houses a Georgia Power substation and easement. Stated that these parcels are sandwiched between the in-boundary and an unbuildable lot. Noted that this was adopted at a time when the status of the fire station was unknown. Stated that staff believes this is worth revisiting and sees a valid argument in that this could have been left out of the overlay district and could have stopped at the boundaries of the Georgia Power substation. Stated that based upon this, staff is requesting that the Commission review this and has no objection to removal of these parcels from the overlay district.

Chairman Lock asked for questions for staff. Being none, Chairman Lock called for a motion to recommend to Council that they adopt the ordinance amending Article 24 of the Duluth Zoning Ordinance as recommended by staff. Commissioner Johnson made a motion to recommend amendment of the ordinance. Seconded by Commissioner Kelkenberg. Roll call vote was taken. **Vote 5-0. Motion carries unanimously.**

IV. OLD BUSINESS

- A. Z0227-09 Manton Bros. LLC Rezoning** –Request to rezone parcels 6264 077 and 7161 121 from the existing R100 to O&I with a conditional use permit to allow a contractor’s office with outdoor storage. Chairman Lock called for a staff report.

Mr. Collins presented for staff. Noted that the request has been amended from the previous request of going from the current zoning to C2, with several waivers from the DOD. Stated that based upon the previous case heard at this meeting, it has been recommended that the parcels involved in this request would no longer be a part of the DOD, meaning that waivers previously requested would no longer be needed. Stated that the O&I zoning district allows for the desired use by the applicant, which is a contractor’s office with outdoor storage, in conjunction with a Conditional Use Permit. Stated that the details of the request are the same. Noted that the Georgia Power property is not part of this request. Noted that this site currently has C1 zoning, which does not allow outdoor storage, so this would be contained on the two parcels noted. Mr. Collins noted that all elements such as review, density, population and grading, flood plain and transportation have not changed; infrastructure and public services are still be handled the same way as with the previous request. Stated that the major difference from the original request is the relationship to the Comprehensive Plan and the future land use map. Noted a typo on page 7 that states “however, the C2 would be permissive,” should

read, "however, the O&I zoning would be permissive." Noted that O&I zoning is Office and Institutional zoning, and would be permissive of public institutional uses. Noted that the property is called out on the future land use map as public and institutional. Noted the character areas of the Comprehensive Plan, which call out appropriate implementation techniques for what has been set up as what is called the Future Development Map, with the character areas previously discussed with this case. Stated that O&I zoning is called out as a tool for implementation of the Office/Institutional Corridor character area. Stated that report given to Commission analyses 2 things—the request for change in zoning from R100 to O&I and the Conditional Use Permit request. Stated that staff findings and report have found that the zoning proposal as is would permit a use that is suitable in view of the use and development of adjacent, nearby property and that the zoning proposal would not adversely affect the existing use or usability of adjacent, nearby property. Stated that R100 zoning doesn't present much of a reasonable economic use, with frontage on Hwy 120. Stated that no real excessive burden would be placed on any infrastructure—transportation or otherwise. Noted the major change stated in Number 5, which is one of the required rezoning findings, that the zoning proposal is now consistent with the land use policy plan and comprehensive plan and other plans adopted by the City of Duluth. Noted that with Conditional Use Permits, certain criteria have to be addressed adequately in plans submitted by applicant such as ingress/egress to property; proposed structures thereon, with reference to automotive and pedestrian safety and convenience, traffic flow and control. Stated that staff has reviewed applicant's plans thoroughly and they do indicate traffic correction, structured ingress and egress and parking that are all in conformance with current codes. Stated that off street parking and loading areas were required with particular attention to economic noise, glare and odorous effects with the conditional use on adjoining properties. Stated that the site plan tied with this request was designed originally to try and conform to the DOD, so buffering and sensitive design standards are in place on the site plan and take care of those effects given on adjacent property. Noted that refuse and service areas are screened in accordance to the code and are currently shown as screened in accordance with the DOD. Noted that screening is also in place for utilities and that any signs will have to meet the current sign ordinance. Noted that no signs are planned, but the applicant is not restricted from placing a sign on the site. Stated that existing property setbacks are not being changed as far as minimum setbacks. Noted that all building additions proposed are on the rear of the existing building. Stated that based on those elements, Commission was presented with proposed findings and staff recommendation of approval for the rezoning request from R100 to O&I. stated that staff has also recommended approval for the

Conditional Use Permit request to allow the operation of a contractor's office with outdoor storage, under Section 1209-C2 of the zoning ordinance, subject to standard conditions as follows:

1. All site and architectural lighting—to control nuisance caused by site, parking lot, or architectural lighting on building—be directed internal to site. Noted that site plan dated 11/18/09 met standards and was approved by staff to proceed.
- 2 & 3. development and buildings meet site development plan and architectural plans presented to staff,
4. require all outdoor storage to be screened and not able to be seen from any public right of way.

Mr. Cross asked Chairman Lock if public comment had been asked for on the Article 24 amendment.

Chairman Lock noted that they had not.

Mr. Cross stated that before any action was taken on the case, Commission needed to see if there was any public comment.

Commissioner Johnson asked if this had been posted.

Mr. Cross confirmed that notices had been placed for all cases.

Chairman Lock asked, in regard to T0127-10 Article 24 Overlay Map Amendment, was there any comment from the public on that proposal.

Ms. Elise Whitworth, of 2900 Barnwood Crossing, Duluth, came forward to speak. Noted the outdoor storage. Asked if there were guidelines.

Chairman Lock noted that they hadn't gotten to that piece yet.

Mr. Cross asked if Ms. Whitworth was referencing the Article 24 amendment. Noted that they were backtracking and taking public comment for the Overlay District. Noted that Ms. Whitworth wanted to discuss rezoning case.

Ms. Whitworth expressed her apologies.

Chairman Lock noted that public comment would be asked for. Asked for questions for staff on Z0227-09. There were none. Noted that applicant was present. Asked if he would like to make any further comment.

Mr. Cross stated that before they moved forward, was Commission comfortable with the making of the motion and second based on no public comments on the original Overlay District.

Chairman Lock confirmed this.

Mr. Blake Manton, applicant, (633 Sunset Dr. Norcross, 30071) asked if he was commenting on the Overlay District or on the overall rezoning.

Chairman Lock stated that Mr. Manton could comment on the pieces that applied to him.

Mr. Manton stated that nothing had changed in terms of his intent for the site. Noted that he was working with Georgia Power to get it rezoned and redone, but his contact at Georgia Power was out of the office for a month. Noted that Georgia Power is interested in leasing the property.

Chairman Lock asked for questions from Commission.

Commissioner Canter asked Mr. Manton if he was familiar with all conditions set forth in the documentation.

Mr. Manton confirmed that he was. Stated that he had no questions in terms of the Conditional Use Permit and was not deviating from his original plan.

Chairman Lock stated that he wanted to make sure Mr. Manton understood that actions taken by Commission at this meeting did not include the Georgia Power property and Mr. Manton would have to come before Commission and Council again once an agreement was made with Georgia Power and request a rezoning and appropriate measures to be taken before any storage is placed on their property.

Chairman Lock asked for those wishing to speak in favor. There was no one. Asked for those wishing to speak against. There was no one. Opened the floor for questions from public. There were none.

Commissioner Kelkenberg asked for clarification on which amendment was being discussed.

Chairman Lock noted that Article 24 was passed and the Commission was now addressing Z0227-09.

Ms. Elise Whitworth came forward to speak. Noted the parameters on outdoor storage. Stated that she was interested in maintaining the aesthetic look of the City.

Chairman Lock asked Mr. Cross to address this.

Mr. Cross noted that with outdoor storage, the uses are regulated by what's known as the Underlying Zoning District. Stated that if this property obtains the O&I zoning classification, which would then be the Underlying Zoning District, that district's regulations then would regulate what use is allowed or whether outdoor storage is allowed. Noted that outdoor storage, by right, in the O&I zoning classification is not allowed. Stated that outdoor storage that is associated with a contractor's office is allowed per the issuance of a Conditional Use Permit, which is what part of this application entails. Stated that with the request, there will be a rezoning of the property to the O&I and the applicant is requesting a Conditional Use Permit to follow up to allow for the operation of the contractor's office with the outdoor storage.

Ms. Whitworth asked if there was any private property backing up to this particular area.

Mr. Cross noted that there is a religious institution on one side and he believed there was some residential to the rear and on the other side is the Georgia Power substation, which fronts Hwy 120.

Ms. Whitworth asked if there was a buffer zone for the residential areas.

Chairman Lock noted that there are always buffer zones for residential areas.

Mr. Cross noted that there are requirements for buffer zones between what's known as incompatible uses.

Chairman Lock asked for other questions or comments.

Mr. Ken Peebles, attorney for Zion Korean United Methodist Church, of 2444 Hwy 120, Suite 106, Duluth, spoke in opposition. Noted that the church was adjacent to the property in question. Stated that his clients were very concerned as originally this was proposed to be a C2 zoning. Stated that while O&I does fit the neighborhood, his client has concern about trucks going in and out and materials being stored in sight. Stated that his client would object to something like this going on.

Chairman Lock asked for questions from Commission. Being none, Chairman Lock called for a vote on the findings of fact on rezoning request.

Commissioner Canter made a motion to accept the findings of fact as stated. Commissioner Marshall seconded the motion. Roll call vote was taken. **Vote 5-0. Motion carries unanimously.**

Chairman Lock called for a vote on the recommendation to Council to accept the change from R100 to O&I on parcels 6264 077 and 7161 121.

Commissioner Canter made a motion to recommend approval on request to rezone stated parcels from R100 to O&I. Motion was seconded by Commissioner Kelkenberg. Roll call vote was taken. **Vote 5-0. Motion carries unanimously.**

Chairman Lock called for a motion regarding the findings of fact on the Conditional Use Permit request for parcels 6264 077 and 7161 121.

Commissioner Johnson made a motion to accept findings as stated. Seconded by Commissioner Marshall. Roll call vote was taken. **Vote 5-0. Motion carries unanimously.**

Chairman Lock called for a motion to recommend Council approve the Conditional Use Permit for 6264 077 and 7161 121.

Commissioner Johnson made a motion that Commission recommend to Council that changes to zoning be accepted in the Conditional Use Permit request for the parcels noted.

Chairman Lock noted, for clarification, that this motion was with the conditions as stated by Planning Department.

Commissioner Johnson confirmed this. Motion was seconded by Commissioner Kelkenberg. Roll call vote was taken. **Vote 5-0. Motion carries unanimously.**

Chairman Lock noted that all motions had been accepted and concludes the business on Z0227-09. Asked for comments from staff.

Mr. Cross noted that this would appear before Mayor and Council on February 22.

B. Unified Land Development Code

Chairman Lock noted Article 1 of the proposed new code. Asked for comments from staff before this was reviewed.

Mr. Collins stated that he felt that the final draft was nearly ready pending any studies or verification that may be needed. Stated that the Commission has reviewed this piece by piece and now has the entire picture with changes that were recommended at separate hearings and work sessions. Stated that if Commission was comfortable with it, the document was ready to be acted on.

Chairman Lock called for questions for staff. There were none. Chairman Lock noted that the Planning Director did mention that he would get an engineering review on some pieces of this, which is independent of the Commission’s review and should not delay the Commission in their recommendation. Chairman Lock complimented staff on the very thorough job. Called for a motion to pass this forward to Council for their review.

Commissioner Marshall made a motion to pass the Unified Land Development Code, Article 1, to the City Council. Seconded by Commissioner Canter. Roll call vote was taken. **Vote 5-0. Motion carries unanimously.**

Commissioner Marshall noted staff’s effort and expressed his appreciation for their work. Congratulated staff on their work.

Chairman Lock added his appreciation to Planning.

V. OTHER BUSINESS/DISCUSSION

A. Matters from the Director.

Mr. Cross noted that Ms. Whitworth was present to speak to the Commission about potential appointment to the Commission. Mr. Cross stated that he concurred with Commission’s compliments to staff in regard to the Unified Land Development Code. Stated that he wanted to make it clear that this was the staff’s work, specifically Mr. Collins, Mr. Atkinson and Ms. Hansel. Noted for the record that Mr. Collins was the director of this document.

B. Matters from the Commission.

None.

C. Matters from Citizens.

None.

VI. ADJOURNMENT

A motion was made by Commissioner Canter and seconded by Commissioner Johnson. **Vote 5-0.** Motion passes unanimously. Being no further business the meeting was adjourned.

Approved this _____ day of _____, 2010.

Chairman

Secretary/Witness