



CITY OF BAYPORT

294 NORTH 3RD STREET
BAYPORT, MN 55003

PLANNING COMMISSION MEETING

City Hall - Council Chambers

February 22, 2011 – 6:00 p.m.

A. CALL TO ORDER

B. APPROVAL OF MINUTES

- January 18, 2011 regular meeting

C. PUBLIC HEARINGS

- Public hearing to consider a conditional use permit (CUP) to allow the existing commercial office use at 836 Minnesota Street South to continue and be recognized as a conditional land use under the city's Lower St. Croix Bluffland and Shoreland Management Ordinance

D. OLD BUSINESS

E. NEW BUSINESS

F. GENERAL INFORMATION

G. OPEN FORUM

H. ADJOURNMENT

**CITY OF BAYPORT
PLANNING COMMISSION MEETING MINUTES
CITY COUNCIL CHAMBERS
JANUARY 18, 2011
6:00 P.M.**

CALL TO ORDER

Pursuant to due call and notice thereof, Chairperson Goldston called the regular Bayport Planning Commission meeting of January 18, 2011 to order at 6:20 p.m.

ROLL CALL

Commissioners Present: Dan Goldston, Pam Hoye, Todd Gilles, and Joe Ritzer

Commissioners Absent: David Levy

City Staff Present: Assistant City Administrator/Planner Sara, City Council Liaison Michele Hanson, and City Attorney Nick Vivian

SWEARING IN OF NEW MEMBERS TODD GILLES AND JOE RITZER

Commissioner Goldston administered the oath to the new members.

APPROVAL OF MINUTES

It was moved by Commissioner Hoye and seconded by Commissioner Gilles to approve the September 20, 2010 meeting minutes as presented. Motion carried.

PUBLIC HEARINGS

Consider an amendment to Conditional Use Permit 83-5C to specify permitted land uses for 101 5th Avenue South: Planner Taylor reviewed the background of the request to amend a conditional use permit (CUP) that was approved in 1983, as part of a planned development, which included the Bayport Marina, residential condominiums known as the Waterford on the St. Croix, and a restaurant property. During the review process for a new restaurant in early 2008, the city discovered that the 1983 CUP that was supposed to stipulate conditions for the restaurant use was never officially recorded, in essence making it void. As such, the city issued a new CUP for the restaurant use.

In July of 2008, the restaurant property owner, Group 41, filed a lawsuit challenging the city's action to require a new CUP, alleging the CUP granted in 1983 shall govern the property. In 2009, a judgment was made that despite the fact that it was never recorded, the 1983 CUP does govern the property. The settlement agreement, approved by the City Council in 2010, stipulated that the 1983 CUP should be amended, to clarify the specific uses that are allowed by the 1983 CUP, including a restaurant with on and off sale liquor. The city has always taken the position that the restaurant is one of the original uses intended for the property. Therefore, the amendment is not actually changing anything from what the city intended back in 1983 or present day, and as such, staff is recommending approval. Additional comments followed by Attorney Nick Vivian, as to the legal issues related to the mitigation and settlement agreement.

Notice of the Planning Commission's public hearing was published in the Stillwater Gazette on December 23, 2010. Comments were received from the staff at the Department of Natural Resources, who is in favor of the ordinance amendment. Discussion followed on the past use of the property and the unique circumstances surrounding the application.

Chairperson Goldston opened the public hearing. The current president of the Waterford condominiums, Arnold Lindall, 483 Mariner Drive, presented a formal letter on behalf of the board,

which expressed concern for several ongoing issues related to the restaurant use and encouraged the city to hold off on amending the CUP until all parties have had a chance to negotiate the identified issues. Past Waterford president Nancy Nelson commented on the settlement agreement, in regards to the legal description of the property and reference to the Waterford units as “townhomes” and requested the documents be corrected to reflect “condominiums.” She also requested clarification on the proposed CUP amended text and inquired why Waterford had not been involved in the discussions to amend the CUP, if they are one of the parties described in Exhibit “A.”

It was moved by Commissioner Hoye and seconded by Commissioner Gilles to close the public hearing. Motion carried.

Attorney Vivian responded to the comments posed by the Waterford residents, stating that the city is only considering the terms of the settlement agreement at this point, which is to amend the CUP. He also stated that Waterford had the opportunity to express their concerns during the mitigation and negotiation of the settlement agreement; however, Waterford chose not participate in the process. He stated the three parties may decide to pursue separate conditional use permits for each property at some point in time; however such action must be initiated by the property owners. Bill Griffith, Larkin and Hoffman Attorneys and representative for Group 41, reiterated staff’s comments and stated that at this time, Group 41 was not interested in re-opening the settlement and amending the terms of the agreement, as requested by Waterford. Attorney Vivian indicated he believes that use of the term “residential townhomes” would not preclude operation of residential condominiums and stated his recommendation to the City Council would be to move the language forward as is.

It was moved by Commissioner Hoye and seconded by Commissioner Gilles to extend the review period for the application from 60 days to 120 days from the date of the application, December 6, 2010, per Minnesota Statute 15.99, in order to meet the city’s meeting schedule and allow adequate time for the City Council to act properly on the matter. Motion carried.

It was moved by Commissioner Goldston and seconded by Commissioner Hoye to recommend to the City Council to approve an amendment to Conditional Use Permit 83-5C, to specify permitted land uses for 101 5th Avenue South, pursuant to the settlement agreement approved by Group 41, Ltd., the City of Bayport, and the Bayport Marina Association, Inc. Findings of fact are as listed in the staff report and as presented and discussed at the meeting. Motion carried.

OLD BUSINESS – None

NEW BUSINESS – None

GENERAL INFORMATION

Both new and past members of the Planning Commission were recognized and thanked for their service.

It was moved by Commissioner Hoye and seconded by Commissioner Gilles to accept the calendar of application due dates and meetings for 2011. Motion carried.

OPEN FORUM – None

ADJOURN

It was moved by Commissioner Ritzer and seconded by Commissioner Hoye to adjourn the meeting at 6:52 p.m. Motion carried.

MEMORANDUM

DATE: February 14, 2011

TO: Planning Commission (February 22nd meeting)
Mitch Berg, City Administrator

FROM: Sara Taylor, Assistant City Administrator/City Planner

SUBJECT: Public hearing to consider a conditional use permit (CUP) to allow the existing commercial office use at 836 Minnesota Street South to continue and be recognized as a conditional land use under the city's Lower St. Croix Bluffland and Shoreland Management Ordinance

A. *BACKGROUND*

In 2009, the Department of Natural Resources (DNR) notified the city that the parcel located at 836 Minnesota Street South was in violation of the Lower St. Croix River Act, as it contained a commercial business in a designated rural district of the St. Croix River (which does not allow commercial uses). After researching the matter, the city found that this property was once part of Baytown Township, which is considered a "rural" community, and therefore designated as a rural district. In 1982, this parcel was annexed into the City of Bayport, which is an "urban" community. As such, the city assumed an urban designation and zoned the parcel for limited commercial use, which staff understands was consistent with past and anticipated future use of the property. Although the DNR recognized that the rural designation may have been inadvertently omitted during the annexation process, they stated the parcel remains rural, and therefore needs to be brought into compliance with approved uses in the rural district.

In early 2010, the city met with Brian Zeller, the property owner of 836 Minnesota Street South, to review the DNR's position and address the issue. Following this meeting, Mr. Zeller asked for the city to support his efforts in proposing legislation exempting his property from complying with the rural district designation and regulations, due to the unique circumstances associated with his parcel and the historical use. The city took no official position on the legislation, but met with and encouraged legislators to resolve the issue.

In May of 2010, the city received notice that the proposed legislation was adopted. The legislation included an amendment to the Lower St. Croix River Act, which allows certain limited pre-existing land uses (commercial, nature-oriented, and/or educational uses) in rural districts in the St. Croix Riverway District to continue and be recognized as approved uses, upon the issuance of a conditional use permit (CUP) from the local unit of government.

In October of 2010, the city approved an amendment to Appendix C – Lower St. Croix Bluffland and Shoreland Management, Section 2 – Intent and Purpose of the Bayport City Code to incorporate the approved legislation and be consistent with the Lower St. Croix River Act. As such, the city has been working with Mr. Zeller to submit an application to the city for a CUP, in order to continue the existing commercial office use at 836 Minnesota Street South.

Notice of the Planning Commission's public hearing was mailed to all property owners within 350' of the subject property and published in the Stillwater Gazette on February 3, 2011.

The following informational items are attached:

- Application narrative by the property owner
- City ordinance #822 (incorporating legislation into city code)
- Site plan for the property

B. STAFF COMMENTS

Staff is pleased with the outcome of the approved legislation, as it is consistent with the city's position that this parcel is suited for limited commercial use and that the existing commercial office use is allowed to continue with a CUP. The approved legislation is also consistent with the city's zoning and comprehensive land use plan.

It should be noted that no significant modifications are proposed to the property as part of this application. The primary purpose of the application is to obtain a CUP to allow the existing commercial office use to continue to operate at the property, in order to comply with city code.

As part of the review process for the CUP, staff has discussed a few necessary site improvements with Mr. Zeller, that are required to bring the property into compliance with city code. Such improvements relate to the installation of signage, installation of a dumpster enclosure, and connecting to city sewer and water service. Mr. Zeller is willing to comply with these required improvements, as stated in his application narrative and identified on the attached site plan. Although not required by city code, Mr. Zeller has also expressed interest in implementing additional improvements, including the installation of landscaping, as well as applying a natural rust colored finish to the exterior of the building, to improve esthetics on the property.

C. SUGGESTED FINDINGS OF FACT AND CONDITIONS OF APPROVAL

The existing commercial office use is consistent with the city's zoning and comprehensive land use plan, and compatible with surrounding land uses. For these reasons, staff recommends approval of the CUP, with the following conditions and improvements to be completed by July 1, 2011:

- General hours of operation for the existing commercial office use shall be designated as 7:00 a.m. – 6:00 p.m. Monday through Friday; any business activity that must be conducted during non-business hours shall be inside the building
- Install a sign to identify the name and address of the business
- Install a dumpster enclosure to screen waste collection containers from public view
- Connect to city sewer and water service

D. RECOMMENDATION

Staff recommends approval of a CUP to allow the existing commercial office use at 836 Minnesota Street South to continue and be recognized as a conditional land use under the city's Lower St. Croix Bluffland and Shoreland Management Ordinance. Suggested findings of fact and conditions of approval are stated in section "C" of the staff report. The Planning Commission is asked to make a recommendation on the application, for City Council consideration. The City Council will consider the application at its meeting on March 7, 2011.

From the desk of
Brian Zeller

836 Minnesota St. S. ~ Bayport, MN 55003
Phone: 651.430.2233 ~ Fax: 651.430.2480 ~ Email: bzeller@greystone-commercial.com

January 5, 2011

City of Bayport
Attn: Sara Taylor
294 North 3rd Street
Bayport, MN 55003

Re: 836 Minnesota Street

Dear Sarah,

Attached please find a CUP application to bring the property located at 836 Minnesota Street South into compliance with the newly adopted city ordinance #822.

The current tenant is Greystone Commercial which operates their real estate office onsite. Office hours are generally Monday through Friday 7:00am – 5:00pm. However, it is not uncommon for one or two people to be present after standard hours.

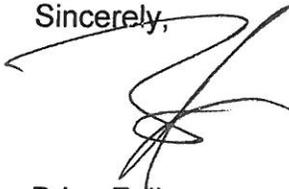
No changes or improvements are planned with the following exceptions:

- Installation of a business sign in full compliance with City code
- Completion of dumpster enclosure as required by City code
- Complete exterior landscaping to improve the esthetics of the property
- Connect to City sewer and water as required by City code

I will work closely with you and City staff to insure that these improvements are done in a timely and fully compliant manor.

Thank you for your consideration.

Sincerely,



Brian Zeller
Managing Partner, St Croix View Partners, LLC

ORDINANCE NO. 822

**AN ORDINANCE OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
AMENDING APPENDIX C – LOWER ST. CROIX SHORELAND AND BLUFFLAND
MANAGEMENT, SECTION 2 – INTENT AND PURPOSE OF THE BAYPORT CITY CODE**

Section 1. The Bayport City Code is hereby amended as follows:

Section 201. Application.

All lands affected by this ordinance shall be construed as land within the "Urban District" wherever mentioned in this ordinance with the exception of those lands located within Government Lot 4 of Section 14 which shall be construed as land within the "Rural District."

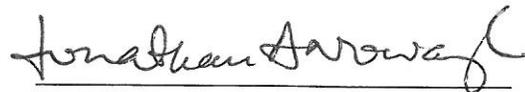
Section 203. Land uses.

Land uses allowed in the respective zoning districts established by Ordinance Number 571 as of May 1, 1974, [as amended by Ordinance Number 621, appendix B] shall be permitted under this ordinance as conditional uses.

Additionally, in rural districts, commercial, nature-oriented, and educational uses may be allowed as conditional uses on properties that were in similar use on May 1, 1974, and on January 1, 2010, if the conditional use:

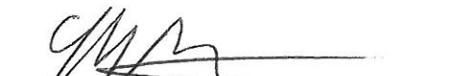
- (1) complies with all dimensional standards, including variance requirements for any changes to the properties made after January 1, 2010; and
- (2) is similar in scope to the use that existed on May 1, 1974.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication according to law. Passed by the City Council for the City of Bayport this 4th day of October, 2010.



Jon Nowaczek, Mayor

Attest:



Mitch Berg, City Administrator

