

**Town of Duluth
Planning Commission
Approved Meeting Minutes
8/26/10**

The meeting was called to order at 7:05 p.m.

Roll call:

Present: Dave Chura, Michael Kahl, Bill Lannon and Brigid Pajunen

Absent: Jan Green, Yvonne Rutford, and Barb Crow

Also present: Sue Lawson, Planning Director; John Kessler, Assistant Planning Director; and Dave Mount, Town Board Supervisor

The agenda was reviewed and Sue asked to move the off-site sign discussion from New Business to immediately following the approval of the minutes to accommodate the schedules of the restaurant owners. The agenda was approved unanimously with that change.

The minutes from the July 24 meeting were approved with minor spelling corrections per an email from Barb Crow.

The owners of the Lighthouse Restaurant, Sara Pearson, Andrea Darsow, and Lynn Compton were present to ask about a permit for an off-site sign that they had requested in March of 2005. At the time the item was tabled. Since that date, the new Ordinance was adopted in August of 2005. They want to install the sign now, but are not sure where their original request stands and how or if the new Ordinance affects it. The sign would be on adjacent property owned by Lynn Compton. There is currently an old sign in that location for Sullivan's lodge, a business that has not existed for many years. The sign they want to put up is not lit and is just one-sided. Lynn said that they have the blue highway sign, but there is a lot going on there and customers coming north on North Shore Drive often miss it. The restaurant can be seen from the Expressway, but not from North Shore Drive. They would not have to cut any trees to put the sign there. Lynn had brought pictures and showed them to the Commission members.

Sue said that she was on the Commission at that time but was not at that meeting. The Conditional Use hearing for the original application was March 31, 2005 and the new Ordinance was adopted August 21, 2005. Sue read from their original application:

“We would like to put up a sign approximately 6 ft by 12 ft and approximately 20 to 30 ft in total height on our property. This will be a directional sign for our proposed restaurant, which will be located on leased land on Homestead Road owned by Mary Cooley. The sign will be aesthetically designed to compliment the surrounding area. Since this will be a brand new establishment, we would like to be able to direct our customers coming along North Shore Drive to our restaurant. Our property is ideally located to be able to accomplish this.”

Lynn said that the sign they want now is smaller than the one they originally requested – 4 ft by 8 ft and about 10 ft high.

Sue read from the public hearing that was held: “Seth Levanen made a motion to table the request until the development of project goes further along. Janet McTavish seconded and asked to add a friendly amendment. The amendment asks to see a design plan of project when the request comes back for reconsideration. The question was called and the motion to table passed.”

She noted that there was nothing in the minutes of that meeting about an existing sign on the property.

The hearing was March 31 and the application was submitted 2 or 3 weeks before the hearing. By state Statute, the Commission has 60 days to reach a decision. Sue did not think that tabling the item constitutes a decision, but she said that she will ask the Township attorney, Tim Strom. It is possible that since they did not get a decision within 60 days and there was no request on the Township’s part for an extension of the 60 days, the permit may be granted automatically.

There were a number of questions. If the original request was for a 6 ft by 12 ft sign – would the permit be for exactly that sign? Does the fact that there is an existing sign there for a defunct business have any effect on the current request? Does tabling a motion constitute a violation of the 60 days the Commission has to give a decision?

Dave Mount asked if they paid a fee to apply and if they got it back. He also asked when the 60 day rule was passed.

Sue said it was \$200 and Lynn said that they did not get it back.

Dave Chura thought that it was before 2005. He made a motion to ask Tim Strom to look into it and if he deems that tabling the motion was not taking action and they get the permit by default, then Sue can send a letter. If Tim’s opinion is that we need to do something else, then we will deal with that when we know what it is.

Wayne Dahlberg said that he was the one who presented the original request to the Commission in March 2005. He said that it was tabled until they knew more about the actual language and design of the sign, subsequent to the building being there. The Commission wanted to know more about what the final product would be before moving forward on it.

Dave Chura moved that Dave Mount contact Tim Strom about the legalities of the situation and if, because of the 60 day rule, they get the permit automatically Sue will write a letter to that effect

The motion was seconded and approved unanimously.

Planning Director Report

Sue said that the decision for the Bieraugel hearing was postponed from tonight for various reasons. Both parties agreed to the Commission postponing the decision to the September meeting and then approving the decision document at the October meeting.

Chair Report

Dave Chura reported on the short-term rental (STR) licensing article that he had distributed by email. Dave Mount had inquired to the Department of Health asking when licensing would apply. The response was that they applied the definition for hotel or motel as found in State

Statutes based on the lodging standard rules. But it looked to him when he looked at the Statute that the definition of a lodging establishment might also apply. So Dave Mount was going to follow up with the Department of Health to see if licensing would be required for lodging establishments as well. The difference between a hotel or motel and a lodging establishment in State Statute is: "A hotel or motel is a rental accommodation for periods of less than a week. A lodging establishment is for 1 week or more or having 5 or more beds." It seemed to him that STRs would be covered either way and would be subject to Minnesota rules, Chapter 4625, which would require a license.

Dave Chura also mentioned the article he distributed about the State suing a Township that granted a variance for building on the shore of a lake.

Sue said that she suspects that there will be a lot more inspection of that kind of thing following the elections. The variance that was granted was an egregious one. It appears that we will continue to adhere to the North Shore Management Plan in lieu of the proposed new shoreland rules. But she said that she expects more input from the State regarding variances and lakeshore in the future.

Dave Chura reported that work on wind energy; hardship vs. practical difficulty; and interim conditional uses was still in progress.

Sue said that she received a request for a variance to be heard in September. The variance was for building on 2 lots to be combined for building close to the Knife River, up from Dodge's. The building lot meets all requirements except lot size. The required lot size is 2 acres. The combined size of the lots is about .96 acres as platted in 1930. The footprint of the home is 28 ft X 44 ft plus a breezeway connecting to a 30 ft x 26 ft garage.

It was decided that the area of notification for the public hearing would be ½ mile.

(**Note:** It was later determined that this lot is a lot of record and a lot size variance is not needed to build on a lot of record if the building placement is able to meet setbacks, so notices were not sent and no hearing was set for September regarding this.)

Dave Chura introduced the next agenda item, reviews of the 2 STRs in the Township. He read from Page 77 of the Ordinance, Article IX.6.G stating that "Conditional uses with conditions will be reviewed periodically by the Planning Commission. Where such a use does not continue in conformity with the conditions of the original approval, the permit shall be terminated and such non-compliance shall constitute a violation of the Ordinance." He noted that this is not a public hearing but rather a review. Comments will be accepted from the audience.

Worden 5249 Greenwood Road STR CUP Review

Sue presented the packet she had put together of informational materials pertaining to the Worden STR Conditional Use Permit (CUP) (see attachment). Included was the original permit application, the conditions imposed on the STR when the CUP was granted, a letter from 6/16/08 reviewing violations of the conditions, minutes from the June 26, 2008 Planning and Zoning meeting at which the CUP was revoked, minutes from the Board of Adjustment hearing, 09/15/08, at which the P&Z revocation was overturned, 09/16/08 letter from the Wordens asking for clarification of the 7-day minimum rental, minutes from the 11/20/08 P&Z meeting clarifying the 7 day rental period, 12/03/08 letter from Sue requesting information verifying that conditions are being met and follow-up correspondence, 12/03/08 letter to Wordens from Sue re: 7-day

clarification, 12/29/08 letter from Wordens requesting an appeal to the BOA of the clarification, correspondence and the BOA decision on that matter, emails regarding complaints about the STR, 07/08/10 letter to Wordens from Sue to inform them of the upcoming STR review and requesting information for the review, communications from Wordens and their local contact with the information Sue requested, 06/21/10 letter from Pamela Mittlefehldt concerning issues with the rental, 06/14/10 petition signed by 21 neighbors asking that the CUP be terminated, 06/26/10 email from Pamela Mittlefehldt to Sue with a list of observed violations, as well as other emails and correspondence relating to the rental. Sue said that not everything that has occurred regarding this STR is in the packet. Not all of the complaints from neighbors or emails that she has received are in the packet. There were meetings with neighbors, including meetings between Mittlefehldts and Dave Mount, John Kessler, and/or herself; a meeting with police chief, Shawn Padden and herself and John; and a meeting with Dave Mount, herself and their local contact, that are not included. The entire chronology of events is not in the packet, but she tried to include documents from the Commission, the Town Board, and the Board of Adjustment that document the process.

Dave Chura asked for clarification on the first condition that the CUP would be “limited to 2 years from the date of granting or until the property is sold.”

Sue said that the Commission originally put a time limit on the CUP but this spring the Worden’s attorney communicated that they believe time limits cannot be imposed on conditional uses. We have not pursued enforcing the 2 year limitation. She said that both our Township attorney, Tim Strom, and the Minnesota Association of Townships (MAT) said that time limits on CUs was a gray area and the Town may not be in a strong legal position on this matter.

Dave Chura asked if this information was in a formal communication.

Dave Mount said that he could not recall if Tim sent him something or if it was communicated in a conversation. He said he did speak directly with Eric Hedtke from MAT on the subject.

Dave Chura read from a document from MAT regarding interim use permits. In it, the author, an attorney for MAT, said that his research confirmed that “counties don’t have the power to put time limits or expiration dates on CUPs.” But that document also said that interim use permits are a useful tool that Towns could use to put time limits on a use.

Sue said that one of the conditions that has been violated repeatedly is the condition limiting occupancy of the rental to six people. One instance was when the Hells Angels were there in the summer of 2009. Police Chief Shawn Padden investigated that complaint. Another was in August of 2010 when 2 extra occupants were there for one night. In that case it turned out to be the parents of the renters who had stayed over because they could not find other lodging. Another complaint about occupancy over the limit was not independently confirmed.

Public Comments

Pamela Mittlefehldt, 5247 Greenwood Road, spoke. She appreciated the thorough documentation Sue had put together. She said that her home is less than 100 ft from the property. She thinks that the Township has been extraordinarily generous in trying to make this STR work, but as we come into the third year, it is clear that it is not working and that the Commission should invoke the eleventh condition and revoke the permit. The property owners agreed to the conditions and now that agreement needs to be honored. One of the most frustrating issues is the problem of management. Unlike other public lodging businesses, there is no on-site management. The

owners of the property live in Litchfield. When people break the condition about noise, no one knows it except the neighbors. No one knows when they arrive and if there are more than 6 people staying there, no one knows that either.

She said that the violations that they have reported are not made up. Because the rental is so close to them, they cannot help but see what is going on. Because no one else typically sees the violations, it comes down to their word against the Wordens. She has seen violations over and over again and there is a problem of accountability. When Hells Angels came roaring down Greenwood Road, it was dramatic. One was a friend of the local contact. They called the police and were told that as long as Hell Angels were there, the police would not respond to anything there. They thought the permit would be revoked but it was not. They thought the permit would be reviewed in January, but it was not. So they decided to circulate the petition. It is clear to them that the STR experiment is not working. She thinks it is time to listen to the local residents.

Bill Mittlefehldt spoke next. He said that they would like to not have to watch the property but because the local contact is a half mile away, they have to. He does not believe the local contact could even tell you the 11 conditions. He said that he believes the permit was a privilege granted by the Planning Commission. He has counted over 30 violations of their conditions, not to mention the Hells Angels. He appreciated the double checking on their reports of more than 6 occupants. They believe that the Commission has solid grounds to revoke the permit and that the 22 people from the neighborhood who signed the petition agree. He appreciates the effort that has gone into it.

Jeff Cook spoke. He said that when he was on the Town Board, he did not want something like this to pass. He knew it would take a tremendous amount of time. He said that he has seen two violations, once there were 8 Angels up by the house late at night and another time there were 6 cars there and he doubts that there was only one person per car. It is not a good situation in a densely populated area like Greenwood Road. He is concerned about the safety of the neighborhood -- you don't know who is coming in. Partying and other things are not good for the neighborhood. There are motels just 1 block away. It is impossible to police.

Dave Chura reminded the audience that the Commission made a recommendation to the Town Board that STRs be banned but the Board did not take the recommendation. He moved that the Commission recommend that the Town Board take action to revoke the permit based on violations of Conditions 1, 6 and 8. If the Board is interested in pursuing it further with the attorney, they can. He believes the Commission has done everything they can to convince the Board that STRs are not something that are desirable in the Township.

Bill seconded. He said that he did not know if he agreed that all STRs should be disallowed in the Township, but he certainly believes this one should be revoked. They create a lot of work and do not adhere to rules.

Dave Mount said that regardless of the Commission's frustration with the Board, the two STR permits being reviewed tonight were issued before the Commission's recommendation and would have been in place anyway. It is the Commission's responsibility to revoke the permit if that is what needs to be done. Nor does he think that the motion should be tied to past contention over STRs and the Commission's recommendation that the Board ban them. That history has had no bearing on the owner's actions.

Dave Chura said that the motion was that the permit be revoked because of violations of Conditions 1, 6 and 8. He said that the Commission could make that decision now, but it might

be better to have the Board look at it and have a chance to decide whether to pay to have legal counsel before making a decision.

Sue pointed out that at this point in time, the Board also acts as the Board of Adjustment. In terms of process, if the Commission makes a recommendation to the Board to revoke the permit, and the Board revokes it, the decision to revoke could end up back with the Board if it is appealed. If the Commission makes the decision and the decision is appealed, it would go to the Board without those complicating factors.

Dave Chura said that he was looking to minimize financial impact to the Town based on our decision. It does not sound like we would spend any more or less either way we went.

Sue said that it is the job of the BOA to see that the process was followed correctly and that the reasoning makes sense and is in accordance with the Ordinance.

Dave Mount read from the Performance Standards section in the Ordinance, Article VIII.1.C:

Every land use permit issued with performance standards shall be conditioned upon the proposed development being in full compliance with the terms of the specified standards. Failure to comply with the terms shall result in the Planning Director revoking the permit.

And under Administration, Article X.2.C:

In the event that an applicant or their authorized representative violates, neglects or refuses to comply with the conditions, performance standards or dimensional requirements imposed upon the proposed or established use or structure as a condition of granting the permit for said use or structure, they shall be notified by the Planning Director in writing by mail or in person of those requirements that have not been complied with... in which: 1) He/she shall have no more than thirty days from the date of the notification to satisfy said requirements or be subject to the revocation of said permit; or 2) He/she shall have no more than thirty days from the date of the notification to make appeal to the appropriate body.

Sue read from Article IX.6.G:

Conditional uses with conditions will be reviewed periodically by the Planning Commission. Where such a use does not continue in conformity with the conditions of the original approval, the permit shall be terminated and such non-compliance shall constitute a violation of this Ordinance.

Bill Lannon suggested that the motion should be worded to revoke the permit pending advice from the Township attorney.

Dave Chura said that the Commission needed to just make the decision tonight and move forward. We have dealt with this for far too long. They are not meeting conditions and for that reason, the permit should be terminated.

Brigid asked if it has ever been suggested that the Wordens make one of the neighbors the local contact and pay them to do the job. Can we require that they hire someone in order to keep the permit?

Mike said that historically, that kind of thing has not been effective.

Dave Chura restated his motion: Following a thorough review of the conditions for the CUP, based on Condition 1 and violations of Conditions 6 and 8, the permit shall be terminated.

Bill seconded the motion.

Dave Mount asked if Dave Chura's intent was to enforce the 2 year limit stipulated in Condition 1 despite the previous decision not to enforce this condition of the permit.

Dave Chura said that he would prefer to leave it in the motion and that he thought it was important to get clarification on that issue.

Sue pointed out that it is important to insure that the revocation will be upheld as it goes through the process, and it might be best to use reasoning that will make a solid case as opposed to including language that could weaken the case.

Dave Chura felt that it was not likely to be thrown out because of one reason. He believes the case is strengthened by having multiple reasons. At the time the CUP was granted, there was no discussion of whether or not a time limit could be placed.

Bill asked again if a motion could be made that hinged on the advice of the Township attorney.

Dave Chura asked what would be gained if we were to ask the Township attorney to look into it. Could the attorney be present at the review? It seemed to him that if the Board and the attorney were concerned about this decision, the attorney should be here. What exactly did Bill hope to accomplish if a motion was passed that was dependent on the advice from the Township's attorney?

Bill said that he just wanted to insure that the Commission will be successful in terminating the permit.

Sue said that in another case we had where we were concerned that there might be further action based on our decision, the attorney for the Town for that case said that if we have even one reason that is clear and thoughtful, the courts are likely to uphold the decision.

Brigid made a motion to amend Dave Chura's motion by removing the language in his motion pertaining to Condition 1.

Bill seconded Brigid's motion.

The motion to amend passed with all voting in favor except for Mike, who voted against it.

Dave Chura read his motion as amended: Following a thorough review of the conditions for the Conditional Use Permit and finding violations of Conditions 6 and 8, the permit shall be terminated.

The motion passed unanimously.

Schousboe 5856 North Shore Drive STR CUP Review

Sue went over the package of information she put together for this STR review. Included in the package is the original application, the conditions placed on the rental by the Commission when the CUP was granted, the list of rentals for the property for all of 2009 and the letter from their contact person indicating that he would continue as contact for this property. Sue noted that Chris Schousboe resolved any issues with the rental as they came up and that the Township has never had any complaints about violations there. Ms Schousboe contacted the Township to inquire about the review.

Dave Chura said he would like to provide some positive feedback to this property owner. He would like to say that the Commission reviewed the CU and conditions and found them to be in compliance and will extend their permit for an additional two years. He said that he realizes that there is gray area concerning time limits on CUPs, but until it is cleared up, we can at least put it in the record that the Commission's intent is to renew the permit for two years.

Dave Mount read Condition 1: "The CUP is limited to two years from the date of granting or until the property is sold, whichever comes first." He said the wording of this condition is hard to interpret in a way that the CUP could be extended without actually modifying that condition.

Dave Chura said that with a clear indication that we reviewed all of the conditions, he thinks we can give them a two year extension. He asked if when the Commission originally put that language in, was the intention that they would have to reapply at the end of two years?

Sue said that the intent was to look at it in two years and if all was okay, continue it.

Brigid said that we could set a precedent here. We could say that you have presented us with the information we need to review the CU to see that you are meeting the conditions and we can grant an extension for another two years. There is no language about how often you need to review the permit.

Dave Chura said that the Commission needs to decide that they are in compliance with all 16 conditions, or that we don't think Condition 1 applies anymore, or we do think Condition 1 still applies and they are in compliance with the other 15 conditions so we would like to extend Condition 1 for another two years. He prefers the last option.

There was a discussion of how to reconcile the extension with the existing CUP and conditions as they are on record with the County. Is the date of granting as stipulated in Condition 1 strictly when the CUP was originally approved, or could the granting of the two year extension be considered the new date of granting. Dave Mount pointed out that there is nothing in the original language to allow for extensions. Would something new need to be filed with the County?

Sue read from Minnesota Statute 462.3595: "A conditional use permit shall remain in effect as long as the conditions agreed upon are observed, but nothing in this section shall prevent the municipality from enacting or amending official controls to change the status of conditional uses... A certified copy of any conditional use permit shall be recorded."

Dave Chura said that we should say that we have reviewed the conditions and found them to be in conformance and will extend Condition 1 another two years to September 25, 2012 and send a

letter to the County. Even if it is challenged for some reason, we still have not revoked their permit.

Dave Mount was in favor of getting legal opinion before taking any action.

Dave Chura said that we can take action and then wait for Tim's advice before actually filing it with the County.

Sue said that although we should write up and approve the motion that revokes the Wordens' STR tonight so that it can be made effective as soon as possible, for this one where we are continuing the CUP, we can wait until the minutes are approved at the September meeting, and at that point, we may have gotten advice from Tim that clarifies wording we should use.

John said that he doubted that there was a need to refile it with the county.

Beth Mullan said that what really needed to be done as far as filing with the County was to clean up the wording of the conditions that are already on file to allow for the renewing the permit every two years.

Brigid pointed out that the minutes are a legal document and if it is documented in the minutes, that may be enough.

Dave Chura said that according to how the conditions are currently written, the CUP is no longer in effect.

Bill suggested that the Commission adopt the motion pending advice from the attorney, and if okayed by the attorney, send the letter.

The motion was repeated: Upon review of the conditions for this CUP we found that they continue to be in compliance with Conditions 2 through 16 and, hence, Condition 1 will be extended an additional 2 years to September 25, 2010.

The motion carried unanimously.

At this point, the meeting was paused while the decision on the Worden rental was written and printed. Dave Chura read the decision out loud and it was approved unanimously.

Dave Chura asked how the Board determines whether Tim Strom should attend a meeting or not.

Dave Mount said that he comes to about half of the meetings as his time allows. If they have an important item, they will request his presence. If he cannot be there, they will make a decision and task one or two supervisors to consult with him and decide on necessary subsequent action.

Dave Chura said that we often make decisions that Tim's guidance would be useful on. Would it be more useful to have him present for meetings -- do we need more legal counsel for the Commission?

Sue said that it would be \$3,000 dollars if he were to come to every Commission meeting.

Dave Chura said that we could think about it for our next budget, maybe try to have Tim attend one or two meetings so that the Commission would have the opportunity to have direct discussions with him.

Dave Mount said that the Commission's legal budget doesn't include things like the Bieraugel matter – once a decision is made, the budget is not dinged for it so there is no need to amend the budget. The budget in place allows for some legal advice.

The meeting adjourned at 9:35.