

**Town of Duluth  
Planning Commission  
Approved Meeting Minutes  
2/24/11**

The meeting was called to order by Vice Chair Mike Kahl at 7:05.

Roll call:

**Present:** Mike Kahl, Jan Green, Bill Lannon, Brigid Pajunen, Barb Crow

**Absent:** Dave Chura

Also present: Sue Lawson, Planning Director and Dave Mount, Town Board Supervisor.

The agenda for the evening was approved.

The January 27 minutes were approved as written.

The first item on the agenda was to review Russ and Wendy Krook's CUP for 10 horses on their property at 1853 Pine Park Road and to address their request to increase the number of horses allowed on the property to 20.

Sue Lawson started by having the audience introduce themselves.

She then presented an overview of the process for the review and an overview of the CUP (see attached). The CUP was originally approved June 23, 2005 with the following conditions.

1. Review in 5 years regarding runoff and manure issues
2. Not to exceed 10 horses, if more wanted they need to come back to the Commission
3. Not to pasture less than 50% of the property
4. Manure should be stored in containment area where it cannot leach into the soil and to till with the slope of hill with Best Management Practices used.

On March 25, 2010, the CUP was reviewed and the Krooks requested to be allowed to have 20 horses on the property. This request was denied because the conditions on the CUP were not currently being met. It was agreed to review the CUP and consider the request again in 6 months. At that time there was to be a manure management plan and implementation schedule in place, that incorporated recommendations from the Minnesota Pollution Control Agency (MPCA) and the Natural Resources Conservation Service (NRCS). It was also asked that they present their future plans for the organization, including the total number of horses they anticipate needing in order to meet their goals, and anticipated traffic and parking issues on Pine Park Road and how these will be addressed.

She read from Russ's site plan proposal:

At present our manure is removed from the property on approximately a monthly basis. It is stockpiled until that time in each paddock, then combined on the dry footing paddock by the small arena for removal. It is

our intention to continue this procedure in the future. We are also clearing pasture land with the idea of using our manure to fertilize these open pastures in the future. Until then it will be removed.

The MPCA and NRCS recommended implementing a feed lot situation in the north and west pastures. We have done that. Also fencing off the valley around the watershed. We have done that. The denuded hill where we previously fed horses has also been fenced off and reseeded. The fence in the west feed lot has been moved back from the hill as per recommendation. The water tank in Lot D will be moved in spring to the top of the hill in the feed lot.

Russ showed on the map where the water tank will be moved to on the top of the hill. The MPCA did not say that he needed to do this, but the NRCS did. He said that the parking lot is not cleared yet but that they are going to try to get it done before spring. They will put about 6 inches of fill on it. The proposed pasture will be divided into three sections for grazing rotation. Lot D is also being cleared. He said that he will leave a 10 to 20 ft buffer of trees along the fence line.

A letter from the MPCA with recommendations and stating that the property is in compliance and a letter from NRCS with recommendations were included in the submitted information (see attached). The Commission also received two letters from neighbors regarding the review, one from Jerry Berlin and one from Lawrence Ulanowski (see attached).

Sue said that the primary issues that have become apparent over time concerning this use are the capacity of the land, the effect on the watershed, and the effect of increased traffic in the neighborhood.

Mike said that the Commission will first have a discussion to address whether the current conditions are being met and then will take on the issue of additional horses.

Bill noted that the property is intensely managed and a lot of thought has gone into it.

Jan said that one of the things she finds most difficult is addressing how well the original conditions have been met. By Russ's own admission they have not been below 11 horses for quite some time. It is now at 15. So no, the original conditions are not being met.

Barb said that she was taken aback when saw that they still had 15 horses on the property when the Commission had talked so extensively about keeping the number at 10 or below at the previous meeting.

Bill asked how they got to 15 horses when they are only supposed to have 10.

Wendy said that the sheriff called and asked them to take a severely abused and neglected animal and they also have two others that were neglected. They also took in two others that were neglected, but have rehabbed them and moved them on. Another time the sheriff asked that they pick up a horse that was loose on Lismore Road and was being chased by cars.

Russ said that the number of horses goes up and down all the time, depending on their needs and on whether they are asked to take abused or neglected animals.

Mike asked if there were other rescue organizations in the area.

Russ said that there is one in the Esko/Cloquet area, but that they are full to the max.

Bill asked how they move them on and what will happen to the extra horses they have now.

Wendy said that they try to find new homes for them. Last summer they had to put three down.

Russ said that regarding the two they have now, they will move one on, but they don't know about the other one. He said that according to County and State laws, they are allowed one animal per acre. He said that they are controlling the manure and it is being removed from the property. He said that according to the MPCA they could stockpile the manure for an entire year, but they have it removed regularly – whenever it gets to be a large amount. They have contracted with someone who has a dump trailer to come in and remove it.

Sue said that the Ordinance dictates that horses are not allowed south of the Expressway and that is why they originally came to the Commission for a CUP. That stipulation has been in the Ordinance since before it was most recently redone.

Russ said that to operate, they need 10 well trained horses. Otherwise they are rescuing horses. They do keep some of the horses they rescue to incorporate into the program as others age out.

Mike said that at the last meeting they had with the Commission they had indicated that 10 horses were not enough for the number of youths they had coming through and they were being worked too hard.

Russ said that this was true, but at that time 5 of the 10 were taking the brunt of the work. They are currently using 12 or 13. They don't want to burn the horses out. Wendy said that the sessions are 1.5 hour sessions with 20 minutes devoted to chores to teach responsibility, 20 minutes spent grooming the horse and 20 minutes riding the horse. They like to rotate the horses. Some kids have a favorite horse that they like to work with every time. She said that being able to offer this as a free service to the community is a huge thing. Many parents have seen big changes in their kids.

Brigid agreed that it is a wonderful program. The problem is where they have chosen to operate this ranch. She asked if, when the original request for a CUP came in, was it just to have horses in this location or did it include the operation of a ranch for kids? A horse rescue operation is much different from a ranch providing riding programs for disadvantaged youths in terms of traffic and impact on neighbors. Is the area zoned for this type of use?

Sue said that the zone district is Shore Land Mixed Use. When the CUP was originally considered, it was for having the horses there, but the intended program was also outlined.

Barb asked how many cars are there at one time and if groups overlap, meaning that there are more cars and traffic and parking issues. She asked if they ever need to park further down the road.

Russ said there is currently parking by the arena and in front of the garage. They have never needed the road to accommodate overflow parking except once a few years ago when they had a one day fund raiser.

Wendy said they have larger events once or twice a year now and they have them park in the large arena.

Bill asked how often they rotate the horses for grazing.

Russ said that they feed the horses hay year around. The grazing is just an occasional extra for the horses, not for providing their primary feed. The horses are currently on dry lot and fed hay, which the MPCA said could be done on a permanent basis. In the spring they will do some grazing again. There is also another pasture behind the dry lots that is not shown on the map.

Mike read the Communication agreement and opened the floor for comments from the public.

Larry Ulanowski spoke first. He owned 40 acres to the east of the Krooks' property. He then divided it and sold the 20 acres adjacent to the Krooks to Jerry Berlin. He sold the other 20 acres to his mother. He also owns a number of lots in the area. His first concern is that the Krooks, with 15 horses on the property, are not complying with the current conditions of their CUP. Nor do they have a proper plan for handling the waste. The stream that goes through the property does flow and he is concerned that the waste is migrating to Lake Superior. Everyone along the shore there had to hook up to city sewer at great cost in order to protect the lake. Because the area there is made up of bedrock and clay it cannot absorb wastes. Even though they may be picking up feces, he knows that horses make a lot of manure and the manure is not removed frequently enough. They need a management plan to be put in place and followed. If they were to do an infrared flyover like they did to show the failing septic systems, you would see it. The stream flows through the Krooks' property, across Berlin's and across his own. The number of horses is constantly exceeded. The whole permit should be pulled. There should be no discussion of 20 horses. They could move to another area that could handle this kind of operation. He is also concerned about traffic on the road. He doesn't live on the road but is sympathetic to those who do. The road is not maintained for a high volume of traffic.

Wendy said that they moved the fences away from the stream. In the summer they take the kids down to the creek. They can see the bottom of the creek and they catch frogs. It is not polluted. Nor does Mr. Ulanowski live there, so he has no idea about the traffic on the road. They tell clients to drive the slowly, have put signs up and have asked them to please respect the neighbors.

Russ said that he asked the MPCA to take a water sample, but the MPCA didn't feel there was a need to do so. NRCS was not concerned as long as it was being handled by MPCA.

Deb Anderson spoke next in support of the Krooks. She said that two of her daughters started riding there. Her youngest daughter started when she was 9 years old. She can now manage and control a large animal. These lessons are incredibly important to her and increase her self-esteem. She said that she can attest to the fact that Wendy constantly reminds parents to drive with respect to neighbors on the road. When she is on the road she never sees anyone else. The Krooks have big hearts. Sometimes they have to provide care for a horse around the clock. They are doing this at great personal sacrifice. It is not realistic to think that they could just pick up and move somewhere else.

John Schifsky spoke next. He has 20 acres adjacent to the Krooks' south border. He believes that horses should never have been permitted in this area, but it is too late to go back now. At the March meeting, he raised a number of concerns, including runoff. Since then, he believes the Krooks have done what needs to be done to prevent runoff. He has to go along with what the MPCA and the NRCS have said. Parking has only been an issue once in the past year when they had a hoedown in August. They had someone park opposite his driveway and made sure that the road remained accessible. He was pleased with that. He has said that they can use his area for parking in the future. Road traffic is a concern to him. He is the president of the Pine Park Road Association. Everyone who lives on the road, including the Krooks, is a member. They meet once a year in April. They have made it clear to Russ that they are concerned with the amount of traffic and with speed. The road is very narrow, maybe 10 ft across at Russ's end. Russ and Wendy have made the effort to work with them. It has not been 100 percent successful and probably never will be. The horses don't bother him. He doesn't see, hear or smell them. The violations of the CUP conditions do concern him, though.

Barb asked if John thought that the arrangement they had for road maintenance was working out.

John said that road maintenance is not an issue at all. They don't want a big highway and are trying to keep people down to 10 mile per hour. John Fischer is vulnerable because his house is right on the road. Any dust from the road really affects him.

John Fisher concurred with what John Schifsky said, adding that last year he had a private party come in and spray the road in front of his house with calcium chloride.

Mike read aloud the email that Jerry Berlin sent to the Commission (see attached).

Wendy wanted to point out that Mr. Berlin does not live there. In addition, he is taking them to court over a property line dispute.

Public comment was closed.

Jan made a motion that they allow up to a maximum of 15 horses with the following conditions:

- 1) The five recommendations made by NRCS be followed with change to item 3 that manure be removed on a weekly to biweekly basis except when frozen.

2) From recommendations made by the MPCA, pasture areas must maintain vegetation and sensitive areas adjacent to the stream must be protected and minimally grazed or completely fenced out. The supplemental feeding and watering areas near the stream are devoid of vegetation and have significant erosion. These areas must be restored with vegetation and further impact must be minimized by removing supplemental feeders from these areas and fencing the animals out.

3) Must maintain a signed log of manure removal and send it to the Commission quarterly.

4) That the Krooks request that the MPCA come back in the summer and then yearly to evaluate what has been done and how it is working, and that their recommendations and any actions taken resulting from their recommendations be submitted to the Commission.

She said that the Commission can review the CUP at any time and also suggested that the Krooks not open themselves to additional rescue.

Barb was concerned about compliance with any standards the Commission establishes. How will we be assured that the conditions are met? She asked if they could require more frequent reviews to help ensure compliance.

Jan said that that is always a problem with a CUP. But she agreed with more frequent reviews and would like to be able to ask the MPCA to come back and evaluate what has been done and how it is working

Sue asked if there was another area where they could have people park and then ferry them in to reduce traffic on the road.

Brigid asked how students come – for instance, how did the students from Nettleton come?

Wendy said that they came by bus. The Roways let them park the bus there and they walked the rest of the way.

Dave Mount suggested that the Commission make it clear in the conditions that if, in the future, at a review of the permit the Commission came to believe that 15 horses were too many, there was language making it clear that they could reduce the number of horses allowed under the permit.

Barb asked if they had 15 horses on the property during the inspection in July.

Russ said that they did.

Barb asked how many groups of kids currently come through the program.

Wendy said that there are 3 sessions per day, Monday through Friday from 10:30 to 4:00. And when school is in session it is on Monday, Tuesday, Thursday, Friday and Saturday with the same hours. Russ said that last season they had a total of 700 kids.

Barb asked if they felt that that number was their capacity.

Wendy said that it was.

Barb suggested that they put that into the motion in an effort to freeze the amount of traffic on the road, but Jan was not comfortable with that.

Bill suggested that the Commission freeze the hours of operation.

Wendy said that they could get together with their neighbors on the road to come up with hours of operation that would work for everyone.

Dave was concerned about implementation. The Board has struggled to make compliance with conditions as objective as possible. The most obvious thing that concerns him is that the limit was 10 horses and the practice was up to 15. The Commission should make it clear what the repercussions of violating the new conditions will be so that no one is ever surprised.

Wendy said that they use 12 to 13 horses for the program. 15 is a lot.

There was a discussion about the road and responsibility for it. Mike said that the Commission does not want to be put in an enforcement role regarding the road. Sue did not believe that the Township has the authority to regulate traffic on private roads. John Schifsky was concerned about potential liability to the road association.

Dave said that the Town's concern is only that there be public access to lots along the road as is required by the Ordinance. So the Town pushed them to create a formal mechanism for public access. It had to do with issuing land use permits on the road.

The Commission voted on Jan's motion and it was approved unanimously. A short break was taken while it was written up. It was read aloud to the Commission and approved (see attached).

### **Planning Director Report**

Sue said that it is possible that there may be another rezoning hearing – John Abrahams is considering asking again. He has to wait a year from the previous request before applying again. So that may be in April. We would need another community participation report. What would the Commission like to set for the area of impact? It was agreed that a half mile radius from the property would do again. Sue said that she and Dave Mount have talked about encouraging Abrahams to come to a meeting and have a conversation with the Commission before submitting another formal request.

Jan said that when he makes his request he has to have a letter from the City of Duluth allowing him to use their property.

Sue said that it was not clear what laws or permits from the State or other entities would apply, but it would be necessary that he comply with any that do apply.

Dave said no one will be served by having him reapply if the nothing has changed in his proposal or on the part of the Commission. However, reapplying would allow him to engage the legal process. He missed the deadline last time to appeal the decision.

Sue said he felt he should have had a chance to rebut public testimony at the last hearing.

Dave asked about having a discussion between him and the Commission. It is a question for the Commission. Is it worth doing that before he applies on the chance that he would better understand the process and the Ordinance? It costs \$500 to apply and is a significant investment of time.

Sue pointed out that he bought the property knowing its zone district.

Bill said it would be courteous to try and talk with him and that our goal is to help people better understand the Ordinance

Jan said she would be more comfortable having him go through the application process.

Sue said that in another case, the judge directed it back to the Commission for discussion.

No decision was made.

Sue continued. The Worden CUP appeal is done. The Board allowed it to continue with additional conditions.

It was suggested that we incorporate some of those conditions into the Ordinance.

There will be a joint meeting with the Town Board on April 28 at 5:30 before the regular Planning meeting.

The Bieraugel property has been sold and there have been questions from the architects.

John Kessler has resigned, but is willing to continue doing his job except for site visits until May 1<sup>st</sup> so that we can have time to get a job description, etc. in place.

Dave Mount wanted to comment on the Worden matter. He said that he hoped the Commission did not feel that their decision was not respected by the Board taking this route. It took five meetings and was extremely difficult. He appreciates the how difficult it was for the Commission to deal with also, and is sorry that it is back in their court. The issue was not about whether short-term rentals were appropriate on Greenwood Rd, but more about the violations and responses. One tool that might be useful in the future is a disuse clause. Right now it is three years in the Ordinance.

Sue thanked Dave for all his work on short-term rentals and the Wordens' rental as the Town Board liaison to the Commission.

The meeting was adjourned at 10:05.

Attachments:

PowerPoint presentation with maps

MPCA letter

NRCS letter

Lawrence Ulanowski letter

Jerry Berlin email

Commission decision