

**Town of Duluth  
Planning Commission  
Meeting Minutes  
8/25/11**

The meeting was called to order by Chair Dave Chura at 7.

Roll call:

**Present:** Dave Chura, Jan Green, Brigid Pajunen, Jo Thompson and John Schifsky

**Absent:** Bill Lannon, Paul Voge

Also present: Barb Crow, Town Board representative to the Commission and Tim Strom, Township Attorney

The proposed agenda was amended to review the Worden CUP first and then take up the Sami Cultural Center CUP.

The minutes from the July 25th meeting were approved without change.

First item on the agenda was the review of Shawn and Ed Worden's short-term rental (STR) Conditional Use Permit for 5429 Greenwood Rd. Dave outlined the review process and read the Communication Agreement for Public Meetings. Sue had put together a summary of everything that has happened with the STR since February 17, 2011 when the Town Board allowed the Wordens to continue the use with additional conditions (see attached.) The review tonight is to see if they met the all of the conditions of their permit satisfactorily.

The Wordens brought some materials to the meeting and handed them out (see attached).

Dave read the list of the 10 conditions that the Board had imposed on the CUP in February (see attached).

Comments from the public:

Bill Mittlefehldt lives on the property adjoining the rental property. They were surprised from the beginning that there was going to be an STR in their neighborhood, which is residential. When the Wordens got the permit for the rental, conditions were put in place to protect the rights of the neighbors. These were quickly violated. Since then the Commission has pulled their permit twice but the Board of Adjustment (BOA) reinstated it both times. Following the Hells Angels incident 21 people in the neighborhood petitioned to ask that the permit be pulled. Instead, the BOA ended up putting 11 additional conditions on the permit. The Wordens first violation of those conditions was that they did not provide the license required in the first condition. Their permit should have been revoked immediately. These owners are not good at following rules. This is the 3<sup>rd</sup> time. There have been at least 4 police calls. It has taken a lot of time and effort. It is time to enforce these conditions to protect the rights of the neighbors. Bill believes the permit should be immediately revoked.

Ed and Shawn Worden introduced themselves. Shawn Worden said that it is not true about the 4 police calls. She said that there are no police reports. They have been renting the property since June 2006. Before they began renting, they called St Louis County. The County said they should call the Township. They had a meeting with Wayne Dahlberg, Dave Miller and John Kessler. There was nothing in the Ordinance at that time about short-term rentals so they were told they could do it. She included the letter from Wayne Dahlberg and John Kessler in the packet of materials. Following that, the Ordinance was amended and STRs became a conditional use in the Township. Their rental became nonconforming at that time but was grandfathered in. They were asked by the Town to get a Conditional Use Permit. They didn't believe they needed one, but were told that they did. So, not understanding the law, they went ahead and got the CUP. They have a vested right to use the property as a STR. She said that you cannot take a vested right and turn it into a conditional right. One of the conditions the Commission put on the permit was to move the fire pit. When Sara Schaffer, from the Minnesota Department of Health, came out to review the property for a State license, she asked why the fire pit was so close to the trees. Shawn said that this is where the Commission told her to move it to. The first revocation was because they hadn't yet moved the fire pit. But the permit cannot be taken away for this reason and it was reinstated. Following the inspection by Sara, they did get a license and it allows them an occupancy rate of 8. The second time it was revoked it was because renters brought 2 extra guests at two different times. She has signed contracts with both parties showing that there were going to be 5 guests for the one and 6 for the other. Shawn said that it cannot be pulled for this reason. These are the "violations." They have had 600 rental days since 2006. They average 100 days in the summer and the house sits empty for the other 265 days. Two or three violations out of 600 rental days are not grounds to take away the permit. And that is what the Town Board found, too.

The first of the new conditions that the Commission believes they violated is not having a license from the State before renting. Shawn said that the Minnesota Vacation Rental Association said that the MN Department of Health does not have a legal mandate to make anyone get a license at this point. James Backstrom from the MN Department of Health also told her that they were not enforcing it at that time. So while that was being worked out, they decided to just rent for full weeks, which does not require a license and also meets the Township's conditions. They were able to do that for the entire summer. They did end up getting the license so they could rent for less than a week during the fall and meet that condition, but they haven't needed it yet. Part of the reason they didn't want to get a license is that the license is for a hotel/motel business and they don't believe that category applies to them. Now they have a license and it makes it look like they are commercial, but they are not.

The second issue, according to the Commission, is that on March 16 thru 20<sup>th</sup>, they did have a four day rental. During their appeal hearing they were told by the BOA that they could continue renting during the appeal process. She included minutes from that meeting confirming this. Their permit was never revoked; they were just given additional conditions. They did not know what the new conditions were until March and she had already booked the 4 day rental. There were not 30 days from the time they received the

new conditions in March to the time of the rental during which they could have gotten a license. She booked it before Feb 28<sup>th</sup>, before they received the new conditions. Since then, they have not rented it for less than a week.

Ed Worden also said that they had gotten permission from the Township before they ever started renting. Then in October 2006, following complaints from the Mittlefehldts, the Board decided there needed to be something in the Ordinance about STRs. In 2009, at the BOA hearing, Ed said they brought a district court case to the attention of the Board. This case, from Alexandria MN, involved an ordinance similar to Duluth Township's regarding short-term rental of a single family dwelling. In August 2009, that case was appealed to the MN Appellate Court and the Appellate Court upheld it. It said that if you don't have a restriction in your ordinance, it is a permitted use. So when Duluth Township changed the Ordinance to make STRs a conditional use, their STR became a vested as a non-conforming use and the Township should never have issued a permit for it. State Statute says that there are only two ways to get rid of a nonconforming use – by discontinuance for more than one year or by fire. You cannot take a constitutionally protected vested property right and turn it into a conditional use. Their research shows that when Townships do use issue a CUP in these cases, it is when a party wants to expand the use.

Shawn said that legally there should be no conditions. Putting conditions on a vested right turns it into a conditional right.

Ed said that other townships in the State handle it by having a nonconforming use register or issuing a CUP without conditions.

Dave asked the Town's attorney, Tim Strom, to clarify the issue of vested rights vs. conditional rights.

Tim said that the idea of the use as grandfathered has been brought up repeatedly and rejected by the BOA. They were doing STRs before the STR language in the Ordinance came into effect. They were told they needed a CUP and they applied for one and got it. The permit was issued with conditions. They had a period of time that they could have brought a district court action against the Township and they did not do this. Instead, they accepted the CUP and operated under the CUP. Following both revocations of the CUP, the BOA overturned the Planning Commission's decisions and gave them another chance. Each time the Wordens raised the same argument and the answer, both times, was that they applied for and accepted the CUP, they operated under the CUP and they defended the CUP. It is not grandfathered in anymore.

Dave asked if there is a violation of a condition, who is held responsible for the violation?

Tim said that the landowner is responsible for complying with the conditions of the CUP. One of the things that was previously discussed is that the mere fact that there is a violation of the CUP does not mean that the permit is automatically revoked.

Jan asked about the State license. What is it for and is there a time limit on it?

Shawn said that it is a license to rent by the day or by the hour. It is to protect the renter. The State inspects the property and looks at water quality, smoke alarms, water heater temperature, etc. The license expires at end of the year. She did not get the initial letter from Mr. Backstrom. If she had gotten it, she would have seen that it was only needed if she rents for less than one week.

Brigid asked if they have been prompt with all other information requests from the Township.

Shawn said that the emails going back and forth, as documented by Sue, show that they have been prompt.

Dave asked them to explain their rental terms. They advertise a daily rate as well as a weekly rate on their site on the internet.

Shawn said that they have that in there for comparison purposes. It's also so people can see what an additional night would cost. Sara recommended she take it off the website until they got the license. Their contracts are all for an entire week.

Dave asked if they understood Condition 9 about rental frequency.

Shawn said that they do, but that State Statute 157 supersedes the Township. Their license says they can rent nightly.

Tim said that the Department of Health is concerned with overall health and the Township is concerned with the local community. Sometimes there is a situation where a State Statute and a local statute cover the same subject. If both statutes are aimed at the same thing, the State usually wins out. But that is not the case in this instance.

Bill Mittlefehldt said that the conditions were set and agreed to. Every time there's been a violation, the Town talks about redoing the rules instead of enforcing the rules that exist. They rented the unit for less than 7 days in March but did not get the license from the State until August. That is a clear violation of the conditions.

Dave Chura made a motion for the following resolution:

WHEREAS the Town Board established several conditions to the Worden short term rental (5249 Greenwood Road) on February 17, 2011 including:

- The owners shall obtain any and all licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction, and keep the same in full force throughout the duration of this conditional use permit. This may include, but is not limited to, a

Minnesota Department of Health license for offering sleeping accommodations to the public for periods of less than seven days (MN Statutes Chapter 157), and a permit to charge sales or other applicable taxes from the Department of Revenue. Copies of these licenses/permits/approvals shall be provided to the Township Planning Director each calendar year, no less than 30 days in advance of any rental of the property. Failure to provide the documentation described above during a calendar year shall be evidence that the short-term rental use was discontinued during that calendar year.

- Thirty days prior to rental of the property in any calendar year, the property owner shall provide to the Township Planning Director the name and phone number of a contact person with the capability and authority to address complaints or concerns regarding the property. This phone number shall also be provided to all other property owners within 500 feet of the lot boundary.

and

WHEREAS the Town of Duluth Planning Commission reviewed the conditions of the Worden short term rental on August 25, 2011; and

WHEREAS there appears to be a rental violation on March 16- 20, 2011; and

WHEREAS the Worden's have been advertising daily rates for the rental of the property and rental rates based on actual use; and

WHEREAS a license from the Department of Health was not acquired prior to rental; and

WHEREAS the Town of Duluth was not notified of the local contact prior to rental in the time period required; and

WHEREAS we believe these violations and adherence to the conditions of the CUP have required continued action by the Town of Duluth Planning Director and Planning & Zoning Commission; and

WHEREAS although these violations may not make the commission comfortable in pulling the Conditional Use Permit (CUP), we will be review the permit again in the future.

THEREFORE BE IT RESOLVED that the Condition Use Permit for the Worden short term rental be reviewed again in April 2012 or sooner as conditions may warrant.

Dave said that overall, he wouldn't suggest that the violations were not serious, but the violations in and of themselves don't make the Commission fully comfortable in just revoking the permit.

Brigid said that she was bothered by the Wordens' attitude that the Township cannot make or mandate them to do anything and that they are grandfathered in. The Town is

only trying to do what the Wordens would do in their own neighborhood. Why are there so many complaints?

Shawn said that their original contact person was never used, so complaints came right to the Town. She said that she is going to be the local contact and they have a local person to respond.

The motion passed unanimously.

### **Sami Cultural Center Conditional Use Permit -- Public Hearing**

Dave outlined the process for the public hearing. He read the criteria that would need to be met for approval of the Conditional Use Permit and the zoning requirements for SMU-6 (see attached).

The group, which is in the process of obtaining their 501(c)(3) plans to purchase the property at 5527 North Shore Drive for the purpose of establishing a cultural center. The property is in zone district SMU-6. They meet all of the lot requirements and setbacks except for lot area. The minimum lot area is 2 acres and they have 1.6 acres.

Faith Fjeld, founder and editor of Baiki: The International Sami Journal, spoke to the Commission about the proposed project. She said that Marlene Wisuri was unable to be at the hearing. Faith said that she will live at the cultural center and be the caretaker. She gave Commission members copies of the Journal. She said that the center will serve as a repository for research and materials on Sami culture that have been collected for over the past 20 years. They seek to educate themselves through the magazine, discussion groups and small educational workshop. People would make appointments to look at materials in the library – they would not just drop in.

Faith said that in this area, 65% of the people are of Scandinavian or Finnish background, many with Sami background, and they are anxious to learn more about Sami culture. She said that they have funding to create the center and bring people in to teach. Teachers would be able to stay at the center. There is ample space for parking. There will be no parking on the road. There will also be an exhibit area and gallery space for visiting artists. In the past, seminars and workshops were held in members' living rooms. They also have a working arrangement with UMD. UMD has a Sami library that their group helped put together. They have shown films and have had Sami storytellers in the large rotunda. She has been doing research under a grant from the National Park Service in Alaska on a group of Sami reindeer herders who came over to Alaska in 1898 and were hired by the U.S. government to introduce reindeer husbandry to native Alaskan peoples. She hopes to put together a book on that at the new center. She says they hope to have interns from the various colleges and universities in the area who can earn credit helping them organize their data and research.

Jan asked when they applied for the 501(c)(3) status and when they expect to know if they are accepted.

Wendy Ruhnke said that she is a member of the planning/steering committee. They have one more piece that needs to be completed for the application and they plan to get that done this week. She does not know how long it will take to get it once it is submitted.

Jan asked how their proposed activities would be likely to change if they did not get 501(c)(3) status.

Wendy said that she has successfully applied for and gotten three others. It typically takes three months and she expects that theirs will be approved. They have been told by the bank that they have permission to do fundraising. The bank has reviewed their articles of incorporation and bylaws. Even if approval is delayed, it will not change what they have planned.

Jan asked if buying the property would be contingent on getting the 501(c)(3).

Wendy said that it would make it more difficult to raise funds, but so far people understand that it is in-process. If the federal government were to stop awarding 501(c)(3) statuses, donors would no longer be able to deduct their donations from their taxes. And that may happen anyway because the government has proposed taking away the 501(c)(3) status. She doesn't expect that not getting the status would change their plans.

Faith presented the Community Participation Report (see attached). She said that Marlene visited with everyone within ¼ mile of the property. She got a very enthusiastic response. There were a couple of people that she could not reach. They provided the Commission with a list of who they were able and not able to contact.

Dave summarized an email from a nearby property owner, Mark Weitz, suggesting some conditions that the Commission consider if they approve the CUP. There was also an email from Ann Libby, another neighbor, wondering what the sale of the property might do to neighboring property owners' taxes if the property is used for commercial activities.

Tim Strom said that he doesn't really know. But if were to come in and pay twice the value of a property, the neighbors' taxes could conceivably go up.

John said that he had concerns about the future use of the property. Will subsequent generations take it over? What might happen to that space? And is the number of users of the center likely to continue to increase?

Faith said that young people are becoming increasingly interested in their genealogy. There is a young woman – 21 years old, whose mother is on the steering committee -- who has an opportunity to go to Samiland to learn about the culture there and learn the language. There are likely to be exchanges. They are much more concerned about the possibility of dying and leaving their library and information scattered about in people's homes. With the increasing interest in genealogy, they do expect to get more members as time goes on.

John asked if there would be interns and/or scholars and other experts staying at the center and for how long. And how often will classes be held?

Faith said that they would be coming over on grants that would allow them to be here for maybe one week. They don't plan for to set it up for people to come and stay for more than a couple of days. They will also be cooperating with the University and other educational institutions. She said they prefer smaller class sizes, typically 9 or 10 people. There would not be other long-term residents there beside herself. She is funded by a grant to edit the journal wherever she lives.

John noted that the area is residential and is usually a quiet and subdued neighborhood. Very seldom are there large groups of people in the area.

Faith said the center would be more of a retreat – quiet and to cherish.

Dave asked Tim, if we do grant a CUP for the center, can we make it specifically for a Sami cultural center so that if the center were to dissolve or move, someone would not be able to come in and use it for some other type of group use?

Tim said that it is not a license to these individuals – it goes with the property. So specify in the conditions and the permit that it is for a Sami cultural center with maybe one full time resident. Then it is defined for that use.

Dave asked if the Commission could make it dependent upon their receipt of their 501(c)(3) status?

Tim was not sure, but thought that the Commission had the authority to do that. But if one of the conditions is that a 501(c)(3) must be in place and the federal government changes them or decides not to have them, then it would be impossible to have the CU and they would need an amendment. So he did not know how wise it would be.

John asked how many people attend the yearly or biyearly event.

Faith said that it is like a family reunion, about once a year. They had about 40 people at the last one at Marlene Wisuri's home. It was a two day event.

Concerns from the audience:

John Fischer asked for clarification of the last two lines of their mission statement – how do they foster relationships with indigenous and environmental organizations?

Faith said that the Sami people are members of United Nations Permanent Forum on Indigenous Issues. They are allied with other indigenous groups who are concerned with treaty rights and sovereignty issues, as well as environmental issues. In addition, Ojibwe

storytellers often join with Sami storytellers for events. Sami people are quite peaceful – they never had a word for war until they borrowed one from the Finnish people.

Dave closed the public testimony portion of the hearing. He suggested someone bring forth a motion and, if the CUP is approved, the Commission could work through to establish specific conditions for the permit.

Jan moved to approve the conditional use permit request for the Sami Cultural Center of North America for the mission of fostering an awareness of the Sami culture through education, communication, research and the arts; to facilitate connections between the descendents of Sami immigrants to North America and their relatives in the Nordic countries: and to foster mutually-supportive relationships with Indigenous and environmental organizations.

The approval is based on the fact that the Commission finds the use is compatible with all of the necessary finding of the Ordinance, Article 9.7.B.1-12.

The motion was seconded by Jo Thompson.

The conditions that the Commission decided on are:

- 1) No more than two full time resident(s)/caretaker(s).
- 2) No rental of facilities on the property.
- 3) Cultural Center will be open by appointment or invitation only.
- 4) No parking on North Shore Drive.
- 5) On-site classes not to exceed 12 people.
- 6) No more than two annual Siidastallans or other large events per year to be confined to the property. These events will have no more than 50 attendees at a time. Good faith effort will be made to notify neighbors within 1/4 mile 3 weeks prior to the event.
- 7) Notify the Planning Director within two weeks of when the 501(c)3 is received.
- 8) The Sami Cultural Center shall notify the Planning Director of the name and phone number of the full-time resident(s).

The motion with the added conditions passed unanimously.

The Commission took a break while the decision document was typed and printed.

Dave read the completed decision document (see attached) to the Commission and it was approved unanimously.

Dave said that the Planning Director has received an application for a variance from Russel Krook for an accessory structure larger than 2,000 sq ft. It is for an indoor arena with stalls, a tack room, and hay storage and would be approximately 22,000 sq ft. Area of notification was set for ¼ mile. The hearing will be at the September meeting.

Jan brought up a concern regarding people cutting down trees on the Congdon Trust land across the street. Nokomis did some cutting across from them, but they had permission from the City.

John said that near him towards the Scenic, there are two trailer homes, and they cut down two entire plots of trees across the street on the City land. He wrote an email to the City of Duluth and copied the police department and John Kessler. That was 6 months ago and he has not heard anything back.

Jan said that it is important to let the people there know that the land on the lake side belongs to the City of Duluth and any disturbance of the vegetation requires a permit. Anything that is done on that side of the road needs to go through the City. Jan suggested starting with Parks and Rec.

The meeting adjourned at 9:25.