

Worden Hearing  
December 8, 2010

Present: Dave Mount, Danny Tanner, Stephen Dahl, Wendy Meierhoff,  
Also Present: Attorney Tim Strom, Clerk Ann K. Cox, Shawn Worden, Attorney Kim Maki, Don McTavish, Jay Zink, Bill Mittlehldt, Jeff Cook

Dave Mount: a continuation of the BoA meeting was called to order at 6:30 PM

This is a continuation of the previous hearing. Dave Mount gave an overview of the November hearing. Two issues need to be addressed 1. possible conflict of interest with a Planning Commission member and 2. possible "due process" allowance of the Worden's to argue their case.

Dave Mount: Since the BoA Board has all the authorities of the Planning Commission, hearing the appeal would both resolve the concerns addressed above and expedite the process. Instead of simply reviewing the Planning Commission decision we will make an independent decision, which will resolve any procedural issues. By way of process I am open to suggestions; inviting Ms Worden to hand out additional material, information and prospective. The hearing will open allowing everyone to speak; once everyone has a chance to speak that portion of the meeting will be closed.

Ms Worden: (Provided 4 copies of additional information inviting those present to share.) Ms Worden introduced herself as a part time resident of Duluth Township. We have not been able to rent our property for the past three months. If there is a violation we should be notified and allowed time to fix the problem. We disagree with the November minutes which state a "violation is still a violation". We are not happy that we were called a "bad manager" in the November minutes 7 time we do not appreciate that and do not consider ourselves bad managers, if I was I couldn't run my CPA business. We had been holding a single family dwelling for a year and a half before the ordinance was updated. We received a letter stating we needed a Conditional Use permit (CUP); we got the permit with conditions added. Our CUP has been revoked twice in two years. The fee was increased. We shouldn't need a permit, we would have saved 2 ½ years worth of hassle, if the law had been followed in the first place we wouldn't be here this evening. In the past 5 years we have had 500 rental days, two days there were more than the allowed number of people. The Hells Angels, we weren't aware they were Hells Angels, had we been made aware right away there were too many we would have contacted them to remove the two extra people. We would have driven here and kicked them out ourselves but we weren't notified, we didn't know until 3 days later. There weren't many complaints until we got the permit. The first meeting at John Kessler's home we were told it wasn't going to be our problem it would be the Town's problem. If we were informed of any problems we would take care of them ourselves. My local contact doesn't have all the information; we have the power to take care of the problem. If there is a complaint, forward the e-mail, if we weren't aware of any problems we can't take care of them. In the packet you can see we talk to the Kahlstorff's and the Ziegler's. We asked John Ziegler to write a letter, they live at 5253 Greenwood Road (the letter was read in its entirety). Ziegler's are closer than the neighbors on the other side. We were told to move the fire pit to the North East corner of the property which means we can see into the neighbors' patio while sitting around the fire pit. Letter from Wayne Dahlberg, Letter from John Kessler, two additional letters, two confirmation letters request a signature, we changed the wording to include maximum number of people allowed on the property.

Dave Mount apologized; he was remiss in turning the tape recorder on, which it was at 6:52 PM. Noted that minutes were being taken prior to the recording being started. The handouts provided by the Wordens will be entered into the record.

Shawn Worden continued: (discussing Ballinger letter) We told them several times there was a 6 person limit. (letter was read in its entirety). The people renting were aware of the 6 person limit but allowed extra guests anyway (page 6 of the packet Ballinger family). Discussed e-mails back and forth between Ballingers and Wordens (in packet). E-mail from the guest requesting permission to allow additional guests, we weren't aware that there were more than 6 people which happened just before the revocation letter.

Discussed Hells Angels visit. Not aware of issue until she received an E-mail from Dave Mount.. Read from previous minutes -- language indicating that Planning Director should investigate violations, notify permittee of violations, and direct owner to correct the violation. Why has the Town not notified us of violations?

Referred to letter from Pamela Mittlefehldt (page 56 in packet from Planning Commission) stating that the Mittlefehldts are full time residents and better able to know what goes on at the property. Ms Worden disagrees, as the Wordens are frequently at the property, and further citing Ziegler's letter (packet), in the P

Pages 56 – 61 of Planning Commission contain 10 complaints i all related to the 7 day condition which was recorded incorrectly but still being enforced. The 7 day condition: you could only rent once per week, prior to that they were renting when we wanted but agreed to once per week, it was recorded as renting once for a week. It was being enforced as renting for a week instead of once per week.

Dave Mount: At some point in the process (BoA hearing) the language was revised to say subsequent rental cannot begin until at least 7 days from the initiation of the previousrental.

Wendy Meierhoff: I believe all of us could misinterpret that.

Shawn Worden: the recording has not changed.

Dave Mount: but it has been changed in the Towns records.

Shawn Worden: At the hearing I didn't have time to think about the definition. Now it sits empty all week, I had a 2 day rental then I cannot rent again until the following Friday. The definition does not work for me.

Dave Mount: but it is consistent with what the Town intended. When your renters want to rent is not part of the definition.

Wendy Meierhoff: When we started, I think it was more intended as a defined week.

Dave Mount: Short term rental came in after I was on the Board.

Wendy Meierhoff: I would not have interpreted the once a week that way.

Dave Mount: I was the Planning representative when this hearing was held. We were all in a room when that definition was arrived at, and everyone agreed, including the Wordens.

Shawn Worden: Regardless, I can only rent it once in 14 days, it sits empty all week before I can rent it again

Dave Mount: I don't believe that issue is before us tonight. No one has claimed that a violation of the 7-d rental condition is a basis for revocation.

Kim Maki: there has been a significant discussion about this issue tonight, so it will be part of the basis for appeal...

Dave Mount: I disagree, the wording that was placed by the Board of Adjustment is perfectly clear. It was not contested at that time, and there is nothing under discussion tonight that would bring the definition into consideration, unless it is asserted that the Town took an action based onan erroneous interpretation of that definition.

Tim Strom: What we have been discussing is violations of the conditions addressing number of occupants and quiet hours. We are here to discuss whether those violations occurred, and if they did, what would be the appropriate response. Now we are talking about the rental period and when the period begins, that to me begins to get far far afield. As far as Ms. Maki's assertionthat appeal would bring up any other disagreements and discussions the Worden's feel they could bring up, I don't see the relevancy. If the issue was a violation of the 7-d rental, then the definition would be relevant.

Shawn Worden: I bring it up because it was on the list of complaints in the record.

Kim Maki to Shawn Worden: please discuss the noise complaints.

Shawn Worden: I did not hear anything about noise complaints. (to Jay Zink) Jay, have you?

Jay Zink: We never had a problem on Greenwood Road before this all came about. I have talked to neighbors up and down the road there have never ever been complaints about her property. Just one complaint, it is impossible to have the problems (it is claimed that) she has. As far as the Hells Angels I met one of the people before he came there. I didn't want to say it, but he (Hells Angels) asked if the place was for sale. I go up and down the road all the time and talked to people on the road. I received one complaint about garbage on the road because the crows got into it.

Shawn Worden: I fixed that problem.

Kim Maki: Mr. Zink have you ever been called if there are more people than the limit?

Mr. Zink: No

Kim Maki: Shawn at least at the last meeting there were two violations as a basis for revocation. The first in July; please describe it.

Shawn Worden: The Hells Angels, I talked to them on the phone, I didn't know they were Hells Angels. She described the requirements. I received an E-mail from Dave Mount the third day saying there was a problem. After I received that e-mail I called John Ziegler and asked what was going on at the cabin. I didn't know the Hells Angels were there. He (Mr. Ziegler) didn't call her because it wasn't a problem. As soon as I received Dave's e-mail I called the Hells Angels and asked if they would please remove the additional people, which they did.

Kim Maki: and the second was July 2010?

Shawn Worden: That was the Ballinger's (refer to letter). They asked ahead of time if they could have more, I said no. They planned to get a motel room, not realizing there wouldn't be any available. I didn't know about it. John Kessler investigated, they only stayed two nights by the time John got there they were gone. We didn't not know about this until the revocation, and the event was not in the review period which ended June 30<sup>th</sup>.

Kim Maki: So there were two violations, the two nights were the Hells Angels; the second was the Ballinger's. Did you ever receive police reports?

Shawn Worden: I've never received any. I talked with Shawn Padden (Town Police) about doing checks on the property and he never mentioned any problems.

Kim Maki: points I would like to make; at the last meeting it appeared the BoA was going to revoke the permit because there was a violation and any violation requires revocation. That's not reasonable. It was discussed that a local contact would help. That wouldn't have helped, the Ballinger's arrived the next day. There is only so much a person can do to make sure these conditions are observed, the Wordens are doing everything they can. They have only 3 violations in 500 nights of renting. As soon as they are notified there is a violation, they take action. They are not bad managers, the fact they live in Litchfield has no bearing on this case. They do the best they can to make sure their rules are followed. Their local contact has not received complaints. How is this to be held against them? Despite all procedures they put in place they cannot work any harder. There has to be a modicum of reasonableness.

Dave Mount: Is there anyone from the Public who wish to speak?

Jeff Cook 5266 Greenwood Road: I live about a block away. I've only heard through the grapevine, until the Hells Angels were there. Part of the reason I voted against it (short term rentals) when I was on the Town Board, there are problems and the problems get bigger. The owners are away, you have to rely on a second or third party to see what happens on the property. It is hard for them to see what happens, not only that, it is

a residential area, not a motel or a resort, if you have one violation it bothers everyone in the neighborhood. It is detrimental towards a sale if you want to sell your property. It can get out of hand easily. Close proximity of properties is a problem, get short term rentals out of a close proximity area and get it into the country more. It is not good for the residents who live in the area.

Bill Mittlefehldt immediate next door neighbor: We have been through this for 3 years. When we talked to the Worden's and learned they were going to do short term rental, we immediately went to Planning and Zoning (P & Z) and asked them not to give them the right to rent. We have been supervising the property because of a lack of resident person checking rentals. 11<sup>th</sup> condition is if any (conditions) are violated the CUP will be pulled, we recorded 30 violations as we understood them. We had to continuously go to P & Z and say there has been another violation isn't it time to pull it? We need to go back to the original documents. There is a 6 person limit, you have Kim and Shawn both saying there have been 3 violations and we could invoke condition #11. We could keep it simple two violations (your) clients have admitted to, the permit can be pulled based on this. When the Hells Angels were here, there were noise problems, the police were called, and the Planning Commission did not revoke the permit. So we got a petition for revocation and had an eager number of people sign. It appears to be poor management, I don't see the owners showing people in when they rent, and I also don't see Mr. Zink showing people in; instead I see people letting themselves in. I agree Shawn probably didn't know there were 8 Hells Angels there – but it's her responsibility to meet the conditions.

Shawn Worden: My home is being used as a single family residence if I lived here I would bring my family, my friends. My cabin is empty 265 days a year, quiet as can be, but the 100 days it is rented it is no different from a single family residence. It is not a hotel, it does not have a bunch of different kinds of people, Hells Angels were not a family but for the most part families rent the property. I have a 100 foot lot, all the property lines are screwed up; we all have 100 foot lots. And I just want to reiterate what I read in the letter about Mr. Mittlefehldt walking over and shining flashlights in the windows counting the number of people. I left my garage door open and the security light on, the next week I came back and the light switch had been turned off. Over supervising I would call it -- trespassing?

Jay Zink: I think I said about it all. We (my wife and I) go south a lot; we've rented places like this in Arizona these places are normally rented by families. It is nice to get into a nice quiet area, in a residential area.

Jeff Cook: I emphasize again, it is a residential area, I don't think there should be short term rentals, and I am concerned about property values and safety. Our police brought that up when we were discussing short term rentals. Policing shouldn't have to happen, neighbors shouldn't have to police the neighbors.

Bill Middlefehldt: We have better things to do with our time. Ms Worden admitted she lives about 3 ½ hours away. It s poor management when the integrity of the customer is in question.

Dave Mount: I am going to close this off unless there is something factual that counters something that has been said..

Tim Strom: I have not heard any factual information about quiet time.

Shawn Worden: I have heard nothing about quiet time. I don't rent to everyone who inquires. I reiterate about quiet time. I never heard about quiet time violations until I received this revocation. Short term rental is a common practice.

Dave Mount: This is not about desirability of short term rental. The Worden's have a permit to rent as a short term rental. This is not something the Board will discuss (desirability).

Shawn Worden: I haven't heard anything about quiet time.

Kim Maki: there have been no verified complaints about noise. I don't believe anyone has other than the Planning Commission has discussed noise. There needs to be a chance for the Wordens to respond to complaints. MN law is clear, unverified complaints about noise and unverified complaints about property value is not a basis to revoke the CUP. All we have is the three violations of the occupancy. Are you going to hold

her to a strict standard? Or will there be reasonableness. The choice is clear, there has to be some reasonableness.

Dave Mount: I want to clarify the three things that couldn't be a basis: neighborhood opposition, public safety and welfare, property values.

Tim Strom: the Worden's have cited a case that involves a denial of a CUP not a revocation, but the same standard might apply. There are cases of denial of CUP's that say there has to be on something more concrete; you cannot rest your decision on general unsupported facts, that is not a grounds for a denial of a CUP. The question is; is it specific and supported? We have cases in MN the Hinnencamp case. The neighborhood opposition was based on property's appearance, lack of screening, and traffic concerns. The court said that was specific. The Edling case: neighbors complained about lack of fencing, dust, traffic -- these concerns were justifiable for denying a CUP. It is important to discuss the details.

Jeff Cook: Just the Hells Angels, there was noise, in the evening around 11 p.m., the 2<sup>nd</sup> incident was a bit of noise at the fire pit. I didn't realize at the time there was a time limit; it was after 10:30. There wasn't a lot of noise but there was noise.

Bill Mittlefehldt: They (Hell's Angels) were very loud and intimidating we called the local police who said not to antagonize the Hells Angels, to stay quiet and lay low. They revved their bikes at 6:30 a.m. consistent noise problem then the other less dramatic problems. We are asking you to honor the 11<sup>th</sup> criteria to pull the CUP.

Wendy Meierhoff: With regards to Hells Angels, were the Worden's called that the Hells Angels had an issue? Has it been verified in terms of notification?

Dave Mount: The Town police verified the occupancy issue.

Wendy Meierhoff: We had a process for notifying them, is there any record we contacted the Worden's that there was a violation so that they could fix it?

Dave Mount: – I'm not sure there was a process set up.

Kim Maki: Shawn you weren't made aware they were the Hells Angels until the third morning?

Shawn Worden: Yes. Regarding the fire pit noise past 10:00. Every now and then we were there, there were conflicting calls about someone who backed their truck up to the fire pit and was playing music (page 60), they were friends of ours not renters, that's not against the rules.

Dave Mount: To clarify, what page? (Page 60)

Dave Mount: Testimony period is now closed.

Dave Mount: Unless the board objects I would like to put together thoughts to narrow this down to what we really have to decide. Tim we will be relying on you here to set aside the things people might have an opinion on and narrow it down to the things that are the basis for a decision.

Dave Mount: a proposed interpretation of the rental period issue. In the latter pages of the Planning documents there are a number of comments on violations of the stay period condition. My sense is the Town clarified the language, and even if the event was prior to the BoA hearing where the language was further clarified, I don't believe there is evidence that the clarified condition was violated.

Wendy Meierhoff: page 24 and 26 of the Planning packet. At bottom of page 26, it says that a rental period will begin on a specific day.

Dave Mount: page 24 and 26 is what came out of the Planning Commission but was amended by the BoA.

Tim Strom: Does anyone on the board take the position that the 7-day requirement was violated?

Wendy Meierhoff: I was curious as to how many violations we really are looking at (page 60/61).

Dave Mount: As far as I'm aware, all the assertions that the rental period was violated are based on the assumption that all rentals must be for a full 7-days. I think it is appropriate that the Town applies the definition that was ultimately decided on. I'm not aware of anything on pages 58 – 61 that would have violated the amended rental period language.

Wendy Meierhoff: Is this is why the Planning Commission revoked the CUP?

Dave Mount: No, I don't believe so. In the findings of fact the stand alone document (Planning Commission findings of fact August 26 2010), the last bit on page 4, there is nothing specific in the findings that alleges a violation of condition 9.

Danny Tanner: I wondered on all these occasions, how were these verified? There is a lot of detail.

Dave Mount: Pamela Mittlefehldt provided the information. In that regard, in terms of evidence of violations, representatives of the Town independently verified two rental periods in which there were excess renters of the property; those were affirmed by the Town. There were no independent Town observations of the additional events, but that evidence is from the same folks who submitted the information on other violations that the Town found to be accurate. Obviously the quiet hour violation, there is no way the Town could substantiate the violation unless they contacted the police and they followed up. So, the other violations rest on the Board's opinion on the veracity of those that claim the violations. The instances the Town did investigate and found violations were prompted by the same neighbor that provided the list (page 58 – 61). That is the record as far as violations. Quiet hours, occupancy.

Dan Tanner: The fire pit?

Dave Mount: The history there is that in June 2008 the Planning Commission revoked the permit for non compliance in regards to the fire pit. The decision by the BoA on appeal was not that there weren't violations, but that given the subsequent correction of the deficiencies, the violations didn't warrant revoking the permit. The set of violations which we are considering here are separate; the previous issues may be relevant background, but they are not the violations we are considering here. With regard to the Grandfathering issue; the Town has twice considered this argument and concluded that there was an administrative appeal process set up at the time, the Worden's did not appeal during that time frame. Even on a grandfathered use we can impose conditions.

Tim Strom: the Worden's applied for a CUP, they had the right to challenge the CUP, they had the right to challenge the conditions of the CUP in January of 2008 they didn't do that, they operated under the conditions. They took the conditions to the BoA and continued to operate. The BoA has twice rejected the grandfather issue; you applied for a CUP, you received a CUP, you should not be using this BoA to appeal that CUP, there was a time and place for that.

Dave Mount: Another issue raised by the Wordens was whether there was sufficient notice. The review letter contained language of revocation from the ordinance; Ms. Maki contested whether that was sufficient notification. As we are basically re-hearing the issue, the Wordens definitely have had opportunity to be heard. so an assertion of insufficient notice is no longer relevant. Item #4 of the original brief dated November 5<sup>th</sup> notification asserted that the incorrect appeal period was applied, but the September 2009 ordinance amendments did change the appeal period and the correct one was applied. Regardless, the Town accepted the appeal as timely. So this is also not part of our decision. Regarding the fee, at the last hearing we went over the expenses the Town occurs to hear an appeal, we can and expect to spend \$1000 or more. We have had several BoA's and know what they cost. Tim tells us we have the right to set a fee that reflects the cost of the meeting, so we do not need to consider this issue.

Tim Strom read the Statute allowing the setting of fees.

Dave Mount: There was also a verbal argument from our previous meeting, an asserted undeclared conflict of interest on the part of one of the Commission members who voted on the matter. Without passing judgement on the validity of that assertion, having this BoA to hear the arguments independently obviates this issue.

Wendy Meierhoff: clarifications; there was a violation August 2nd 2009 which was the Hells angels group? Answer: yes, occupancy and noise. There was a second violation July 31 to August 2, 2010 which were the Ballinger's? Answer: yes occupancy.

Dave Mount: some of the testimony has referenced the Hells Angels. There is also a July 6<sup>th</sup> 2008 alleged noise violation and check in time.

Wendy Meierhoff: I'm looking at those we have direct knowledge of.

Dave Mount: Tim what is your guidance for burden of proof?

Tim Strom: The burden is for those who would advocate for violation. When in doubt don't pull the permit.

Dave Mount: So as far as I know there are several asserted violations as documented on pages 58 – 61 that no Town representative can verify. Does that mean they don't exist?

Tim Strom: No that doesn't mean they don't exist. You make decisions based on your best judgement. Mr. Mittlefehldt is saying they happened. Ms Worden is saying I don't know they are happening I don't know they existed. Mr. Cook is saying they did happen

Jeff Cook: I was on the Town Board at the time.

Dave Mount: on page 56 there is a letter from Pamela Mittlefehldt to Sue Lawson. It says it may be helpful to the Planning Commission to have a list of the violations. The list came from that document. On page 52, there is text associated with the petition which says there were repeated violations to the conditions.

Wendy Meierhoff: That is restricted to one weekend of the Hells Angels. Wendy read the wording above the petition.

Stephen Dahl: in the middle of that same letter it says there are repeated violations

Bill Mittlefehldt: after the Hells Angels there were some serious discussions, neighbors were then beginning to become concerned about property values.

Wendy Meierhoff: I was concerned about how it was documented.

Dave Mount: There was an assertion by the Wordens that this is a single family residential use – I don't think that is going to be a factor in our decision. My understanding of current State statute that defines this as a lodging accommodation which also requires a license by the state. I state that for the record, but it is not important to our decision as that is not a basis for a revocation decision. So, as is documented here, condition #11 states (read #11 in its entirety). In some of the testimony and written materials it is asserted that if there is a violation the Town needs to revoke the CUP.

Tim Strom: in my opinion when there is a violation of a CUP, the Town has an obligation to make a decision as to what to do. A conditional use permit shall remain in effect as long as the conditions (ordinance) are met. It does not say you have to revoke a permit if the conditions are not met. The Town's ordinance says something similar, and indicating that the permit will be reviewed occasionally. We don't have many Appellate court cases that discuss this, it is a proportionality issue. There can be a violation which is not significant enough to revoke a permit. However, if it is an ongoing problem, it may be reasonable. The courts have never told us what the proportionality rule is. The Town has the discretion to define what is appropriate.

Wendy Meierhoff: are we allowed to set different limits?

Tim Strom: yes you can revisit the permit and modify the conditions, reasonably.

Dave Mount: Tim if you could comment, under enforcement in our ordinance, there is language that says, if there is a violation that the Planning Director would notify the permittee? That is in the general section; the other language is specific in the CUP section.

Tim Strom: I did not study that language. When you go back to the revocation proceedings beginning in 2008, the fire pit was someplace it wasn't supposed to be, was it a violation? Yes but it is something you can tell the owners it is a violation please move it. The more difficult situation is violations of something like quiet hours. You can correct it, but there is still disturbance. Just because something may be over before it can be corrected, does not mean it is not a violation. If you have 15 verified noise complaints you aren't going to fix those by notifying someone -- but it doesn't mean they are not a violation of the CUP.

Wendy Meierhoff: – as a general thing, in giving out the Conditions, can each permit have different conditions?

Tim Strom: Yes; yes – you need to be fair, but a different property, different rental schemes, those are all going to affect what goes into the individual permit.

Dave Mount: (to Tim) You talked to me earlier about balancing different interests.

Tim Strom: Zoning is about balancing different interests. Everything you do with zoning has to do with balancing different interests and setting out basic rules on how things should go. The Worden's have a legitimate interest in running a business. The neighbors have a legitimate interest in not being overly bothered by the Worden's CUP. The Commission has the job of trying to balance these interests.

Dave Mount: What troubles me is that the conditions listed on the permit seem reasonable, and people living in the neighborhood should expect them to be adhered to. The Worden's have provided steps they have taken to adhere to the conditions. It has not always worked. The Worden's are not always there, and some of these things are hard to meet if you aren't there. If the nature of the operation means the conditions cannot be reasonably met I'm not sure where that leaves the Town. It isn't when the quiet hours are but it is making sure their renters adhere to the quiet hours on the other hand. Unlike a neighbor that lives there all the time, you don't have the ability to work it out over time. Renters are by their nature ephemeral.

Wendy Meierhoff: In 2008 we did another CUP (Schousboe). One of those conditions was (read condition regarding local contact). This condition was not put on the Wordens. If there were more conditions and if all property owners within 400 feet of the property were notified, would that be different.

Danny Tanner: you see it as unreasonable to revoke based on the two violations?

Wendy Meierhoff: I don't think we'd win in court, I don't see where Shawn has notified them of violations. I don't see them getting warnings.

Dave Mount: Tim, is it incumbent on the town to notify them of a violation?

Tim Strom: I see what Wendy is saying is, on a judicial review it would have been better if a notification had gone to the Worden's. The Town is not in the business of running this property. Conditions were put on the property, they were agreed upon, they should be obeyed. It is not the Town's job to make sure the conditions are followed. If you are asking me is it incumbent of the Town to monitor the property and contact the Worden's or Mr. Zink if there are violations so the Worden's and Mr. Zink can tend to the violations? No, that's their duty. Wendy's point is that if you had done that would you be in a stronger position? Yes. But it is not the Town's duty to monitor the property.

Stephen Dahl: the bulk of our information is from two people – does that constitute specific and supporting?

Tim Strom: the question becomes what is the board relying on? Everyone is agreeing there were two violations of the occupancy, one with the Hells Angels group and one with the Ballinger's group in 2010. So you have those two violations. Then the question becomes these noise complaints, some dates and some allegations regarding noise complaints. Mrs. Mittlefehldt is the creator of the document but isn't here to discuss the document herself. It is not entirely clear if the complaints on the petition were just with the Hells

Angels or were there others involved. You look at the evidence use your common sense, and decide how much weight you want to give to that.

Dave Mount: Coming from what Tim said, (hypothetical) if we had the police documentation that all the alleged violations occurred, would that be sufficient to revoke. If so, is the decision on the gray area of whether we have confidence the incidences occurred?

Tim Strom: the burden of proof: 1. is it credible to me? 2. do I have to make it reasonable and beyond a reasonable doubt. The question is, on balance, Does it seem likely to me that it happened?

Wendy Meierhoff: We have two violations of occupancy and one noise violation we have all agreed to tonight. The State Trooper came on the Hells Angels violation we have three that have documentation for – the question is, “is that enough?” I need documentation.

Dave Mount: So unless there is a second notification of a violation it is not compelling to you?

Wendy Meierhoff: No we have three violations we agree to, the issue is whether that’s enough.

Dave Mount: I do not exactly see it that way. I see that for those instances less room for uncertainty to exist about what happend. I believe those three instances, but I am not ready to go from there and say there was nothing else. There were additional events, and we would be relying on judgment as to whether they should be a basis for decision. I don’t know exactly what happened but whenever an assertion was made by the Mittlefehldts it was found to be true. It doesn’t mean that the others definitely happened, but it suggests there was in fact something there.

Mr. Zink: can’t they do what they did in the old days, call the Police? If it continued on we reported it to the Town Board. The Hells Angels it wasn’t right; but nobody complained the next week.

Tim Strom: When you look at the things submitted by the Mittlefehldts I assume Ms Maki would point out there is a long history between the Mittlefehldts and the Worden’s. That may give reason to question. I’m sure Ms Maki would follow in the line of Mr. Zink, the police have not been called. However, we have followed up with the Mittlefehldts we did find violations.

Kim Maki: Not every single report made by the Mittlefehldts that was checked was verified, one complaint included 7 towels on the deck, but it wasn’t true that there were excess occupants. The majority of the complaints were made only by the Mittlefehlds, but the Ziegler’s did not make any complaints. The Mittlefehldt’s are egg shell plaintiffs, a little more bothered by things that are going on around there.

Danny Tanner: (to Ms. Worden) Did you ever live at that house as your residence?

Shawn Worden: No. We bought the house for our daughter who had planned on living there.

Bill Mittlefehldt: I don’t know if we are egg shell or not but we do live next door and the owner lives 3 ½ hours away. The verification of the 3 violations is sufficient.

Dave Mount: What constitutes unreasonable noise? (Hypothetical) What if what we have isn’t enough to go on, maybe we institute a requirement where someone gets called whenever there is a problem. Then we have more. We have 6 problems we could have 12, the Worden’s don’t know. If the neighbors start calling we now have Mr. Zink being called. Now what do we do? If the conditions cannot reasonably be complied with to me that is just off on the side. They are reasonable conditions I do not see it is the Town’s problem they are not reasonably enforced. I can’t see moving forward in the same way if we don’t know what the threshold for excessive problems is. In fairness to the Worden’s I don’t want to be back here for another hearing because we are making a squishy decision. I don’t want to impose a decision, I want to impose a criterion where we know if it’s been exceeded. It is not our responsibility to be down there determining compliance all the time. I am very concerned it is a way to put off the hard issue, how much is too much? I want to come up with a positive decision. I want quantitative bounds, but I am afraid we won’t have that.

Stephen Dahl: We can make the argument that xyz has happened we can go with that and keep it simple.

Dave Mount: thoughts Dan?

Dan Tanner: I see the solution. First of all do we have other short term rentals? Yes. Why do they work and this one doesn't? Are they very far from their neighbors? There is no way you can get a short term renter in from somewhere else that won't be out beyond 10:00 p.m. making noise. In regard to having more than 6 (people) is going to happen also. Maybe the problem is the neighborhood is simply too dense for short term rentals. My solution is hire Bill and Pam Mittlefehldt to be your managers, as ridiculous as that sounds it is a solution.

Mrs. Worden: now that I have been made aware of noise complaints I could emphasize it more. I haven't said anything about noise other than the document in the house. The only violation that was against what I told them was (Ballinger). If I told them about it up front it would likely be different. I could say this is a neighborhood and say if you are going to be up and going to make noise maybe you want to stay somewhere else.

Wendy Meierhoff: on their permit is that 2008? Yes. (reads additional conditions from Schousboe permit).

Dave Mount: The Planning Commission went through the process with the Schoesboe's after the Worden permit and had a better process. We are considering the violations of this permit, I'm not sure the other conditions are the issue here.

Wendy Meierhoff: What works in some places does not always work in others.

Meeting suspended for a brief break 9:00 p.m.

Meeting was reopened at 9:07 p.m.

Dave Mount: We had asked for an extension of this process to January 25th. It is not a requirement that we make a decision tonight, but unless we think there is insight that comes from individual consideration, I'm not sure it's a good idea to just kick the can down the road. That said I am personally struggling with this issue, I think where we have been doesn't fit with the vision of where the Town would hope it would go when they established the conditions. I think things have transpired that are undesirable and negative things have happened so my own view is that I don't view this as business as usual and we're not going to just forget about. I think there are significant obstacles to meeting the conditions, such that violatins are going to continue. Particularly in view of the noise issue there hasn't been opportunity for correction, perhaps that is the Town's problem; there has been nothing specified as far as follow-up. I'm not really sure but we can't say what would have happened if every time one of these things (noise complaint) came up we wrote a letter, I don't know that it would have changed anything. That is a factor in my decision. If we were to move for revocation is that a fair approach or is the fairness of that approach contingent on there being enough notification. In my mind it is between amending the conditions to try to eliminate occurrences that are contrary to the spirit of the things. The outcome the Commission was trying to achieve an environment that was amenable with the larger community I'm not sure if there is another way to achieve these things. My concern is; can (amending the conditions) really lead us somewhere different or does it leave you with whether xyz is unreasonable or not.

Stephen Dahl: it is not an easy decision but I think we need to make a decision tonight. I make a motion to uphold the Planning and Zoning Commission decision to revoke the Conditional Use Permit.

Tim Strom: I think technically that the motion would be to revoke the Conditional use Permit.

Stephen Dahl: I am withdrawing my motion. *I make a motion to revoke the Worden's Conditional Use Permit Dave Mount seconded the motion.*

Tim Strom: what do we do about supporting reasons?

Stephen Dahl: Do they need to be part of the motion?

Tim Strom: No but I think it would be worthwhile to discuss the reasons for revoking the permit. I need to write up a decision and there have been a lot of factors.

Dave Mount: As I understand from you there is language in the 60 day rule saying we have to have written findings tonight.

Tim Strom: I was wrong, if a multi-member governing body denies a request it must state the reasons for the denial of the CUP. (Tim read the rule.) It is appropriate to state on the record what its reasons are, it should be follow up at the next meeting with a written decision, but the written decision has to hue to those reasons discussed.

Dave Mount: If there are limitations, this is not going to be a quick thing to write up, it is very complex. Would the next meeting be when we define we are meeting on this matter?

Tim Strom: the next meeting of the BoA on this matter, not the next meeting of the Town Board.

Dave Mount: We would not be revisiting the decision we would be meeting just to review the written decision.

Dave Mount: We have a motion on the table we need to articulate the reasons to support that motion. The construction of the motion would be based on two periods of violation of condition #8 (occupancy) of the CUP about which there seems to be little disagreement that it did happen. A violation of condition #6 (quiet hours) happening on or about July 2009, and I guess I would add evidence to suggest that there may have been additional violations of conditions #6 and # 7 (check in time) that have been asserted but that the Town cannot independently verify.

Wendy Meierhoff: Can you clarify what you mean by the last two.

Dave Mount: Conditions 6 and 7, quiet hours and check-in time. The Board is not asserting that there were violations outside of those. I am trying to make it clear that there were different levels of verification of those. It seems to me the real hard decision is whether this is such a substantive violation that revocation is warranted. Tim if you think there is a line of reason that wasn't captured there otherwise I believe we have rendered moot most elements that have been discussed.

Tim Strom: we have two violations of occupancy which there is no quarrel about; we have one violation of noise which we also have no quarrel about. There are additional allegations, they have been disputed but not disproven. Should the Town revoke the CUP or should we impose additional conditions?

Dave Mount: what frequency is something likely going to happen again? I don't think it likely during a screening process on can eliminate a renter that might violate a condition. None of this is asserting that any renter who has had a violation, isn't a good person, or that you can be sure this isn't going to happen again. The Ballinger's were apparently perfectly nice people. The reason for limiting the occupancy is an indirect tool to control the myriad of issues that go along with renting to large number of people

Wendy Meierhoff: They've had about one violation per year, and when they have had a violation and when they have been notified about the violation they have fixed the problem. I don't think we'd win in court.

Dave Mount: (Hypothetical) If there was a violation every night and they were addressed immediately, that still violates the spirit of the conditions.

Wendy Meierhoff: When there has been a violation how many times did they get in touch with Mr. Zink?

Bill Mittlefehldt: We called Mr. Zink twice we were rejected both times.

Stephen Dahl: Is there an action we can take?

Wendy Meierhoff: Should we give the Worden's 6 months with additional conditions and give the residents within 400 feet a person to call and documentation to take place? I don't see any of these violations serious

enough to give up their business. This is a business for them. I am certain we have other people who have issues going on but two violations and they are out of business? I don't agree with it.

Tim Strom: Is there a meaningful way to change the conditions? If the answer is yes it would be a worthwhile way. On the other hand if there is no meaningful way to change the condition then revocation is the only way. There is an interplay between the two.

Stephen Dahl: I hear what you are saying but it is a residential community this is a strike against a residential community. There is a state legislation that they put limits on rentals.

Wendy Meierhoff: we don't have to go back and completely review our ordinance I think we are all looking bigger and we sometimes write ordinances we can't manage.

Dave Mount: We have to view this permit under the ordinance language it was adopted under. It is about this permit and the ordinance language that was in place when it was issued. So where does your reasoning lead? X number of violations a year the same type of violation? I am hesitant to send this out of here and in a way that has us back here again trying to decide how much is too much. There has to be some kind of articulation about some sort of guidance -- if these are not unreasonable violations, what would be?

Wendy Meierhoff: what we need to set up is how many violations before it should be revoked, we need to research that. There are different things to look at.

Tim Strom: I looked at this in the case of a CUP, there is not case that says that amount of violations doesn't justify it. There is one case where it was right in the permit that there have to be substantial and repeated violations. When I am looking at it I'm looking a remedial action, there is a reasonable amount of discretion whether the violations rise to the level of substantial.

Danny Tanner: what I see happening and Dave is essentially saying; I cannot see a path to lead us to a successful resolution, we are going to have problems in the future because Ms Worden is not a resident here and there is no one to screen and discuss the issues. Wendy is saying is it justified to pull the issue for 3 violations? Planning and Zoning said you cannot have more than 6 people there, but having 2 more people doesn't guarantee that there will be problems. Yes having Hells Angels there causes a problem yes the noise causes a problem but how do we solve the problem?

Dave Mount: I don't think anyone is thinking about alternatives other than revocation or modification. My difficulty with making a decision is about this motion is that I can't see very far down Wendy's path. I cannot see how anything can change the trajectory of this thing. If we want more conditions, we have to do it -- I don't believe sending it back to Planning and Zoning would be very constructive. I don't see a way what the alternative will be fleshed out within the next few minutes. I'm stuck on the lack of a viable alternative.

Stephen Dahl: an alternative would be an onsite manager

Danny Tanner: it would be a potential solution.

Dave Mount: We would have to flesh out that idea. If it wouldn't meet anyone's objection to have anyone live there, how about the degree of oversight more than orientation? It seems to me that tabling the motion and giving people time to think would be a benefit as far as I'm concerned. Anyone who would have constructive suggestions on new conditions is welcome to suggest them. The decision has to come from the board but not necessarily the idea..

Wendy Meierhoff: if I came up with a set of conditions that might work for a time period could I go through you? Can we do that before we make a motion?

Tim Strom: if Wendy came up with condition abcd would it be proper for Wendy to work with Ms. Maki (through Tim)? I would be more comfortable with the idea with the Board saying, these are the conditions we think that would work, we would not revoke the permit but would put the conditions on in place. It is modified to extent essentially saying if you want to operate your business you will under these rules.

Dave Mount: We want to know if someone has an alternate mechanism to achieve the goals.

Tim Strom: There is something to be said (for getting input from the Worden's). (To Ms. Maki) What is your reaction?

Meeting closed to allow Ms Maki an opportunity to talk to her client Ms Worden. 9:45 p.m.

Meeting reopened 9:47 p.m.

Kim Maki: I think I understand what you proposed. We would be interested in getting a list of changes to the CUP to see if they would work for the Worden's. We would like to receive the list prior to the next meeting.

Tim Strom: I want to make sure you understand it might be a Board member coming to the next meeting and saying you know I've been thinking. It needs to be understood Ms Worden might not hear about it until the next meeting.

Danny Tanner: I would like to see something work, not just Wendy. I would like to see resolution if it is possible. It might not be possible.

Tim Strom: The choice seems to be some kind of action,; is it revocation or is it modification of the conditions. Danny are you suggesting you too would call Ms Maki? (No)

Stephen Dahl: Wendy can put forth the plan but make it clear that someone else might come up with a viable suggestion.

Dave Mount: it isn't a goal to put someone on the spot. We want a path forward. Ms. Maki and Wendy will have a dialogue -- is there a mechanism for that to be circulated to the rest of the board (before the meeting)?

Wendy Meierhoff: I think I can send it to Ann and have her forward it to the rest of the Supervisors.

Tim Strom: I would think if Wendy and Ms Maki work together and come up with a plan then send a copy to each of the board members and all other interested parties. I fail to see where there be a problem with that.

Ms Maki: that proposal is fine by me.

Bill Mittlefehldt: I hope Dave will set a time schedule.

Stephen Dahl: I move we table the motion Dave Mount seconded. The motion to revoke the Worden's Conditional Use Permit has been tabled.

Dave Mount: the motion to table has passed unopposed.

Tim Strom: under the open meeting law you can talk as long as it isn't a quorum. But I discourage you from doing it. There is a danger of an unintended violation if there are serial discussions.

Wendy Meierhoff: I can e-mail with Dan.

Danny Tanner: I would like to have input.

Tim Strom: Wendy and Dan will discuss with each other, Wendy will be point in discussion with Ms Maki.

Ms. Maki does not object to the proposal.

Discussion of timing for next meeting

Ms. Maki agrees to an extension of the decision period; she will put that in writing.

Dave Mount: What is the status of the permit while this appeal is going on?

Tim Strom: The Board has options. My general advice is to not enforce the revocation while the appeal is heard. They could theoretically claim damages if the revocation is reversed. This Board can say, until this Board meets again, if Ms Worden wishes to rent the property she may. However the Board can also decide to uphold the revocation.

Dave Mount: if something happens during this interim period that could influence the board? Would it be in play?

Tim Strom: yes it could be.

Dave Mount: I move that the revocation of the Conditional Use Permit for 5249 Greenwood Road for short term rental be held in abeyance until the Board makes a final decision on the pending appeal. Danny Tanner seconded. Motion approved unopposed.

Dave Mount made a motion to recess until January 25, 2011 at 6:30 p.m. at the Town Hall, Wendy Meierhoff seconded. Motion passed unopposed.

Meeting recessed 10:03 p.m.