

Worden BoA
5249 Greenwood Road
February 3, 2011

Present: Danny Tanner, Dave Mount, Stephen Dahl

Also Present: Sue Lawson, Tim Strom, Kim Maki, Jan Green, Don McTavish and Clerk Ann K. Cox

Meeting was reconvened at 6:05 PM

Dave Mount: I think everyone has received a copy of the prepared draft conditions. I did send a copy to Wendy who was unable to make tonight's meeting, Wendy was OK with them as they were (attachment #1). A second document is a memo from the Town's attorney Tim Strom (attachment #2). A third document is a letter from Ms. Maki giving their comments on the conditions. Before we step through the conditions, if there anyone has concerns with the path of added conditions please let me know before we begin. I think I am right in saying that to the extent that we can find conditions that are mutually agreeable to the Worden's and the Town that's a good thing, but this is not a negotiation, it is not a requirement that the Worden's agree. We will go through the conditions and in doing so review what Ms Maki and the Worden's have commented on (attachment #3). But in the end it is the Board's decision with Counsel's advice on what we do.

Licensing:

Dave Mount: The Town has contacted the Department of Health twice, and they believe this facility needs to be licensed. There was a legal opinion that Ms. Maki circulated asserting that licensing was not necessary. I'm not interesting in having the Town arbitrate that issue. The reason the condition is structured this way is because if it only says they need to be licensed, and the Worden's do not believe they need to be licensed, where does that leave us. With this wording, they need to either get the license the Town has been told they need, or settle their disagreement with the Department of Health; the issue is between the Department of Health and the Worden's, not the Town. Ms. Maki asserts what we are trying to do is spark litigation, which is not fair. I am making sure where we don't go is to allow the issue to lie in the weeds. This could be changed to say "requires any licensing required by the state" this does not lead us anywhere else. Ms. Maki I don't know if you have any wording that would be more comfortable that would still resolve the issue and not just let it go underground.

Ms. Maki: I indicated that we left it that the Worden's would comply with any licensing requirements. By requiring the Worden's to send a letter to the Department of Health stating they don't need a license is basically making them thumb their noses at the Health Department and bring on litigation. There are people working on legislation to clarify this issue. By requiring this now you are creating a bunch of work that might not be necessary. By requiring a letter you are basically telling them to stick their necks out before everyone else in the State. We are here because there are alleged occupancy violations and two alleged noise violations; licensing is not before the Board in this appeal. The Worden's will comply with all applicable licensing requirements and that is sufficient.

Dave Mount: I don't see that it is. The Worden's have already imposed their definition of "applicable," and it's not the Department of Health's (definition). You're saying that we should accept the Worden's definition above the Department of Health's – we can't do that.

Ms. Maki: This is a State matter before the Worden's and the Department of Health.

Tim Strom: Ms Maki raised a point in her letter saying that what we have is a violation regarding occupancy and noise so any conditions should have a nexus for occupancy and noise. I think it is an incorrect position. A lot of our decisions have been over occupancy and noise. But when you talk about adding conditions to the CUP, do we have power to impose restrictions beyond occupancy and noise? The answer is yes. We have a reasonable reason to revoke the permit, but we are choosing instead to impose conditions to make this work in this residential neighborhood. It seems to me that the power goes beyond those two issues. I don't find a statute or case that directly says what you can do in this position but as a matter of powers is a little broader than addressing occupancy and noise. We looking for how to make this work in this setting.

Dave Mount: The Worden's already agreed in principal to the licensing principle. I am happy with nerdling the wording, but if we decide to go with your (Maki) wording, we are left choosing between the Worden's opinion and the Department of Health's – the Town has no choice but to go with the Department of Health. I don't want the Town to become complicit in the Worden's decision to not comply with the Department of Health's requirements, which is what happens if we just say, OK, you don't need one.

Tim Strom: Could you say they are required to have licenses and permits required by other departments?

Dave Mount: I'm not sure that will address Ms. Maki's concern. The most difficult problem we have with this CUP is measuring compliance. I chose this approach because it's not up to the Town to determine if they are in compliance, they have to report to the Town that they are in compliance or have opened the dialog. How the Worden's and the Department of Health resolve the issue is not our problem.

Danny Tanner: Is your statement that the Department of Health requires licensing absolutely true?

Dave Mount: It's true that the Department of Health says yes, but Ms. Maki says they are wrong

Danny Tanner: If that's what the Department of Health says, then that's the way it is.

Ms. Maki: laws are subject to interpretation that is why we go to court. There is currently legislation being proposed to clarify the interpretation by the Department of Health.

Danny Tanner: I know Ms. Maki, but as of now, that's the way it is, citizen's have to comply, we can't say, "Well, we're going to change that" – in the meantime, we have to follow them.

Dave Mount: I am happy with Tim's approach, but I don't want the Town chasing around finding out where the current legislation is at. The Town can't be asked to just shut up knowing there is an unlicensed business in the Town.

Sue Lawson: The way it was written, "prior to the rental of the property in any calendar year+ -- the Worden's don't always understand what we mean by calendar year. Please add received by December 31st of that year.

Dave Mount: And if it isn't rented until June?

Sue Lawson: Please put a date, it would be much clearer.

Dave Mount: It seems unnecessary, the issue is they get it (licensing) before it is rented.

Don McTavish: We don't know when they are renting.

Sue Lawson: If it is when they are going to rent it, then it will be subject to interpretation.

Dave Mount: I take your point, I'm not insensitive to your point. Item #2 is of a similar structure Tim suggested we combine the two into one.

Tim Strom: If you are going to say something along the lines of "the owner shall keep in force (reads from text). What we are talking about is licenses by the Department of Health and the Department of Revenue. I am using licenses or other government approvals.

Dave Mount: While Tim is working on wording for this -- does anyone have any problem with the combination?

Kim Maki: Will there be a moratorium on revocation if the Worden's enter into litigation with the Department of Health? I don't think they should lose their CUP here while they are working through those issues.

Dave Mount: That is fine with me, personally. If there is a process going on, that's fine; what I am uncomfortable with is a don't ask don't tell approach.

Insurance:

Dave Mount: I am going to suggest we strike this (insurance) condition.

Tim Strom: (suggested wording) The owners shall obtain any and all applicable licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction, and keep the same in force throughout the duration of this CUP. The Worden's would have to make their decision with the Department of Health, and the Town understands that they do, the that will require a judgment as to whether the condition has been violated. It doesn't matter if the Worden's agree, it says if it is required, you shall have it.

Rental records:

Sue Lawson: Going along with the intent of the Town to have affirmation of compliance instead of policing of compliance. I would suggest the records be provided quarterly or half year rental records.

Dave Mount: Let's go with April 30th November 30th that we have to have (rental records).

Complaint Response:

Dave Mount: There's a lot of words here but this issue is that the person that gets the call and the person that responds might not be the same person. Even if the Worden's are in Litchfield they could receive the call and decide who is going to respond. This is written to accommodate that. If it (local contact) is Mr. Zink then Ms Worden could call Mr. Zink and have him respond.

Ms. Maki: There is a part in the middle that seems that there would have to be a backup contact and more reporting. She (Ms. Worden) is going to be the primary contact by telephone, Someone may be the one that goes to the property if something has to be done. They have no problem giving contact information out in the neighborhood and keeping it up to date. What they had the most problem with is the discussion of revocation at the bottom. It is always mentioned once in the CUP, bringing it up every time is something they bristled at.

Dave Mount: Violation of anything in this permit is grounds for revocation.

Tim Strom: Violating anything in the permit is grounds for revocation, you don't have to say it. Regarding immediate revocation -- revocation is subject to an opportunity to be heard. Immediate revocation really isn't correct.

Dave Mount: I put it there not to bristle the Worden's but to emphasize that they are getting a third chance and we are serious about this -- we don't want to be back here. There is a statement in the conditions already and the legal basis is there for revocation. I can strike the language. The discontinuation clause is here to call the Worden's attention to this. I'm trying to establish clear measures, if these things are not in place then the business isn't operating.

Ms. Maki: Did you intend that the Worden's would redistribute this information at the beginning of every rental year? It doesn't change much.

Dave Mount: It could be read that way, it wasn't my explicit intent.

Sue Lawson: If this requires that the information be provided to homeowners and such does it say which homeowners? (within 500 feet) I think the Town should be reassured that they have done that in one form or another.

Danny Tanner: The only other place I've seen "immediate" in this document is on the renters themselves.

Dave Mount: It is in multiple places.

Sue Lawson: The language “prior to rental of the property” – permits and licenses are usually annual. I make a request to Dave to find a firm date.

Dave Mount: As an example, my boat needs to be licensed but it doesn’t need to be licensed until I use it. I am not out of compliance until I use my boat that is where I was going with the language.

Sue Lawson: As long as there is a date I don’t care what date.

Dave Mount: I will remove the revocation language from the individual conditions and just have one. I’ll strike furthermore. I feel strongly about the discontinuation language. We can take out the sentence about the Zoning Ordinance.

Tim Strom: If you accept the language I am suggesting for #1 and #2 it has been taken care of. My language doesn’t talk about providing, you could add that they have to provide.

Sue Lawson: Could we put 30 days prior to the rental of the property?

Dave Mount: Ms. Maki, the alternate contact, I put that in to give the Worden’s flexibility. If you want to take it out, I will.

Ms. Maki: As long as it is understood that they are the primary people, if you want to keep it in there it is fine.

Dave Mount: If they can’t fulfill the requirements here we must have someone else, it must be clear. I don’t ever want to be back here with people not understanding what all this meant.

Contact Complaint Log:

Steve Dahl: This looks good, do you want to add Sue’s language about when they provide it.

Ms. Maki: At the end of the first sentence -- they don’t want to have to keep a log when it is their guests (rather than renters). Would prefer “when the property is occupied by renters.

Dave Mount: I want to get the Town out of the investigation business. We don’t know if the Worden’s are there, we don’t know if they are renters or friends and so that is why I made that distinction. I recognize the issue with friends staying there.

Ms. Maki: I understand it is difficult, but it is a single family residence at those times.

Dave Mount: I understand your perspective.

Danny Tanner: There is no way the Town could know.

Dave Mount: Something that might help us work better together is if the Town knew when people staying were friends of the Worden’s. I don’t want to create a bunch of paperwork. (concern expressed over “reasonable” complaint). I’m concerned about a situation where complaining becomes a tool for creating noncompliance. The revocation thing can be changed to say owner or representative must respond within an appropriate time frame.

Sue Lawson: Could it be just that “failure to respond to complaints regarding the conditions of the permit” -- a condition of permit not a neighbor issue.

Dave Mount: That would capture the concept. I think that addresses Ms. Maki’s concern.

Onsite contact with renters:

Dave Mount: One of the problems at this property is renters not doing things they don’t have permission to do -- onsite contact will hopefully stop this. We can say “within 24 hours.” I would be comfortable saying they (onsite contacts) have to make a visit, if they aren’t there they may leave a written note.

Ms Maki: I can't say if my clients would like that or not.

Dave Mount: The representative needs to make a personal visit and provide reminders.

Sue Lawson: Please add a date instead of "on request."

Permit requirements reflected in rental contract:

Dave Mount: This was volunteered by the Worden's.

Ms. Maki: The immediate removal was intended to apply to occupancy, not necessarily other conditions.

Overnight occupancy:

Mary Ann Sironen: Is the occupancy limit broad or specific to this permit.

Dave Mount: Specific to this permit, because there are two bedrooms.

Tim Strom: I said the suggested language makes perfect sense. What about the situation at 12 30 in the morning you have 15 people in the house there is a complaint by a neighbor. Jay (current representative) shows up and they say, no they're not going to stay overnight. What about 2:30 in the morning, 3:30 in the morning. Somehow you have to define what an overnight occupancy is. Dave used the quiet hours to bracket that.

Rental frequency:

Dave Mount: When this issue was brought up previously, the Worden's didn't like this definition they want a calendar week. I am frustrated with this -- previously the Planning Commission said it is weekly and asked the Worden's when the week started. At that time, the Worden's refused to define the beginning of the week. So we changed to the wording we have here, and now they don't want this they want a defined week. This is the wording the Worden's agreed to, I would maintain it is a reasonable definition of weekly, it is clear and unambiguous. This is not a new requirement, it is just a restatement of what the requirement is. I will go back and get the exact wording. This issue is not being reopened we are just acknowledging the definition.

Process:

Dave Mount: We have until February 28th according to the current agreement. We already put the revocation in abeyance under the old conditions.

(Discussion of when to finalize the wording and decision)

Dave Mount: we have an agreement in concept, once we decide we have to deliver it in writing.

Tim Strom: there has been discussion about whether we will change this, I would suggest the chair make the necessary changes.

Dave Mount: we are already to be here for a budget meeting on the 17th we wouldn't need an extension. We will meet at 6 p.m. on the 17th, Tim recommends 5:30. Ms. Maki, anything else?

Ms. Maki: I think you have discussed our comments and I don't have anything to add.

Dave Mount made a motion to continue on February 17th at 5:30 p.m. Danny Tanner seconded. Motion passed unopposed.

Attachment #1 – Draft Conditions

Attachment #2 – Attorney Tim Strom’s “Decision on Appeal from Planning Commission Regarding 5249 Greenwood Road (Edward and Shawn Worden).

Attachment #3 – February 3, 2011 document from Andresen & Butterworth P.A. RE: Worden CUP