

Worden's Public Hearing Continuation  
January 25, 2011

Present: Danny Tanner, Dave Mount, Stephen Dahl, Wendy Meierhoff  
Absent: Mary Ann Sironen

Also Present: Bill Mittlefehldt, Attorney Tim Strom, Shawn Worden, Attorney Kim Maki, Don McTavish and Jeff Cook.

Meeting opened at 6:40 PM

This meeting is a continuation of an appeal on the CUP revocation at 5249 Greenwood Road. When we last met there was a motion made to revoke the CUP, that motion was tabled in favor of evaluating additional conditions as an alternative.

Wendy Meierhoff: (see attached document) We did not come up with additional conditions as we had proposed. There are three issues #1. Licensing: It was brought to my attention that they would need licensing and liability insurance. #2 their local contact, we need someone within a short distance to at least have a phone number, in fact all of the neighbors should have the Wordens and their local contact's phone number. and #3 Rental Records (log).

Shawn Worden: The problem is the people, if they violate something in the contract.

Wendy Meierhoff: if there are any more violations within 6 months the CUP should be gone. We cannot do this over and over, if you cannot manage this you need to not have it. I wanted to know from you how you manage this business. How do you see this working? What is the role of your overseer? You must have someone doing operational duties for you? (Shawn Worden indicated herself.)

Shawn Worden: I can change the contract to say to my guests, if you don't follow the rules it is grounds for immediate removal. I can take care of things if I am made aware. My local contact is supposed to be called and then he is to call me. If a neighbor has a complaint I would like to know about it.

Dave Mount: So regardless of how we got to this point, you had requested time to consider proposals, that didn't work out as intended.

Kim Maki: #2(Local Contact) we have spoken about it and it isn't a problem. Shawn has a niece who can act as a backup; she is within the one hour drive. We would like to have Jay Zink continue as the local contact.

Shawn Worden: I (Ms. Worden) would like my cell phone given out as well. The phone numbers can be publicly available.

Kim Maki: #3 (Rental Records) our issue with that, why is that information necessary? We would be giving away information that is confidential. What would the information be used for? We don't have a problem getting that information and keeping it but I guess if there is an instance where you would need it for something I guess we don't have an issue.

Dave Mount: I presume the concern is that the occupancy limits are observed?

Wendy Meierhoff: I was going off other logs where they listed days and times (renters) they were there.

Shawn Worden: In the past I provided dates and numbers but not names.

Dave Mount: The times there have been over occupancy, the presumption was that they would be under the occupancy limit. I'm struggling to see how the log would prevent that

Stephen Dahl: I don't think it is necessary.

Dave Mount: The bigger issue is not having a problem

Danny Tanner: you aren't objecting to # 3 (log) so much but in the past they have had a local contact that isn't effective.

Kim Maki: Ms Worden has contacted some professional contacts, they do nothing more than is already being done. Contracting with a professional contractor won't change or correct any issues.

Shawn Worden: My idea of putting the occupancy limit in the contract came out from the Cascade hand book. The number of stated guests being more, you might be out without a refund.

Jeff Cook: if professional people cannot control it how can nonprofessionals control it? There is no oversight again. If that is the case, where is this happening, and are they having the same problems the same issues elsewhere.

Danny Tanner: She (Ms. Worden) said professionals couldn't do better than she does.

Jeff Cook: If that is the case how many short term rentals failed to keep up the zoning recommendations? I don't know how far you've researched that.

Bill Mittlefehldt: We have 3 years of failure from this experiment. We are here because P&Z pulled the permit. I hope you exert some leadership and deal with the issue; we are on what? hour number 6 of this issue?

Wendy Meierhoff: The only part we had a hard time with is #2 (Local Contact). #1 came in because it was brought up that it might be illegal without a license. A log is just to keep consistent with other CUPs, something to keep track of guests. I guess we need to move forward. I like the Wordens suggestion #1 but not #2, the whole neighbor thing. Right now no one is calling the local contact. I don't want to rely on one source.

Shawn Worden: The problem is I'm not being notified. I'm not made aware of anything until my permit is gone. I am shocked. I need to make the rules a bit harsher. I want to know, if there is a problem I need to have the neighbors call me and I can be on it.

Dave Mount: This gets to the core of the problem. I appreciate the effort to have a backstop to deal with the problems, but the goal is to not have problems. That's what I don't see. Right now there is no oversight. Someone who has a problem with what is going on has to start the process. I don't really want neighbors to be monitoring occupancy. If neighbors aren't a part of the monitoring system, how do we prevent what has happened before? What is the mechanism? That is where I'm stuck. If we go down this route and it is violated again then what?

Wendy Meierhoff: If it is violated again do we have to go through all these hearings again? We do have to set conditions. If this doesn't work this time do we have to go through the hearing process again? (To Tim) Is there a way to avoid the hearing process.

Tim Strom: If the question was directed to me, yes we would have to give them notice.

Shawn Worden: The daughter had a party, the police had to come, the first time they got a warning, the second time they would get a ticket the third time there would be a harsher punishment. I understand that type of punishment.

Bill Mittlefehldt: I am the manager of that property so I hope you pay attention to that.

Kim Maki: I understand you don't want the neighbors to police the property; it is what we are trying to prevent. If you have a neighbor who is sensitive that is what is going to happen. I want a strong suggestion that they contact the local contact so we can address problems; we don't want a year later to hear or receive a lengthy list of the things that have gone wrong. What we are trying to do is minimize the amount of problems their neighbors face because of the rental. On a different note, we disagree there is a requirement that vacation rentals need a license from the Department of Health. (Introduces letter from an attorney expressing an opinion that a license is not needed).. It is not offered out to the public.

Dave Mount: Isn't listing it on VRBO "offering it out to the public"?

Kim Maki: Not exactly, not like a hotel.

Wendy Meierhoff: My understanding that it is on anything longer than a 2 day rental.

Shawn Worden: It is proposed. And I have plenty of insurance.

Wendy Meierhoff: We are trying to stay consistent with everyone else.

Dave Mount: Tim should probably read this not me (the letter). An advocacy group for vacation home rentals says on their website that most vacation rentals would qualify under that statute (in reference to a letter from a law firm regarding the licensing and insurance issue, a copy was not provided to the clerk).

Wendy Meierhoff: This came from the Minnesota Department of health.

Kim Maki: The Health Department might be trying to do that but they don't have the legislative backing yet.

Wendy Meierhoff: It looked as if had passed on the MN State site.

Shawn Worden: It did not pass.

Wendy Meierhoff: if we can verify that.

Dave Mount: My understanding is the definition was put into the statute last year. We can still add the language, we can require they meet state requirements.

Tim Strom: The letter appears to be a letter from an attorney on behalf of a vacation rental association. We can require all required licenses. If it isn't required then we don't need it included.

Bill Mittlefehldt: If the Planning Commission had voted unanimously for revocation, is it appropriate for this Board to be considering conditions?

Tim Strom: The Board has the same powers as Planning and Zoning, they can create new conditions.

Dave Mount: I've spent a great deal of time creating an argument both ways. What is the argument for revoking it, what is the argument for modifying the conditions and letting it stand. We have two undisputed events where the occupancy limit was exceeded. We have testimony from some of violation of the quiet hours but we don't have independent verification of that. There have been violations; the permit does state that failure to comply can be used to revoke the permit. As for alternatives, the owners' state there is no real way to prevent future violations. If we contemplate going to different conditions, if there is no way to prevent future violations so there is no reason to change the conditions. The flip side is, not diminish the fact there have been violations, but the language in the CUP about revocation it is not binding. We are not legally bound to revoke it for any particular violation. So, according to Tim, it is not a valid argument that just because the conditions say that, it does not have to be revoked.

Tim Strom: There is some language in the ordinance that says if there is a violation the permit "shall" be revoked. If there's a violation the permit can be revoked, but a violation does not necessarily lead to revocation to a permit. There is a range of potential actions you can take if there is a violation. You have reasonable discretion as to what a reasonable solution is.

Dave Mount: So, the argument in favor of modification is, that the nature of the violations and the frequency are of a magnitude that does not mean revocation. It means we need to prevent, detect, and correct in the future. It basically comes down to how serious is this? I have to say I have neighbors that aren't rentals that have disturbed my peace. It's the residential nature of the area that we want to protect; residential use alone does not preclude issues. The main difference is when there are permanent neighbors there is a longer term relationship involved and a better chance to work things out.

Danny Tanner: Question is, would that being in the contract, if they violate anything, is the permit revoked? If there was, how effective would that be in stopping the problems?

Dave Mount: People who follow rules would continue to follow the rules. The last people (Ballinger) weren't flaunting the rules, they had people who didn't have a place to stay and needed to stay.

Wendy Meierhoff: If we went and added these 5 conditions to their CUP can we move forward and try to vote on it?

Dave Mount: I am not happy with what we have, it has to do with two things. Help with enforcement and -- I don't want to be back here arguing subjective things. I want to say it is over. What is the threshold. We need stronger protections and we need to know when it has crossed the line.

Wendy Meierhoff: Would help for us to have more enforcement or help for them? How do we facilitate notification? How do we want to make this work?

Stephen Dahl: please remember the motion on the table (page 9 December 8, 2010 "I make a motion to revoke the Worden's Conditional Use permit" the motion was seconded and on page 12 of the same set of minutes the motion was tabled).

Discussion with Bill Mittlefehldt over problems with conditions and resolutions.

Wendy Meierhoff: (in reference to a condition that neighbors are required to notify of problems) I don't like the word required but we have to come up with a policy.

Dave Mount: The word "required" implies there would be retribution for not reporting, is that your (Bill Mittlefehldt's) concern?

(Discussion of the need for notification)

Kim Maki: The Wordens would be made aware so they wouldn't be ambushed at the next Planning and Zoning meeting.

Dave Mount: it doesn't matter if it is reported, it still happened.

Kim Maki: If we are talking about occupancy, if there are 7 or 8 people sitting around the fire, the people who are staying can have people sitting around the fire just not stay overnight.

Dave Mount: It shouldn't be incumbent on the neighbor to count people before they go to bed. If they called the next morning it still wouldn't undo it. I'm all for having the mechanism (for reporting), but I'm still stuck on two things, prevention and defining what is an acceptable violation rate.

Danny Tanner: With regard to prevention, I cannot imagine any way to prevent violations completely. How can you insure no violations even if you had an overseer close by?

Stephen Dahl: you can't prevent everything but if the mechanism is there we can minimize the amount of problem for the neighbors.

Jeff Cook: what authority does that person have to get people off (the property) legally?

Stephen Dahl: that is what needs to be in this contract, the local contact would have the authority to remove the problem.

Shawn Worden: I would like to be involved in the solution but it would be my contact's responsibility to call me.

Bill Mittlefehldt: Does Mr. Zink know the 11 conditions? Is he paid?

Dave Mount: We do not have the ability to insist that Mr. Zink be compensated. We can set the requirements for the local contact. You are reaching logical conclusions on how someone might deal with the conditions, but

we are not in the position to tell them to pay someone. (To Tim) We can impose requirements that logically relate to achieving the goals of the Ordinance, correct?

Tim Strom: If there is a check in time and the guests actually meet with the local contact person who walks them through the rules -- I don't know if the contact person comes over the next day and asks if there are any issues or not. I think you are correct, we cannot tell the Wordens to pay the local contact but we can tell them they need to have the local contact do xyz.

Dave Mount: The purpose of putting the conditions is to make sure the renters understand the rules, it seems to me that having to local contact tell them that makes sense.

Shawn Worden: that would be really hard to do and I don't think it would help.

Wendy Meierhoff: Sometime during the check in Mr. Zink should introduce himself as the local contact and let them know if there is a problem he is just down the street.

Dave Mount: Having someone stare a renter in the face and tell them the rules is a significant addition.

Wendy Meierhoff: It also brings a level of respect to the renters; it lets them know this is a residential neighborhood. It gives them a sense of how the property is rented. If I have issues, I have someone to ask how to resolve a problem. You take a bit more respect that it is someone's place.

Danny Tanner: Would it be hard for Mr. Zink to remind them of the conditions? It would remind them (renters) that these things are important and have consequences.

Shawn Worden: It is a little weird to me to have Mr. Zink stop by out of the blue.

Dave Mount: I've never rented a place without having a local contact talk to me.

Wendy Meierhoff: When I've rented the local contact has handed me the hand book and done a welcome and these are the rules. It doesn't have to be intrusive.

Shawn Worden: I've rented several times and I've never had this happen.

Dave Mount: What about the number of cars? I bring it up because it is an indirect correlate of the number of people who stay. I'm looking for a way to indicate large numbers of occupants without opening the door and counting.

Jeff Cook: I would think it would be similar to what (the City of) Duluth does, there would need to have parking spots.

Dave Mount: You could probably park 20 cars on the (Worden's) driveway. Three (cars) comes to mind. I don't like it because it is an indirect thing, but I am looking for a way of indicating occupancy.

Danny Tanner: you could also have each person drive their own car.

Shawn Worden: I turn down rentals for 6 separate adults, I generally rent to families. There is only one bathroom.

Wendy Meierhoff: Do you ever see more than 3 couples that would have more than three cars?

Dave Mount: Tim, is this car thing going too far afield?

Tim Strom: There is a nexus there but I don't think the nexus is terrible strong.

Wendy Meierhoff: Towards the enforcement part -- you said you had two parts.

Dave Mount: What is a revocable level of violations -- so we aren't here trying to split hairs whether or not there was or not. Two parties with a lot of people and a dozen or so noise violations in a couple of years is something I experience at my house. The possibility is if there had been a greater number of notifications to

the owners they might have taken care of the problem. With the owners on notice of the Towns concern with the items added, if there is noise after 10 PM, how many times does that happen before we are back here again? The Planning Commission is supposed to do annual reviews of the permit and look at the record, what would they see that would cause them to decide the line has been crossed and we revoke? We will be right back here again.

Stephen Dahl: Let's go this way – If the local contact was made aware of an occupancy exceeding and nothing happened, then that would be a definite revocation. If we are going to go this way we will have to have strict parameters because we don't want to be back here again.

Tim Strom: You certainly can try and talk about or discuss if x happens it is revoked. I suggest to you it will be extremely difficult. How do you take the thought and turn it into written word on a page. It would be great but judgement will be required. For the local contact: What is the local contact to do? We can spell it out but if the local contact doesn't do these things what do we do? We will have to consider the circumstances.

Wendy Meierhoff: I think Shawn can be the primary and she can call Mr. Zink, she is the contact. If we can't get a hold of her we then can get in touch with Mr. Zink, Mr. Zink can be her eyes. She can be the local contact as per a problem, let us give her the opportunity. I would want to be addressed first, anyone would.

Tim Strom: the question had been brought up, is it a violation or isn't it a violation? The question is what is the response to the violation. The response to the circumstances surrounding the violation is what needs to be dealt with, what is fair?

Bill Mittlefehldt: it is the second time it (the CUP) has been pulled, so we are adding a condition and hoping for better results?

Dave Mount: (suggests condition language) If they receive a complaint they have to keep a record of what the complaint was and what they did to address the problem. These are in addition to not instead of. It needs to be merged with #2 (Wendy's). I guess there is more work that needs to be done. In the term of process, if the Board thinks this would be a workable process, I'm willing to work on it.

Stephen Dahl: I should withdraw my tabled motion if we're going this way.

Danny Tanner: I think there will always be issues here, in the terms of the property and the adjoining neighbors. It isn't going to go away.

Dave Mount: I understand. This action doesn't mean that the violations didn't exist. It isn't a clean slate.

Wendy Meierhoff: Can we at least outline the process you (Dave) would do the technical writing of this? I am not going to be here for the next meeting so I guess I would like to know where we are going with this.

Dave Mount: Tim procedurally, is there a way Wendy could have input on this without being there? I can work with Wendy on this? Wendy wouldn't have a vote.

Tim Strom: Dave could (meet with you and) come back and say this is what Wendy and I came up with. But there will probably be a bit of give and take at the next meeting, would you approve or wouldn't you approve – how would we know?

Dave Mount: Wendy could provide her opinion on a written statement to be read.

Stephen Dahl made a motion to withdraw his motion from the December 8, 2010 meeting. Dave Mount agreed with the withdrawal of the motion.

Tim Strom: Point of order, between the December 8<sup>th</sup> meeting and this meeting, we received a letter from Ms Maki, extending the deadline to February 28<sup>th</sup> — that should be in the record. We need to get this done by February 28<sup>th</sup>.

Shawn Worden: If you want to wait until Wendy is back I don't have rentals all winter.

Dave Mount: Mary Ann will likely recuse herself because she hasn't been part of it, although she is entitled to vote. I am trying to get things done during regular Board meetings.

Wendy Meierhoff: Since we have the 5 provisions let's try to get it going.

Stephen Dahl: We can still post a special meeting if we have to.

Wendy Meierhoff: Dave and I can get this done.

Danny Tanner: February 3<sup>rd</sup> is next week.

Stephen Dahl: Do we need to state formally what our decision is?

Tim Strom: Where I see you folks leaning is: there have been violations, we could pull the permit, we could do nothing but what we have decided is to write up new conditions.

(Discussion about drafting new language; although the intent is to write up the concepts discussed tonight, there is no guarantee nothing new will be proposed).

Dave and Wendy will create new conditions and forward them to the supervisors, Tim and Ms. Maki.

Tim Strom: Even if Mr. Mittlefehldt and Mr. Cook have left, we should give them a copy, it is the polite thing to do.

Shawn Worden: I want to thank you for at least having a chance to deal with this. I will definitely be more strict on how I handle phone conversations. I hate working with Planning and Zoning I feel blind-sided.

Dave Mount: This process has taken a great deal of time. I hope you appreciate that we are working on finding the best path forward.

Dave Mount made a motion to continue this meeting to 6:00, February 3<sup>rd</sup>, 2011 at the Duluth Town Hall, Wendy Meierhoff seconded. Motion passed.

Attachment:

There are 3 additional requests of the town.

1. Prior to rental of the property in any calendar year, the owner of the short-term rental unit is required to provide a copy of a current MN Department of Health license for commercial lodging and proof of liability insurance.

<http://industry.exploreminnesota.com/side1/vacationhome/Landowners>

2. Owners of the short-term rental unit must provide a local contact to oversee the property that is able to respond to problems at any time and is located within one hour drive of the rental property. . The Planning Director, renters, and adjoining property owners must be provided with telephone numbers at which the property overseer can be contacted at any time. Alternate contacts must be provided whenever the primary overseer is unavailable.

3. A log will be kept; the name, address, phone number and vehicle license number of all guests using the property. A copy of the log shall be provided to Planning Director upon request.

The Wordens have suggested the following provisions:

- (1) A paragraph in their contract/confirmation letter that violation of any of the conditions are grounds for immediate removal from the property;  
and
- (2) A complaint procedure set forth in the CUP whereby neighbors are required to contact the local contact to lodge a complaint regarding condition violations. When the local contact receives a complaint, it will be the duty of the local contact to rectify the violation in a timely manner.