

Ordinance Public Hearing
June 3, 2009

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

Also Present: John Bowen, Planning Director Sue Lawson, Planning Member Barb Crow,
Janet McTavish, Bill Mittlfehldt, Clerk Ann Cox, Planning member Janet Green

Meeting was called to order at 7:04 p.m.

As this is a small group, everyone will be able to speak as they wish.

On the Board of Appeal (BoA).

Janet McTavish: I am concerned about the Board of Appeal (BoA). I am not sure the BoA was a well written portion of the ordinance in the first place. We are giving a lot of power to three people only one of which is elected and thereby bound by elections. It would be easy for special interest groups to get two of the three members to overturn everything in our ordinance. We need to have the BoA make recommendations to the board which is elected. As a resident if I found people taking advantage of the situation I have no recourse with the exception of the one elected person. With the BoA there is one person from the planning commission and one person from the community, we could be in trouble if they threw out the rules. We have had problems in the past with people who wish to throw out the Planning Commission.

Dave Mount: we have a letter from Don McTavish (read in its entirety by Clerk Ann K. Cox)

John Bowen: I don't believe it should be changed that the Planning Director works through the Planning Commission. There should be no fee to a Planning Directors decision to the Planning Commission. The statute says what the BoA authority is; they can make changes to what the Planning Commission has done.

Tim Strom: A Towns power comes from Chapter 462 which says that a Town Board may provide various things for its BoA. A Town Board may provide that the Board itself serves, or the Planning Commission, or a committee to serve as a BoA, the committee to be made up of; one Town Board member, one Planning Commission member and one Citizen of the Town. The BoA has basically these powers, it shall hear and decide appeals where it is alleged there appears to be an error. The BoA might hear requests for variances; there is a section of the statutes where the Town Board can designate the Planning Commission to decide these matters which is what our Town Board has done.

Jan McTavish: my preference is to have the Town Board to act as the BoA, if you are doing the wrong thing I can at least vote you out.

Dave Mount: Our current says; Planning Director decisions are appealed to the Planning Commission, then to the BoA then to court. Some decisions by the Planning Director could be held to the 60 day rule (we were trying to streamline this process to hold the 60 day clock). What was said in the ordinance was very confusing; it didn't say anything of the appeal of a Planning Commission decision. I would like to say personally there might be some wisdom in having the Town Board serves as the BoA, if the next step is court.

Janet McTavish: It takes out one step most decisions are going to be made from the Planning Commission.

Jan Green: There is another argument, there is more than one Town Board person who becomes familiar with the Planning decisions, there are only 3 members needed for the BoA which means you can recycle decisions.

Wendy Meierhoff: all the appeals have been coming from the Planning Commission, only one from the Planning Director. Are we only listening to appeals from the Planning Director or all?

Sue Lawson: The Town Board is my boss; I work for the Town Board not the Planning Commission.

Janet Green: Having heard the arguments, the BoA should not be a separate body; they should be part of the Town Board

Wendy Meierhoff: then we need to have one process.

Janet Green: The Director is close to the Planning Commission, it is hard to split.

Dave Mount: if the Town Board was hearing a decision by the Planning Director, the Town Board could then get the commission to provide information.

Tim Strom: Variances can go to the BoA; you can designate the Planning Commission as the BoA appeal to the Town Board. The ordinance discusses variances being decided by the BoA not the Planning Commission. There are three functions of the Planning Commission. 1 Comp plan; adopt and enact. 2 The Planning Commission is there to deal with the zoning ordinance. 3 Town Board may designate PUD's and CUP's to the Planning Commission. The BoA can also hear administrative appeals and variances; the Town Board can also designate the Planning Commission to hear these items as well.

Jan Green: What we do now is, the appeals of the variances go to the BoA. The trickiest part is deciding hardship.

Jan McTavish: Couldn't the Town Board be designated as the final BoA for questions the Planning Commission comes up with? The Town Board is responsible for what the Planning Commission does, if you want to appeal, it comes right back to the Town Board.

Tim Strom: Also provide all BoA are advisory to the Town Board.

Jan Green: That is a step for making decisions accountable. Tim, can we set it up the way we have it now with the Planning Commission doing variances and CUP's, then send it to the BoA for appeal, then have Town Board review?

Dave Mount: If I understand correctly, relative to the statute, we could name the (Planning) Commission the BoA, then the BoA would be the primary decider of CUP's and variances so the BoA is no longer an appeal function, the Town Board would then be the appeal function.

Tim Strom: This is one way to structure, the Planning Commission would be there for the Comp. Plan, the Zoning Ordinance, they will make decisions about CUP's, PUD's and then be the BoA for administrative and variances. If there is an appeal it is taken to the Town Board who then sits as the BoA.

Dave Mount: That addresses who makes the final appeal for the town but it doesn't get us away from the three step process. If Sue makes a decision, an appeal of Sue's decision goes to the Planning Commission; an appeal of the Commission goes then to the Town Board.

Dave Mount: She could refuse a land use permit.

Tim Strom: Once I hand her a piece of paper the 60 day rule begins.

Jan Green: All Sue has to do is look at the paper and say this is incomplete, I do not accept your money. You simply do not stamp the application as approved and do not take the money.

Tim Strom: If that application is incomplete Sue has 15 business days to return the application and explain why the application is being returned and how to complete the application. The 60 day rule is then suspended and will only begin again when the application is returned.

Mary Ann Sironen: These are critical issues, they can create a great deal of dissatisfaction from our customers, and it makes sense to have the Town Board act as the BoA.

Dave Mount: The BoA will be the Commission, to then appeal it would go to the Board.

Janet McTavish: You are the Board of Appeals as opposed to the Board of Adjustment?

Stephen Dahl: Do you have to go back into the Board elsewhere?

Tim Strom: In the statute it is the Board of Adjustment and Appeals.

- Board of Adjustment
 - Administrative appeals
 - Variances
- Planning Commission
 - Comprehensive Plan
 - Zoning Ordinance
 - CUP's and PUD's.
 - The decision of the Planning Commission is advisory except where the ordinance provides differently.
- Town board
 - Will be the BoA
 - Can also say the Planning Commission is the BoA

Dave Mount: Assign all the BoA's to the Planning Commission. The Town Board hears appeals from the BoA or Planning Commission.

Mary Ann Sironen: if we assign at the program of work?

Dave Mount: No I envision using the entire Town Board.

Wendy Meierhoff: I would rather just say get a quorum there in case the whole Board cannot make it.

Mary Ann Sironen: That means the whole Town Board has to be very familiar with the zoning ordinance.

Dave Mount: We always bring in the Town Attorney. One person who is up on the zoning ordinance is the Planning representative from the Town Board. If the Town Board is acting as the BoA, the Town Attorney phrases or lays it out before the Board

Mary Ann Sironen: We do get complete reports.

Sue Lawson: On the other side the Town Board, being the decision maker, will now have to put yourself in the line of having to know your ordinance.

Sue Lawson: The ramification is that you are now thrown into the mix of land use decisions.

Mary Ann Sironen: When you think of the ramifications of the decisions I believe it belongs with the Town Board.

Jan Green: I think it definitely needs to go to the Town Board.

Tim Strom: Speaking as a resident, whether you want to sit and have it go to the Town Board or not, it is reasonable to go either way. Lakewood went to this system for precisely the reason we are discussing. If this is a matter which will end up in district court, we want to be the people who make the decision. 1. The Town Board already has enough on their plate; these are going to take time. 2. There is a real

difference when a lawsuit has been started. There is a real difference when you think there is an element of pride in your decision even if the decision is wrong.

Dave Mount: The Lakewood process, we are the parallel? The Planning Commission is only advisory? We are talking about when the decision is made we are the last decision before court?

Sue Lawson: To consider we are going to go with the Town Board as the final appeal, you need to really look at the cost of the appeal process. The appeal process gets watered down.

Jan Green: If the Planning Commission has to say why they made the decision that creates a coherent decision the Town Board can follow. It is the findings that are the key, it is the findings the court will look at, and it is what you put down on paper. The Planning Commission should make the decision, if the applicant doesn't like it then it will go to the Town Board for a fresh look at the issue.

Janet McTavish: I would be more intimidated having to go before the Town Board. I think as extra work goes the Town Board needs to then give yourselves a raise.

Wendy Meierhoff: Those coming in will have to have the correct information.

John Bowen: It has only been in the past year where most of the appeals have been. I agree 100% with the Town Board becoming the Appeal Board.

Tim Strom: I would raise a procedural question: if at the public hearing we hear the Planning Commission recommendation. Can we as a Town Board make changes that are not recommended by the Planning Commission? An amendment to the zoning ordinance may have to be brought forth.

Dave Mount: We are proposing a significant change to the BoA. Is this basically a new proposal?

Sue Lawson: Do we have to have another public hearing?

Tim Strom: You will have to have another public hearing. You are within your rights to end broadly, but you are also within your rights by saying this should go back to the Planning Commission for more recommendations.

Dave Mount: We asked the Planning Commission to look at short term rentals.

Sue Lawson: We looked at the entire document.

Tim Strom: An amendment not initiated by the Planning agency shall be referred to the Planning agency

Dave Mount: We are not making a decision this evening.

On Removal for Cause.

Janet Green: Article 13 Planning Commission remove for cause page 104. There aren't any outs. If you have a very valuable Planning Commission member who gets sick there is no out. You need to remove the word "shall" change it to "may".

Dave Mount: Something which would allow the Town Board to review.

Mary Ann Sironen: It is good to have this in, to allow the Commission to understand what is expected of them.

Tim Strom: You want to stay away from discriminatory.

Wendy Meierhoff: Make it simple, change the wording to "may".

On Short Term Rental.

John Bowen: I think we should take all working rentals and go back to the 2005 wording. There has been only one problem. The short term rental on Greenwood Road was spoken against at a public hearing while the short term rental up the shore, not one person spoke against that rental. It spoke to "not in my back yard".

Wendy Meierhoff: You are advocating we do not monitor any rentals?

John Bowen: You are done; we do not have the resources to regulate them.

John Bowen: The CUP, I am not a fan of the community participation portion, it is a positive but you are working too hard to make it work.

Dave Mount: discussion?

Wendy Meierhoff: Do we have long term and short term rentals? You are adding long term.

Dave Mount: We got into a rental thing where we have a use that was not addressed. We were trying to get away from short term rental. It was added not so much to create anything as to simply put it into words. This category of rental doesn't impinge on that.

Wendy Meierhoff: We are hearing long term rentals? No?

Dave Mount: There are no permits. If it is long term it is allowed, if it is short term it is not allowed. I am sympathetic to the work this adds to the Town. There are conditions that could arise that I as a citizen could find troubling. If we were to follow John's wishes, the effect of not mentioning it is to allow short term rental, we never had a problem before.

Sue Lawson: This is your "don't ask don't tell policy"?

Dave Mount: I would advocate by putting the definitions in if that is what we are doing. I am not comfortable with don't say anything approach. Whatever we do we should say what we are doing. Write down in clear language whatever it is we are allowing or disallowing.

Sue Lawson: Even if this changes they will still exist.

Tim Strom: If we repeal short term rental, I would caution it might be better to say you are repealing those, except those who have been permitted by the Town. They have a strong argument of you can't take this away from me simply by changing the ordinance. I am not sure precisely how you word it but you want to be very careful how it is worded. Repeal except for those which are lawful and existing.

Stephen Dahl: The argument is; is short term rental is allowed under CUP's only?

Dave Mount: What problems did it cause, we spent money on process. It involved other types of nuisance calls. They don't have anything to do with our appeal process, none that fall under the Land Use anyway.

- One argument, a non-compliance with conditions that were applied.
- One claiming it was a preexisting use.
- One not a legit appeal, the Town was courteous in hearing items far beyond the appeal time.

Sue Lawson: Why are we looking at it now? In what they are talking about, what short term rentals do to the neighborhood regardless of how many conditions you put on, it doesn't fit in the neighborhood.

Dave Mount: Look at what a mess Duluth is in, arguably it is because they didn't pay attention. It is an attempt to respond to more than an isolated issue in Duluth.

Sue Lawson: We have people who do long term rental, we have home stays allowed. The Township is not in the business to give people the maximum return on their property. I am not talking about the Wordens.

John Bowen: I am talking about how only one family had problems with that property, the neighbor right across the road and the neighbor on the other side of the property didn't have problems.

Dave Mount: I have to say, through this I am sensitive to doing something about this, and landowners would be left with little recourse if we do nothing. If we say it is allowed or not say anything about it at all, the owners would have little recourse. We need to do something about the issue. I think it could be done in a way that doesn't bother anyone. When does it create problems and when does it not create problems. The difference between the two short term rentals, the others further up the shore actually did what they were supposed to do with the neighborhood.

John Bowen: Still the shore is the shore. It has been rental property all the way up the shore for years and years. My house that I live in was two cabins, all the way up Ryan Road there were cabins which were rented out. It is a vacation tourist area. There is a whole difference between the shore and the back end of the Township.

Sue Lawson: I think rentals have changes; I think things will change over time.

John Bowen: So there are less rentals, will there be less problems?

Dave Mount: Someone buys a property there; I want to live in a residential area. Areas can change over time.

Mary Ann Sironen: Character is hard to defend. What I am having problems with is behavior issues, the law enforcement issues.

Sue Lawson: How are we going to prove that?

Mary Ann Sironen: We don't have a curfew

Wendy Meierhoff: One way or the other, we have to change something. Either come up with long term or spell out, we do not have time to police this. I feel we have to be careful.

Dave Mount: I have to point out the speed limit, 99% of the people who speed do not get caught, but speed limits are not the problem it gives rules to deal with issues as they arise. There are going to be problems with people no matter what the issue is.

John Bowen: You are going to deny 99% of the people the right to rent out their property for the 1% of the people who are causing the problem. You are restricting the use for what I can use my property for.

Sue Lawson: On the other side of this, the Police commented on what it does to their property. Short term rentals are a great place to do drugs. You are making it so you don't know your neighbor.

John Bowen: How come it only became a problem in 2006?

Sue Lawson: It only became a problem because don't ask don't tell quit working.

Wendy Meierhoff: I feel as if we are putting restraints on, I understand what you mean about the community but we are putting restrictions on people's homes.

John Bowen: The character of the area is changing again. I cannot see the old area changing into this huge rental area.

Dave Mount: I think we need to have more input from people who live in the area.

Sue Lawson: We already have them it is called conditional use hearings.

Dave Mount: We will at least have a mechanism to both allow it where it isn't a problem and perhaps head it off where it might be a problem. We can decide whether or not to permit them. So far we have made three decisions, one no longer exists.

Sue Lawson: It all has to do with the property owner.

Dave Mount: We will have failures of the system but that doesn't mean the successes should be thrown away.

Tim Strom: interesting discussion. If you continue to have short term rentals you will have to look at each. It is going to be difficult now for someone to claim "I am grandfathered in".

On Housekeeping.

Tim Strom: Conditional uses on page 75; taking about community participation report completing the CUP application. Maybe it would be more useful to call it the pre application form, the 60 day rule is triggered by the application. Change to "A pre application form is not complete until a community participation report has been completed". I would recommend when the pre application form comes into the office the Planning Director send a letter stating the application is not complete until the community participation report is done.

Tim Strom: Page 103, Ex-officio members: suggestion to remove "or their representatives".

Dave Mount: Page 89, Section 3, Letter B, number 2. "Other appeals shall be submitted to the Planning Commission" should be struck and added to the appeal section. This concept may still be relevant but no longer in this section.

Dave Mount made a motion to close the hearing, Stephen Dahl seconded. Motion to close the Public Hearing passed at 8:45 p.m.