CITY OF BAYPORT
SPECIAL CITY COUNCIL MEETING
Council Chambers, 294 North 3rd Street
May 19, 2008
(Immediately following the Planning Commission meeting – not before 7:00 p.m.)

CALL TO ORDER

ROLL CALL (Mayor Nowaczek and City Council members Carlson, Johnson, Kraftson, Ridgway)

NEW BUSINESS

1. Consider a request for a conditional use permit to operate a restaurant at the existing building located at 101 5th Avenue South, adjacent to the Bayport Marina

UNFINISHED BUSINESS

1. Consider approval of liquor licenses for the establishment "Refuge on the River" located at 101 5th Avenue South

OTHER BUSINESS

ADJOURN

CITY OF BAYPORT
294 NORTH THIRD STREET
BAYPORT, MINNESOTA 55003
PHONE 651-275-4404 FAX 651-275-4411

Date: April 30, 2008

To: Mayor and City Council

From: Mike McGuire, City Administrator
Sara Taylor, Assistant Administrator

Subject: Consider a request for reinstatement of a conditional use permit to operate a restaurant at the existing building located at 101 5th Avenue South

BACKGROUND

At the May 19, 2008 meeting, the Planning Commission will hold a public hearing to consider reinstatement of this conditional use permit (CUP). Since the City Council will be in attendance at the Planning Commission meeting, and the City Council will be discussing the application immediately following the Planning Commission, staff did not prepare a separate report for the City Council However, all items that were distributed to the Planning Commission are attached, along with a draft resolution, for consideration. Depending upon the Planning Commission's recommendations, the resolution may require revisions, which can be accomplished at the meeting.

RECOMMENDATION

Based on the outcome of the comments at the public hearing and actions of the Planning Commission, staff recommends the City Council consider a resolution to either approve or deny the reinstatement of the CUP to operate a restaurant at 101 5th Avenue South.

M E M O R A N D U M

DATE: May 9, 2008

TO: Planning Commission (May 19th meeting)
Mike McGuire, City Administrator

FROM: Sara Taylor, Assistant City Administrator/Planner

SUBJECT: **Public hearing to consider a request for reinstatement of a conditional use permit to operate a restaurant at the existing building located at 101 5th Avenue South**

A. BACKGROUND

The property is located at 101 5th Avenue South and is legally described as Lot 2, Block 2, Bayport Marina. According to city records, the existing building is approximately 4,240 square feet, which includes dining areas and a kitchen. The facility also includes and outdoor patio and deck area. The subject property is surrounded by a residential condominium development and the Bayport Marina, and is zoned Residential – Planned Unit Development (R-PUD).

The applicant and lessee Mike Scanlon, in conjunction with the property owner Kathleen MacDonald of Group 41, have submitted this application to request reinstatement of the conditional use permit (CUP) to operate a restaurant at the subject property. The restaurant building was originally approved and constructed in the early 1980's as part of a PUD that included the Bayport Marina and the Waterford on the St Croix Condominium Association. However, because the underlying zoning of the development was residential, the restaurant and the marina were still required to obtain a CUP from the city that stipulated specific conditions under which these uses would be allowed within the development.

The restaurant operated as Clyde's until it was sold to a new property owner in January of 2007. Since this time, the restaurant use has been discontinued and the building has remained vacant. The property owner stated that when they purchased the property, they were unaware that the restaurant was only permitted by a CUP, and not permitted by right. They were also unaware that section 505 of city code states that if a building becomes abandoned or is not utilized under the conditions of the CUP for more than 120 days, the permit expires.

Recently, the property owner leased the building to the applicant to be operated as a restaurant entitled "Refuge on the River". As part of the investigation and review process for this restaurant, it was determined that the CUP had expired, and in order for the building to be used as a restaurant, a CUP would have to be reinstated.

Notice of the Planning Commission's public hearing was mailed to all property owners within 350' of the subject property and published in the Stillwater Gazette on May 6, 2008.

The following informational items are attached:

- narrative by the property owner
- photos of the existing building and property conditions
- site plan of property
- correction orders issued by the city and Washington County Health and Environment
- comments from Waterford on the St Croix Condominium Association
- comments from the Bayport Marina Association, Inc.

B. *STAFF COMMENTS*

1. Conditional Use Permit.

The purpose of a CUP is to regulate uses that are not permitted by right in a zoning district. As part of the application process for a CUP, the property should be reviewed for compliance with the performance standards set forth by city code, impacts and overall compatibility with the surrounding neighborhood, and whether the proposed use would be beneficial to the community. If the use is determined to be compatible with city code and not have a negative impact on the neighborhood, a request for the CUP should be considered

The existing building on the property was designed and built for a restaurant use, as part of a planned development, to compliment the owners and visitors of the marina, as well as the adjacent residential neighborhood. Because the proposed restaurant use is consistent with how the property was intended to be used and has been used for the past several years, staff feels that the request to reinstate the CUP is reasonable. The applicant intends to operate a fine dining restaurant, similar to the restaurant that previously existed in this location, with on-sale and off-sale liquor, limited hours of operation, and a majority of the business being conducted during the summer season.

It should be noted that if the previous restaurant use would not have ceased for more than 120 days, the applicant would not have had to go through this reinstatement process and could have operated under the previous CUP, as the CUP is issued to the property, not the individual entity operating the restaurant. The conditions of the previous CUP specified a seating capacity of 183 and required the lighting on the main sign to be extinguished by 1:45 a.m. (45 minutes after the facility was required to be closed) No other specific conditions were listed in the previous CUP related to the restaurant use, however, staff recommends that performance standards be established to delineate how the property may be used, and to allow the lessee and/or property owner to operate a successful restaurant, while respecting the adjacent property owners. The following is a summary of the applicant's proposed performance standards, followed by staff's comments and recommendations:

Seating capacity

Requested:	Capacity of 180, with expected seating of 150.
Recommended:	Capacity of 180, or as determined by the Metropolitan Council for sewer availability, but no more than 183 as originally approved. The capacity shall be inclusive of both indoor and outdoor seating

Exterior storage

Requested:	None specified.
Recommended	No exterior storage shall be allowed, with the exception of a dumpster for collection of waste and refrigeration units, which already exist within an enclosure at the rear of the building

Hours of operation

Requested:	11:00 a.m. – 11:00 p.m., 7 days a week
Recommended	11:00 a.m. – 11:00 p.m., 7 days a week. The previous restaurant was approved to be open until 1:00 a.m.

Signage

Requested	None specified
Recommended	Existing signage was approved under the original PUD, which is located on property owned by the

Bayport Marina, and shall be allowed to remain. Both entities shall work together to modify and/or add signage, subject to review and approval by the city. Lighting on all signage shall be extinguished by 11:45 p.m., 45 minutes after the facility is required to be closed.

Sale of liquor

Requested: On-sale liquor, off-sale liquor, and Sunday on-sale liquor.
Recommended: On-sale liquor, off-sale liquor, and Sunday on-sale liquor, as these were the licenses issued to the previous restaurant.

Noise and Lighting

Requested: None specified.
Recommended: The restaurant and all accessory uses associated with the restaurant, including special events, festivals, live entertainment, etc. shall comply with the noise requirements set forth by city code. Exterior lighting for the restaurant shall comply with the requirements set forth by city code and be extinguished no later than one hour after the restaurant is closed.

Parking

Requested: 87 spaces for vehicles and 8 spaces for boats.
Recommended: 87 spaces for vehicles and 8 spaces for boats.

City records indicate that the restaurant has 29 exclusive parking spaces for vehicles, and 58 additional spaces that are shared with the Bayport Marina, as originally approved under the PUD and private cross easements agreements. The restaurant also has 8 non-exclusive parking spaces for boats under the private cross easement agreement with the Bayport Marina, as well as non-exclusive access to a boat tie up area at the Bayport Marina. Based on the square footage of the building, city code requires approximately 75 parking stalls, which will be met by the applicant's request. However, additional proof of parking may be required, depending upon volume of patrons, and the use of the additional seating area on the outdoor patio.

2. Site Plan Review.

As part of the application process for the CUP and liquor licenses, a health, safety, and welfare inspection of the premises was performed by city staff and Washington County (see attached letters). In addition, all Service Availability Charges (SAC) fees must be paid to the Metropolitan Council, as well as all City of Bayport fees associated with the SAC fees and connection fees (based off of the SAC units), a grease interceptor/trap must be installed, to eliminate heavy grease from entering the city's sewer utility system, and a lock box must be installed, to allow the fire department access, in case of an emergency, and the exterior storage of materials in the dumpster enclosure area must be removed. Prior to reinstatement of the CUP and/or issuance of any liquor licenses, all correction orders issued as a result of the inspections must be resolved, to ensure the premise is fit for occupancy and service. An update on the progress of these orders will be given at the Planning Commission meeting.

C. SUGGESTED FINDINGS OF FACT AND CONDITIONS OF APPROVAL

1. Conditional use permit.

To approve: Because the existing building was developed as a restaurant, and previous use of the building as a restaurant did not have a negative impact on the neighborhood, issuance of the requested conditional use permit would be justified, subject to the following conditions:

- Performance standards, including but not limited to, seating capacity, exterior storage, hours of operation, signage, sale of liquor, noise, lighting, and parking shall be established by the city and are required to be observed at all times, in order to operate a restaurant use under the CUP

- All correction orders issued as a result of the health, safety, and welfare inspection of the premises must be resolved and inspected prior to issuance of the CUP.

- In the event that the property is sold to a new property owner, it is the responsibility of the seller to inform the buyer that the property is only able to operate as a restaurant under the conditions of the CUP, and that the use is not permitted by right.

- The lessee and/or property owner will be expected to address any complaints or violations of city code or the CUP upon written notice from the city The city shall also have the ability to revoke the CUP with 120 days written notice to the property owner, if the use as a restaurant is determined to have a negative impact on the surrounding uses and neighborhood.

- The CUP will be reviewed on an annual basis, or as often as deemed necessary, to ensure compliance with the conditions of the CUP.

2. Site Plan Review.

To approve: The building was designed for restaurant use, and therefore, the layout and facilities will accommodate the proposed use, subject to completion of all correction orders referenced in section B-2 and included in the attached letters.

D. RECOMMENDATION

Staff recommends approval of Application 2008-01 requesting a CUP to utilize the existing building on the property located at 101 5th Avenue South as a restaurant, which is located in a residential planned unit development. Suggested findings of fact and conditions of approval are as stated in section "C" of the staff report.

The Planning Commission is asked to make a recommendation on the request for City Council consideration. The City Council will consider the request at a special meeting following the Planning Commission on May 19, 2008.

Refuge on the River
(formerly known as Clydes)

Summary: The mission statement of the Refuge is to provide "A safe, unique, high value dining experience". ~~Attached is a menu from my previous restaurant.~~ While this gives an overview of what I serve it also demonstrates the importance I place on my mission statement as it is placed in a premium position front cover. This statement provides the guidelines for any action I take and the way I run my business.

Each facet of the statement is phrased as a question that must be answered in the positive from each of our five key constituents. In order of importance they are: the customers, the community, the employees, the business and the vendors. As safety is first on my mission statement it is most important. The importance is seen in the depth of the questioning process.

The process begins when the customer enters the premises. Is the parking lot pothole free, well lit, clean and safe from physical threat; robbery or head on collision with someone who drank too much included. Once the building is entered the same questions are asked from the perspective of the five senses as well as identifying any potential physical threats. The list of methodologies, tactics and solutions is lengthy and beyond the scope of this document and is therefore limited to one example, the floral arrangements. All of our plants will be fresh herbs which do not cause an allergic reaction, provide a pleasing aroma and give a feeling of security that the meal will be fresh and prepared by those who care. Safety, from every angle, is my number one concern and from every perspective I will exceed expectations in the areas I control.

I also identify the greatest threat to safety that is not entirely under my control, those that over indulge in alcoholic beverages. It is a fact that we will be dealing with some that have had too much. Some will have had too much before they arrived here. My policy is to eliminate further intoxication without insulting the patron and creating an embarrassing situation that makes everyone uncomfortable. My training and experience in this area includes managing casino patrons that are not only drunk but have lost a large amount of money and are angry. This training will be shared with employees so that they may identify and prevent problems before they happen. By taking the steps necessary to insure that the quality of experience of patrons inside the building is not made negative by someone who drank to much the risk to those outside the building is for the most part eliminated.

Our posted hours of operation will be to open at 11:00 am - 11:00 pm seven days a week. Winter hours may be reduced in the evening.

All activities will follow the previously stated policy of safety for the community. Activities will include anything that one would expect at a reception; dining band, dancing etc. Activities that would conflict with dinner service will not be accepted. Specific attention will be given to reducing/eliminating the risk of drunk driving and excessive noise. Any events, banquets or others that include entertainment will meet community requirements for permits while managing noise levels. A specific strategy may be to purchase a decibel meter. This would be used to identify and maintain acceptable noise levels.

Signage locations will be at existing locations for both the restaurant and Marina. Cooperatively, we are working with the Marina to develop a plan that allows equal exposure on all highway signage. Additional signage, community related (parking for residents only, this area restricted to marina members only, etc) will be obtained as needed.

Seating for 180 will be set in the 3,636 available square feet that is divided into four areas during the summer. Formal dining room will be set for 76, bar 24, enclosed patio 56, outside patio 180 (seating chart attached). Seating is arranged to limit total occupancy at less than 150 as that is what the kitchen is able to service at required standards for quality and time. Currently there are sacs for 183. While this number is greater than maximum capacity and planned capacity the Met Council formula identifies seating for 193. If an additional sac is required seating space will be reduced with the placement of a permanent structure as future plans include an expansion of the server area.

Alcohol service will include beer, wine and mixed drinks served both indoor and outdoor. Off sale liquor will be provided primarily for the local townhome and boater residents. Off sale will not be advertised or marked.

The following is a temporary agreement/understanding, that is not meant to be binding but only a first step to addressing Bayport Marina concerns. As discussed in our first meeting with the city council there are several issues that will need to be addressed. Parking/flow is probably the largest and will take time to properly identify and develop solutions to any undesirable issues.

As a "first step" parking is defined by the original cross easement agreement. There are 13 spots located directly in front of the restaurant and 16 located on the side for a total of 29 on restaurant property. Section 1.03 of the cross easement states that "That part of the Marina Property that is currently laid out and improved between Restaurant property and the sales and service building of the Marina Property (referred to separately as the the restaurant and service parking area)", That part of the Marina Property that is currently laid out and improved along the boat slips situated on the Marina Property (referred to separately as Boat Slip Parking Area" "all of which, from time to time is devoted primarily to parking, approaches, entrances, exits, sidewalks, incidental and anterior roadways, service roads, loading areas and other similar areas. Section 2.02 of the easement states that "Each of the parties hereto hereby grants to the occupants and permitees, a non-exclusive easement over and upon parking area for purpose of (i) pedestrian and vehicular ingress, egress, passage and traffic over, upon, across and through such parking area, (ii) parking, and (iii) access and the right of access between the public street to and from the properties. Restaurant and service areas consist of 29 spaces located on the restaurant property and 50 on the Marina property. Boat and Slip parking Areas are, under verbal agreement between Mike Scanlon, Lessee and the Marina, will not be used for restaurant patron parking. Boat slip parking states that the Marina has made available eight boat slips and a tie along area that is temporary and non exclusive. Refuge expects that during the first three months of operation all concerned parties will be able to identify existing or potential issues. Those that need to be immediately addressed will be. This will also be a display of the level of commitment the Refuge on the River has to provide the safe, unique, high value dining experience. The second step would be to memorialize actions and use in a cooperative agreement. The third step would be to attach the revised easement agreement as an addendum to the conditional use permit.

The overall intent is best described by Bill Kranz who states a "restaurant property that operates in a manner that is in harmony with the use of the adjoining marina and residential condominium property.

The request for a conditional permit to reopen the restaurant formerly known as Clydes should be granted for several reasons; my business plan offers what the marina community wants, there will be an economic benefit to the community and the building is present but unoccupied.

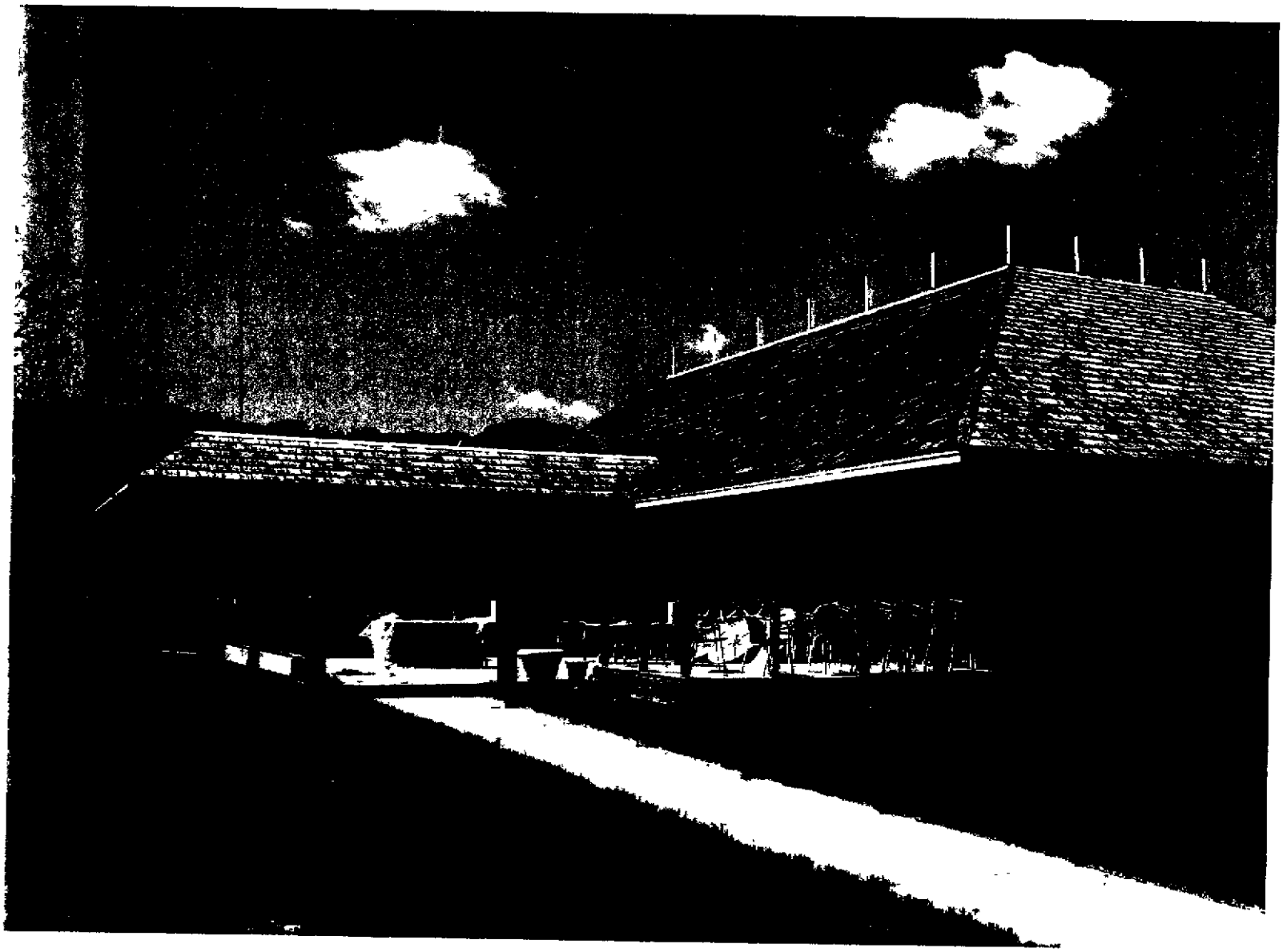
The building located at 101 5th Ave S. is one third of the original planned development now know as Bayport Marina. Currently it is not meeting the expectations of the community. It's closed. I have met with the board of directors from the Marina and Townhomes who told me they wanted, "a nice place with good food, good service that didn't disrupt their lifestyle". I am confident that The Refuge will exceed their expectations

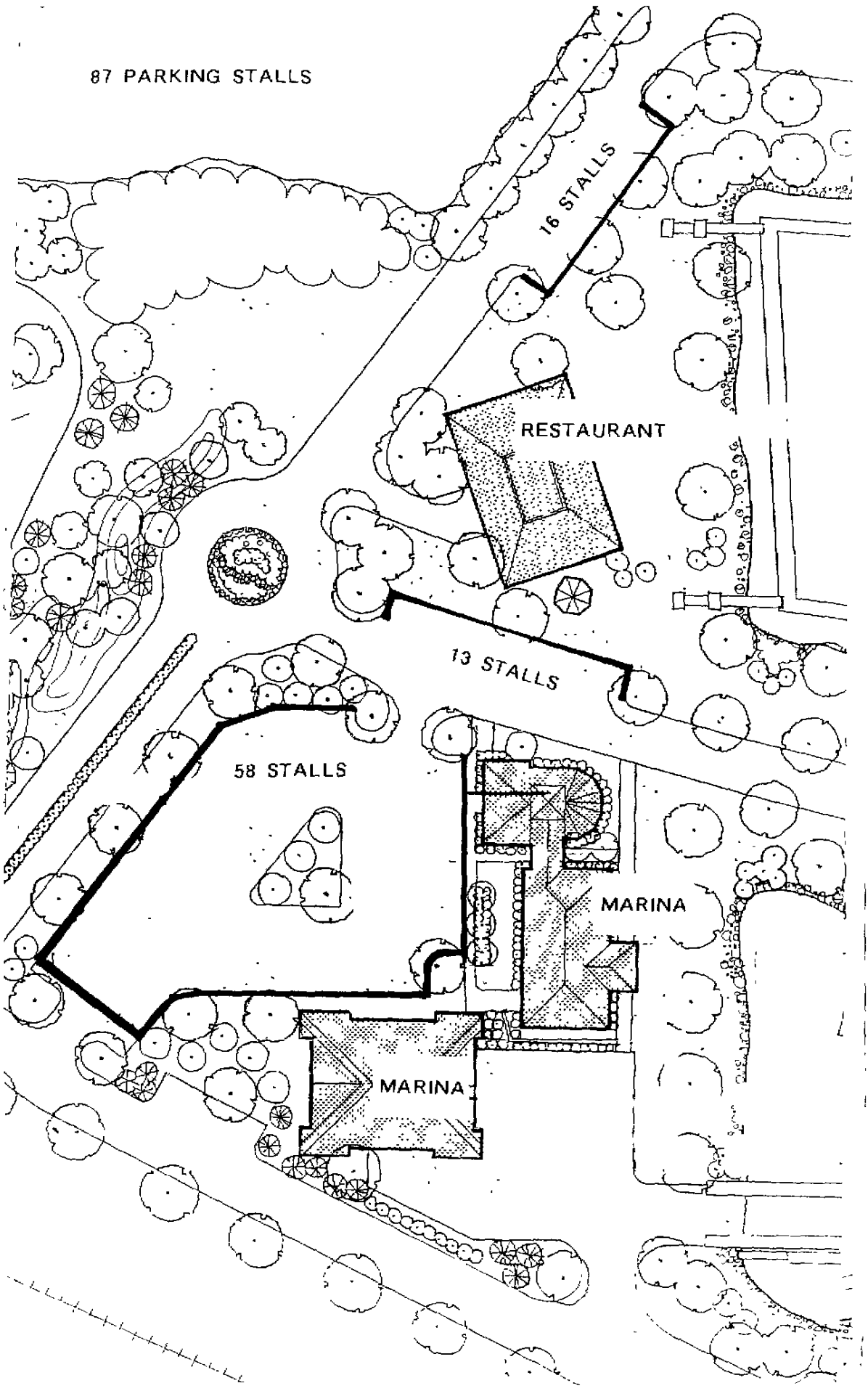
The Refuge, while operating in Hammond was known as a destination for fine dinning. Its safe, unique, high value, dining experience attracted diners from as far away as Apple Valley and St Cloud. Demand during the colder months was such that there were often waits and some no space available nights on weekends and holidays. However, during the summer months business died. Clydes's successes were based on convenience dining. Its location in Bayport Marina provided a captive audience, the "boaters". Demand was high during the summer months but died during the winter.

I am not able to quantify even an approximate monetary value we would provide the community. I do know that I will be hiring a staff of approximately fifteen. I also know that I attract a high end customer that will seek the amenities I don't offer in town or close by. In Hammond the local bars saw an increase in their business as people sought post dinner entertainment. I did not pursue a "bar crowd" by offering juke box music, pool, darts, video games, in fact I didn't even turn the TV on for anything other than Packer games. The demand from this higher end group for post dining entertainment is an opportunity for the local bars and businesses.

The fact that the building is present but unoccupied means that I will eliminate the negatives associated with an unoccupied building. I am referring to both exterior and interior upkeep. Currently I am addressing over forty issues that relate to bringing the building up to code. In addition I have done extensive work on the interior's appearances and work on the exterior has begun.

As a side note is the existence of the current conditional use permit. It is my understanding that back in the 80s one permit was obtained for what was intended to be one owner of the Marina, the Townhomes and the restaurant. Unfortunately, due to illness, what was originally planned to be under one ownership is now under three. The situation that is now present is one that is confusing and will be cleared up with each entity holding its own permit.




87 PARKING STALLS
16 STALLS
RESTAURANT
13 STALLS
58 STALLS
MARINA
MARINA

CITY OF BAYPORT
294 NORTH THIRD STREET
BAYPORT, MINNESOTA 55003
PHONE 651-275-4404 FAX 651-275-4411

April 3, 2008

Mr. Mike Scanlon
101 5th Avenue North
Bayport, Minnesota 55003

Re: Clyde's Inspection – April 3, 2008

Dear Mr. Scanlon:

This inspection was conducted as a requirement for the liquor license from the City of Bayport. Please review this letter for compliance issues. You will be responsible for implementation of all code corrections.

1. The exhaust vent pipe for the water heater that terminates at the roof on the north side needs a cap installed, per the Minnesota Mechanical Code.
2. The fire sprinkler system must be tested and monitored. All work must be done by a licensed contractor, per the Minnesota Fire Code.
3. The exterior ramp must have handrails at 34" minimum to 38" maximum, and they must return into a newel post or building, per Minnesota Building Code.
4. The walking surface for the ramp must be of a nonskid surface, per the Minnesota Accessibility Code.
5. All brush and trees that are against the building and ramp must be removed.
6. The northeast exit door landing must meet the minimum building code for handrails and walking surface.
7. The rim board around the screen porch must be treated and approved fasteners must be used.
8. All outside water outlets must have a **#1052** backflow check valve installed, per the Minnesota Plumbing Code.
9. All outside electrical boxes must have GFI protection, per the National Electrical Code (NEC).
10. Front stairs must have handrails on each side and must return back into a post or building.
11. The main and northeast exit doors must be labeled with a minimum of 1" letters stating, ***These doors shall remain unlocked during normal business hours.***
12. Must install and hardwire exit signs with emergency lights by the main door and northeast exit door.
13. Must install exit signs by the two exits going off of the screen porch area, per the International Building Code (IBC).
14. The canopy on the porch by the bar must be a minimum of 7 feet, 6 inches off of the floor to meet the head room requirements per IBC.

15. All electrical boxes must have approved covers installed, per the NEC.
16. The exit doors for the porch area must meet the accessibility code for the door handles. No squeezing or twisting allowed to open a door.
17. The kitchen hood system must be tested and approved per state code.
18. All electrical panels must have approved panel covers installed and locked, per the NEC.
19. The carbon dioxide tanks must be attached to the wall area with an approved device.
20. A licensed plumber must install a check valve or an RPZ on the water supply before the sprinkler system, per the Minnesota Plumbing Code.
21. All of the existing fire sprinkler heads must be checked for a possible recall and cleaned, per the Minnesota Fire Code.

All areas must be brought into compliance prior to issuance of a liquor license. Additionally, a seating plan must be submitted to the Metropolitan Council for review and possible adjustment to the SAC requirements.

If you have any questions regarding this letter, please contact me at 651-275-4408, or via email at jbuckley@ci.bayport.mn.us.

Sincerely yours,

John Buckley
Building Official

Washington County

Department of Public Health and Environment

Lowell Johnson
Director

Sue Hedlund
Deputy Director

March 31, 2008

Mike Scanlon
718 Mc Cutcheon Rd
Hudson WI 54016

Re Clyde's Inspection

Dear: Mike Scanlon,

This letter is in regard to the inspection conducted on March 26, 2008 at Clyde's On The Saint Croix located at 101 5th Ave S, Bayport, MN 55003 The inspection was conducted with Mike Scanlon During the inspection of the establishment items were noted to be out of compliance with the MN Food Code Chapter 4626 As required by the Washington County Food Code Ordinance #145 and as an agreement with issuing the license. items that are not in compliance with the MN Food Code must be brought into compliance

Please review this letter and the Washington County Food Service Construction Guide, as you will be responsible for implementation of all applicable requirements. The following deficiencies were noted during the inspection and must be corrected prior to issuing the license.

1 The establishment was found in poor sanitary condition. Clean and sanitize all areas and equipment
2. Large amount of mouse droppings were found throughout the establishment. Provide a licensed Pest Control Operator Seal all openings to the outside, clean all areas and treat as needed.
3. Back door had a large opening below the door. Provide a door sweep on the back door. Check all areas and seal as needed.
4 Multiple broken tiles and missing tiles were found in the cook line area Replace broken and missing tiles as needed in the cook line area.
5. There is not a convenient hand washing station in the food preparation area. Provide a hand washing sink for the food preparation area. Please note, as discussed on inspection pipes are not allowed to run on the exterior of the wall. Submit plan prior to making changes Provide each hand washing sink with soap, a fingernail brush and disposable towels. Side splash shields must be provided at hand wash sinks located next to food and equipment.
6. Multiple ceiling light shields were found broken. Replace all broken light shields.
7 Cooler door seals on multiple coolers were found in poor condition. Replace door seals as needed.
8. Coolers and freezers were not operating on inspection. All equipment must be properly operating and able to maintain required temperatures. Any equipment that is not operating must be removed All equipment must be commercial NSF approved equipment and in good condition.
9 The laminate cabinets in the service area were found with peeling laminate Repair or replace these cabinets.
10 There is not a convenient hand washing stations for the service area. Provide a hand washing sink for the service area Please note, as discussed on inspection pipes are not allowed to run on the exterior of the wall Submit plan prior to making changes
11. The walk-in cooler had multiple broken tiles on the interior Replace the broken tiles
12 The walk-in cooler exterior is missing the base coving Provide stainless steel base coving with a radius cove
13 Multiple walls and corners were in poor condition. Repair or replace wall coverings, connectors and corners that require repair
14 The interior of the bar does not have a smooth washable surface Provide a cleanable surface in the interior of the bar

15 The bar floor does not have base coving Provide approved base coving for the bar areas
16 Beverage tubing and cold-plate beverage cooling device is installed in ice bin Remove from ice bin and provide a cold plate that is constructed integrally
17 The ceiling above the bar was found in poor condition with paint peeling. Repair the ceiling above the bar
18 Toilet room ceiling are not constructed of an easily cleanable material. Replace ceiling tiles with easily cleanable commercial vinyl ceiling tiles
19 The patio storage room has open studs and wood floor If this room is to be used as storage, approved finishes must be provided. Submit plan for approval prior to making any changes
20 The patio bar does not meet the construction guidelines. If the bar is to be used, it must be brought into compliance. Submit plans for approval prior to making any changes.
21. The kitchen ventilation hood and make up air must be verified by a HAVC contractor as operating properly and exhausting the required amount of air above the cooking appliances. Contact a HVAC contractor and provide a copy of the report to this department. If the hood is not adequate or is not functioning properly, an approved system is required to be installed
22. Hot water was not available on inspection. Provide adequate hot water (Dish machine was not checked.)
23 Contact and receive approval from all local and state licensing, building, and inspection departments. Pull all permits as required. Approval must be granted from each department if required

As discussed during the inspection, this may not be a complete list of deficiencies Multiple areas including the walk-in freezer, outdoor walk-in freezer, and dry storage areas were not inspected. All areas including these areas must be brought into compliance prior to issuing the license. The sanitation issues that were found made it difficult to evaluate the equipment and portions of the facility As cleaning is completed, more issues may be determined

The change of ownership inspection and minor remodeling fees are due at this time The change of ownership fee is 50% of the annual license fee and the minor remodeling fee is 50% of the annual license. The annual license fee for 2008 is $770 00 (Full Service Food Establishment > 18 employees) and $150 00 for each bar.

Complete and submit the plan review application. Submit plans for all construction and equipment changes This includes changes to the bars, hand washing sink and equipment Plans must be submitted for approval Include drawings of proposed changes and equipment specification sheets for each piece of equipment to be added. Plans must be approved prior to making the changes.

After plans have been approved, changes have been made and the deficiencies have been corrected please contact me to arrange for an inspection. Another inspection will be conducted prior to bringing in any food products. At that time all refrigeration must be operating for the final inspection. The licensee must submit the license application and all appropriate license fees before the final inspection.

Please contact me directly at (651) 430-6704 if there are any questions, comments or concerns

Sincerely,

Kristofer Keller, REHS
Senior Environmental Specialist

cc: John Buckley Building Official, City of Bayport

RECEIVED
APR 2 5 2008

April 14, 2008

Mr Michael McGuire
Bayport City Administrator
Bayport City Hall
294 3rd Street North
Bayport, MN 55003

Dear Mr. McGuire,

The following activity has come to the attention of Waterford on the St. Croix Condominium Association Board of Directors:

- Ownership of Clyde's Restaurant property has changed hands and the apparent intent on the part of the new owner or its tenant to operate a restaurant/liquor establishment on those premises.

The Condominium is a registered Minnesota Non-Profit Corporation under the provisions of Minnesota Statue 317. The formal declaration for the Condominium was filed on May 18, 1989 and operates pursuant to Minnesota Statue 515A. This declaration states that the units shall be used exclusively for residential purposes, and the units shall be occupied and used only by holders of interest, their families, lessees, and social guests for residential purposes. With this in mind, Waterford on the St. Croix Condominium Association, Inc., consisting of forty-one (41) condominium units organized as a "residential real estate management association" within the meaning of Section 528 of the Internal Revenue Code, has the following concerns to present to the City of Bayport:

- We understand that an application for **on-sale/off-sale liquor license** as been made for the Clyde's Restaurant property. We request that "Waterford" be advised in advance of the actions that the City proposes to take with respect to granting of the requested liquor license, including being given advance notice of all hearings pertaining to this application and notice of public hearings on the matter.

- We request that in connection with the City's review of this liquor license application, that it limit any license it might issue to insure compliance with the Conditional Use Permit that applies to the Clyde's Restaurant property

- We request notification to all Waterford Unit Owners should there be an application for a separate Conditional Use Permit from the Clyde's property owners or lessee.

Waterford on the St. Croix Condominium Association, Inc. would welcome and support a restaurant/on-sale liquor establishment on the Clyde's Restaurant property that operates in a manner consistent with the use of the adjoining marina property and our residential condominium property. However, it is important that the all three entities (Condominiums, Marina, Restaurant) work together to enhance the whole.

Waterford is a quiet, riverside, planned unit development/community consisting of both full and part-time permanent residents. We are Bayport City taxpayers and want our voices heard with regard to the operation of a restaurant/on-sale liquor establishment. Our community complies with the City of Bayport laws which include the right to control and regulate noise, rights, or any other environment nuisance factors. We request the operation of a new restaurant/liquor establishment also comply with all rules, regulations and ordinances pertaining to the regulation of noise and general operation within a residential community.

Having a restaurant on-sale/off-sale establishment operating directly adjacent to our residential condominium association homes is not the typical adjacent land use that one would expect to see.

Historically, the three entities consisting of a restaurant, private marina and privately owned residential condominium homes have related in a mutually agreeable way due in large part to the fact the restaurant/on-sale liquor establishment known as Clyde's did not draw large volumes of customers to the facility, but rather catered primarily to the marina members and local residents. The facility typically limited its hours of operation from just before Noon to 8:00 p.m. on weekdays and to 10:00 or 11:00 p.m. on weekends.

In considering approval of the conditions for the requested liquor license for the Clyde's Restaurant property, we, residents of the City of Bayport, request the City of Bayport to include the following as part of the conditional use permit associated with granting a liquor license:

1. Limit hours of operation – similar to the precedent that has been previously established.
2. Limit the capacity of the operations and the traffic into and out of the facility;
3. Limit entertainment;
4. Limit noise – control and regulate noise and any other environment nuisance factors;
5. Ensure that the operations on the property are first and primarily that of a restaurant which serves alcohol as opposed to an on-sale liquor establishment which could continue to operate as a bar even if the restaurant business failed.
6. Require outside maintenance of surrounding areas be appropriately cleaned and cared for in way that is consistent with the adjacent properties and does not pose any health and/or safety issues.

We ask the City of Bayport to limit access into and out of this immediate area and consider the health and safety of all those who live in the condominiums, many of whom also own or lease private boat slips in the Bayport Marina.

We seek assistance from the City of Bayport to control parking. The roads with direct access to the condominium homes are private and for the exclusive use of residents, their families, lessees and social guests.

In event of flooding, Condominium cross-easement controlling documents allocate 25 parking spaces be reserved for the owners of the Condominium units on the Marina property that is currently laid out and improved between the Restaurant Property and the sales and service building of the Marina Property; and that part of the Marina Property that is currently laid out and improved along the Boat Slips situated on the Marina Property. Therefore, the Conditional Use Permit should include language which protects these parking allocations if such risks or perils are presented.

Waterford on the St. Croix Condominium Association believes that the use of the Restaurant property, Condominium Association and the adjoining Marina property is protected under the terms and conditions of the Conditional Use Permit dated as of August 10, 1983 which was issued by the City of Bayport. It is significant that the zoning classification for the property in question carries the designation of "Residential" which is the predominant nature of the use of the two directly adjacent properties; Bayport Marina and Waterford on the St. Croix Condominium Association.

It is imperative any conditions that are imposed on the conditional use permit be the same as would be expressly attached to an ongoing permit.

We would also like to bring to your attention a situation that occurred in the year 2006 relative to the community sewage pumping station that must be addressed as it directly impacts the health and safety of the residents in Waterford on the St. Croix Condominium Association. The sewage pumping station failed resulting in a back up of raw sewage into the garage of Unit 110 Mariner Drive. After inspection, it was determined a large amount of kitchen grease, combined with other matter inappropriately deposited into the sewer system servicing the restaurant, marina, and condominium homes, directly impacted the functionality of the system resulting in the discharge of raw sewage into the environment.

We ask the City of Bayport to incorporate the general set of standards found in the City of Bayport ordinances in considering a conditional use permit. i.e., the general welfare standard, nuisance standard, general plan consistency standard and zoning consistency standard. We request the City of Bayport to consider the residents of Waterford on the St. Croix Condominium Association and ask that the integrity and character of this zoned district within our community not be adversely impacted.

We ask the City of Bayport to schedule an annual review with Waterford on the St. Croix Condominium Association, Bayport Marina and the owner's of Clyde's Restaurant

property (to include lessee) in an effort to proactively address and resolve the concerns of all residents

We look to the City of Bayport to support the positions presented by the forty-one, active and interested Residential Units of Waterford on the St. Croix Condominium Association. We look to work together with the City of Bayport, the Bayport Marina, as well as the Clyde's Restaurant property owners (and Lessee) to achieve a mutually beneficial resolution for all concerned.

Respectfully submitted,

Waterford on the St. Croix Condominium Association Board of Directors, as follows:

Ron Jorgensen	Nancy Nelson	Sue Larimer	Al Sawczuk
President	Vice President	Secretary	Treasurer

Nancy Hall	Diane Legato	Marie Doyle
Member at Large	Member at Large	Member at Large

c: Mr. Marsh Nowlin, Bayport Marina Manager
Ms. Sara Taylor, Bayport City Planner
Mr. William Kranz, Bayport Marina Attorney

MONTPETIT, FREILING & KRANZ

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JOEL A MONTPETIT
SHARON L. FREILING
WILLIAM J KRANZ

TELEPHONE 651-450-9000
FAX 651-450-9476
TOLL FREE 877-563-3310

April 8, 2008

Mr Michael McGuire
Bayport City Administrator
Bayport City Hall
294 3rd Street North
Bayport, MN 55003

Re: Bayport Marina Association, Inc
Clyde's Restaurant Property
Conditional Use Permit/Liquor License Application

Dear Mr. McGuire:

As you are aware, I represent the Bayport Marina Association, Inc.

I am writing to reiterate my client's concerns over the change in ownership of the Clyde's Restaurant property and the apparent intent on the part of the new owner or its tenant to operate a restaurant liquor establishment on those premises.

We understand that an application for an on-sale liquor license has been made for the Clyde's Restaurant property. I am requesting that the Bayport Marina Association, Inc be advised of the actions that the City takes with respect to granting of the requested liquor license, including in particular, receiving notice of public hearings on the matter. I am also requesting that in connection with the City's review of this liquor license application, that it limit any license it might issue to insure compliance with the Conditional Use Permit that applies to the Clyde's Restaurant property. I would also ask that the City consider a review of the Conditional Use Permit with the involved parties to clarify matters where appropriate to avoid any confusion over the guidelines and restrictions that were intended to be set forth when that Conditional Use Permit was initially issued.

At the outset, I want to underscore that the Bayport Marina Association, Inc., its members, seasonal renters, and their guests would welcome and support a restaurant/on-sale liquor establishment on the Clyde's Restaurant property that operates in a manner consistent with the use of the adjoining marina property and the residential condominium property.

The Bayport Marina Association, Inc. operates the Bayport Marina for the private recreational use and enjoyment of its members. Membership in the Bayport Marina Association, Inc. consists of approximately 240 individuals with membership slip rights to 120 slips at the marina, in addition to 60 seasonal renters. The boats moored at the Bayport Marina are predominantly larger boats with living quarters. A majority of Bayport Marina members and seasonal renters use their boats in much the same way one might use a cabin. They typically spend time aboard their boats while moored in their respective slips and often spend nights, particularly weekend nights on board. They also spend time

on the marina grounds which include a pool, patio area, and open spaces with views of the St. Croix River.

Having a restaurant/on-sale liquor establishment operating adjacent to a private marina and a residential condominium housing community is not the typical confluence of land use that one would expect to see.

Historically, the restaurant, private marina, and residential condominium arrangement has been a workable situation due in large part to the fact that the restaurant/on-sale liquor establishment known as Clyde's did not draw large volumes of customers to the facility, but rather catered primarily to marina members and local residents. The facility typically limited its hours of operation from just before Noon to 8:00 p.m. on weekdays, and to 10:00 or 11:00 p.m. on weekends.

A more expansive restaurant/on-sale liquor establishment that draws larger crowds and caters to other than local patrons for extended hours would be disruptive to the uses of the surrounding properties and likely lead to conflict ultimately involving the policing authority of the City of Bayport.

My client's concerns relative to pending operations on the Clyde's Restaurant property are a function of several factors, the first of which is the inherent potential for conflict between the uses of both properties outlined above. The second is the proximity of the two properties with no barrier or buffer between them. Third is the area or size constraints of the Clyde's Restaurant property. Its land area consists of just under 39,600 square feet. That property has only 25 dedicated parking spots and is otherwise reliant on its Cross Easement Agreement with the marina property for additional parking on a nonexclusive basis. Fourth, access to the Clyde's Restaurant property is over and across the marina property pursuant to the aforementioned Cross Easement Agreement. Additionally, and for some unknown reason, the new owner of the Clyde's Restaurant property has not seen fit to communicate with representatives of the Bayport Marina Association, Inc. and has gone so far as to ignore, even rebuff, overtures to open a dialogue intended to lead to a mutually beneficial relationship

My client's concerns also arise from the fact that without clear guidelines in place from the outset, what may begin as a well intentioned plan to operate a restaurant/on-sale liquor establishment in a harmonious manner and within the parameters of the Conditional Use Permit may, driven by outside economic factors, change and expand such that the operation is no longer in harmony with its neighbors and becomes a nuisance.

In considering approval of the requested liquor license for the Clyde's Restaurant property, I would ask on behalf of my client that the City consider including the following conditions as part of the liquor license in order that it comply with the Conditional Use Permit by.

1. Limiting hours of operation:
2. Limiting the capacity of the operations and the traffic into and out of the facility.
3. Limiting entertainment:
4. Ensuring that the operations on the property are first and primarily that of a restaurant which serves alcohol as opposed to an on-sale liquor establishment.

My client believes that its use of the property and that of the adjoining residential condominium property is protected under the terms and conditions of the Conditional Use Permit dated as of August 10, 1983 which was issued by the City of Bayport

The Clyde's Restaurant property, as well as the marina property and the condominium property are zoned by the City of Bayport as "Planned Unit Development—Residential." As I read it, the City's current ordinance specifies that Planned Unit Development is a zoning district "designed to allow greater flexibility in the development of neighborhoods and/or non-residential areas by incorporating design modifications as part of a PUD or mixture of uses that may involve a mix of residential, commercial and/or industrial uses." The Planned Unit Development designation therefore allowed a restaurant establishment to be established adjacent to the residential condominium development and marina.

It is significant that the zoning classification for the properties in question carries the designation of "Residential." This is the predominant or overriding nature of the use of the three properties

Though the vast majority of specific provisions in the Conditional Use Permit relate to marina operations on what is now the Bayport Marina property, item 23 of that Conditional Use Permit provided that business operations could be conducted on the three properties including "restaurant" operations that were to be allowed "only as specifically authorized by the City Council [of Bayport]."

At the time the Conditional Use Permit was applied for, all three properties were controlled by a single entity. The historical record clearly supports the fact that the restaurant use was included in the plan to service and compliment the marina operations and planned condominium development

Promotional material published by the developer of the marina at or around the time the Conditional Use Permit was approved indicated that the marina was "[d]esigned as a New England Seaport Community . [that] represent[ed] an entirely new concept in marina life." Those materials describe the Bayport Marina in the following terms:

> It is what a marina was meant to be .. from the first class harbor to the fully landscaped grounds from the harbormaster's office to the ship's door, from the service building to the convenient service dock. Soon to be added are a harbor view restaurant and condominiums that will lend a unique atmosphere to this exclusive development.

With specific regard to the restaurant which was being contemplated, the promotional materials provided.

> Onsite recreation and dining.
>
> Swim in the private pool Stroll along the curving beach Roam the landscape grounds with its many trees and shrubs .. Take in the view across the river of the wooded Wisconsin hills.
>
> Coming in the near future is a harbor view restaurant with a wraparound outdoor deck. Eventually it will offer fine dining year round as well as your favorite refreshments after a day of boating.
>
> The restaurant will be a final touch to an exclusive, distinctive setting for entertaining your friends and business associates

The foregoing highlights the context in which the developer submitted its plan for the Conditional Use Permit and in which the City of Bayport issued that Conditional Use Permit.

Provisions in the Conditional Use Permit that seemingly grant the City control over the type and nature of operations being conducted on the Clyde's Restaurant property include the following.

..

(5) This Conditional Use Permit shall be subject to annual review by the City Council.

..

(10) The City reserves the right to regulate and control vehicular, watercraft, and pedestrian traffic/circulation on and near the site [which includes the condominium property, marina property, and Clyde's Restaurant property].

.

(12) The City reserves the right to control and regulate noise, lights, or any other environmental nuisance factors that are or may become present.

..

(16) The City reserves the right to take immediate, specific, correction action in the event that the permitted uses and occupancy of this site creates environmental problems detrimental to the general public health, safety, morals or general welfare.

(18) All structures, parking areas, buildings, sign, landscaping, waste storage areas, and other property features and improvements shall be well maintained, properly repaired, and reasonably clean and orderly at all times

.

(26) This permit may be amended or revoked at any time in accordance with due process of law following review by the planning commission, due public notice, and public hearing, based on any significant violation of the terms of this Conditional Use Permit

Thank you for your attention to this matter

My client looks forward to working with the City, as well as the Clyde's Restaurant property owners to achieve a mutually beneficial situation for all concerned, including the City of Bayport and its residents.

Very truly yours,

MONTPETIT, FREILING & KRANZ

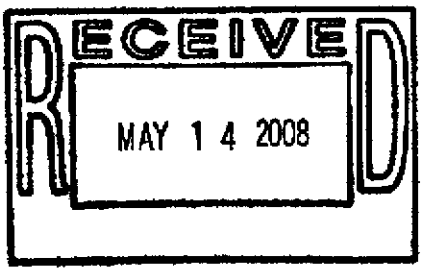
William J. Kranz
bkranz@mfklawyers.com

WJK.ld

c: Mr. Marsh Nowlin
Mr. Nick Vivian, City Attorney
Mr. Justin Bonestroo, City Attorney
Ms. Sarah Taylor, Assistant City Administrator
Mr. Ron Jorgenson

Refuge on the River
Addendum

Hours of operation, restrictions. Opening, midweek 11:00 AM weekends 8:00 am. If there is to be an opening time set in stone it would be best to state it at 8:00. While breakfast demand midweek/winter is not expected should it develop it would be prudent to allow us to meet community demand. Closing, posted hours will be closing at 11:00 pm seven days a week. Earlier closures/posting may occur based on demand. Weekend evening closures will be last call at 12:00 AM or 1:00 AM for special events. It is the intention to serve those that are here without attracting the late night "bar crowd".



RESOLUTION NO. 08-

EXTRACT OF THE MINUTES OF THE CITY COUNCIL MEETING CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA HELD MAY 19, 2008

Pursuant to due call and notice therefore, the regular meeting of the City Council of the City of Bayport, Minnesota was duly held at the Bayport City Hall in said municipality on the 19th day of May, 2008.

The following members were present:

The following members were absent:

Council member _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING THE REINSTATEMENT OF A CONDITIONAL USE PERMIT (CUP) TO OPERATE A RESTAURANT AT 101 5TH AVENUE SOUTH, LEGALLY DESCRIBED AS LOT 2, BLOCK 2, BAYPORT MARINA, BAYPORT, WASHINGTON COUNTY, MINNESOTA

WHEREAS, The city received a request from Mike Scanlon. applicant, and Kathleen MacDonald, property owner, to consider a conditional use permit (CUP) to operate the existing building on the property as a restaurant at 101 5th Avenue South, which is located in a Residential-Planned Unit Development (R-PUD); and

WHEREAS, The Planning Commission of the City of Bayport held a public hearing on May 19, 2008, for the purpose of obtaining public comment on the CUP application. At the close of the public hearing, the Planning Commission recommended approval of the CUP request to the City Council; and

WHEREAS, The City Council of the City of Bayport recommended approval of this application on May 19, 2008 at a special meeting: and

WHEREAS, The City Council has made the following findings of fact:

FINDINGS OF FACT

A. On or about April 24, 2008, Mike Scanlon (applicant) and Kathleen MacDonald (property owner), submitted an application to request a CUP be reinstated to operate a restaurant at the existing building located at 101 5th Avenue South.

B. The subject property is zoned Residential – Planned Unit Development (R-PUD). Because the underlying zoning of the development is residential, the restaurant is required to obtain a CUP.

C. Zoning Ordinance 505.10 states that any building or use that is operating under a CUP and becomes abandoned or does not conform to the conditions listed in the CUP for a period of 120 days, the CUP shall expire at the end of said 120 days. Since it has been

determined that previous use of the building as a restaurant ceased for a period of more than 120 days, the CUP previously granted for the property expired. Therefore, the applicant has requested that a CUP be reinstated to allow use of the building as a restaurant.

D. The Planning Commission of the City of Bayport held a public hearing on the applicant's CUP application on May 19, 2008. At the close of the public hearing, the Planning Commission recommended approval of the CUP request to the City Council.

E. In order for a CUP to be issued, the property shall be reviewed for compliance with performance standards set forth by city code, impacts and overall compatibility with the surrounding neighborhood, and whether the proposed use would be beneficial to the community. Specific performance standards have been established for the restaurant use and are included within the CUP.

F A CUP was granted in the 1980's when the PUD was approved, to utilize the building as a restaurant. The building was designed for restaurant use, and therefore, the layout and facilities will accommodate the proposed use, subject to completion of all correction orders referenced in the staff report.

G. The desire to utilize the building as a restaurant is reasonable and consistent with the original intent. The use as a restaurant would not alter the essential character of the neighborhood.

H. Based on paragraphs (A)-(G) above, a CUP is justified to allow to the existing building on the property to be utilized as a restaurant.

NOW THEREFORE BE IT RESOLVED: By the City Council of the City of Bayport, Washington County, Minnesota, does hereby ordain as follows:

1. The application for the requested CUP is hereby approved, based on the findings of fact listed above and subject to the conditions listed below:

   - Performance standards listed below are required to be observed at all times, in order to operate a restaurant use under the CUP:

Seating capacity	Capacity of 180, or as determined by the Metropolitan Council for sewer availability, but no more than 183 as originally approved. The capacity shall be inclusive of both indoor and outdoor seating.
Exterior storage	No exterior storage shall be allowed, with the exception of a dumpster for collection of waste and refrigeration units, which already exist within an enclosure at the rear of the building.
Hours of operation	11:00 a.m. – 11:00 p.m., 7 days a week
Signage	The existing signage was approved under the

	original PUD, which is located on property owned by the Bayport Marina, and shall be allowed to remain. Both entities shall work together to modify and/or add signage, subject to review and approval by the city. Lighting on all signage shall be extinguished by 11:45 p.m., 45 minutes after the facility is required to be closed.
Sale of liquor	On-sale liquor, off-sale liquor, and Sunday on-sale liquor.
Noise and Lighting	The restaurant and all accessory uses associated with the restaurant, including special events, festivals, live entertainment, etc. shall comply with the noise requirements set forth by city code. Exterior lighting for the restaurant shall comply with the requirements set forth by city code and be extinguished no later than 12:00 a.m., one hour after the restaurant is closed.
Parking	87 spaces for vehicles (29 exclusive spaces and 58 non-exclusive, shared spaces with the Bayport Marina) and 8 non-exclusive spaces for boats (subject to the cross-easement agreement with the Bayport Marina). Additional proof of parking may be required, depending upon volume of patrons, and the use of the additional seating area on the outdoor patio.

- All correction orders issued as a result of the health, safety, and welfare inspection of the premises must be resolved and inspected prior to issuance of the CUP.

- In the event that the property is sold to a new property owner, it is the responsibility of the seller to inform the buyer that the property is only able to operate as a restaurant under the conditions of the CUP, and that the use is not permitted by right.

- The lessee and/or property owner will be expected to address any complaints or violations of city code or the CUP upon written notice from the city. The city shall also have the ability to revoke the CUP with 120 days written notice to the property owner, if the use as a restaurant is determined to have a negative impact on the surrounding uses and neighborhood.

- The CUP may be reviewed on an annual basis, or as often as deemed necessary, to ensure compliance with the conditions of the CUP.

2. The entire record of the hearing before the Planning Commission, including without limitation, the testimony and exhibits presented together with the

discussion of the City Council regarding the matters described herein are hereby made a part of the record of these proceedings.

The motion for adoption of the foregoing resolution was duly seconded by Council member _____and upon roll call being taken thereon, the following voted via voice:

Jon Nowaczek -
Dan Johnson -
Sharon Ridgway -
Connie Carlson -
Torry Kraftson -

Thereupon said resolution was declared duly passed and adopted and signed by the Mayor and the City Administrator. Passed by the City Council, City of Bayport, Washington County, Minnesota on this 19th day of May, 2008.

ATTEST:

_____
Mike McGuire
City Administrator

_____
Jon Nowaczek
Mayor

CITY OF BAYPORT
294 NORTH THIRD STREET
BAYPORT, MINNESOTA 55003
PHONE 651-275-4404 FAX 651-275-4411

Date: April 30, 2008

To: Mayor and City Council

From. Mike McGuire. City Administrator
Sara Taylor, Assistant Administrator

Subject: Consideration of liquor licenses for Refuge on the River located at 101 5th Avenue South

BACKGROUND

At the May 5, 2008 meeting, the City Council approved a motion to continue the consideration of liquor licenses applied for by Mike Scanlon, Refuge on the River. It was the opinion of the City Council that reinstatement of the conditional use permit (CUP) to utilize the existing building at 101 5th Avenue South as a restaurant should be considered prior to consideration of any liquor licenses As such, the City Council scheduled a special meeting for May 19, 2008. following the Planning Commission meeting, to discuss reinstatement of the CUP to operate a restaurant at the property and issuance of the liquor licenses.

The liquor licenses being requested are on-sale liquor, off-sale liquor, and on-sale Sunday liquor. As you know. a health. safety, and welfare inspection of the premises was performed by city staff and Washington County. Several correction orders were issued, and the applicant is aware that these orders all need to be completed before a CUP or liquor licenses can be issued. A summary of any outstanding orders will be discussed during consideration of the CUP.

RECOMMENDATION

Based on the outcome of the discussions related to the CUP application and progress on the correction orders, staff recommends the City Council adopt a motion to either approve or deny the requested liquor licenses for 101 5th Avenue South. If approved by the city, staff will forward the paperwork to the Minnesota Alcohol and Gambling Enforcement Division (AGE). AGE will then notify the city when the licenses have been approved and when the sale of liquor is allowed.