

## STAFF REPORT

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**Application:** Ordinance Amendment for Leasing/Renting of Residential Property  
(continuation)

**Applicant:** City of Emily

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**Background:** The ordinance amendment for leasing/renting of residential property is a continuation from the August meeting. A public hearing for the amendment was originally heard at the June Planning Commission meeting. At that meeting the Commission made a recommendation for approval of an amendment to the City Council. The City Council did not approve the recommended amendment to the Ordinance at the June council meeting but remanded it back to the Planning Commission for additional consideration in July.

At the July Planning Commission Meeting the Planning Commission members watched a DVD from the City Council to hear their comments on the amendment. The Council also directed staff to provide notice to the local businesses and also to all shoreline property owners so that their views could be heard in the deliberations.

As directed by the council staff also sent letters to multiple State Agencies and other potentially interested parties requesting feedback on the four proposed alternatives being considered for the August meeting. These agencies included: Minnesota Association of Realtors, Congress of Minnesota Resorts, Crow Wing County Assessor's Office, Hospitality Minnesota, Minnesota Department of Health, Business Education – Corporate Sales Tax Division, Minnesota Department of Natural Resources, and Minnesota Waters.

The alternatives under discussion were as follows:

1. Unlimited rental of residential properties, including weekly and weekend rental of shoreline properties.
2. Unlimited rental but to have a licensing requirement so as to provide some control for nuisance situations.
3. Allow only for long-term rentals three months or longer in duration.
4. Prohibit all rental of residentially-zoned property.

At the August meeting the following responses had been received regarding the four alternatives for rental of residential properties. These responses were discussed by the Planning Commission, and responses from the public were heard in regard to renting/leasing residential property on a long term and on a short term basis.

### Minnesota Department of Health, Gary Edwards

Gary Edwards from the Minnesota Department of Health indicated the following regarding these alternatives:

1. Alternative 1 would require a lodging or hotel/motel license from the Department of Health.

2. Alternative 2 is not an option. The City of Emily cannot “license” lodging. Licensing is the responsibility of the State of Minnesota, unless specifically delegated to a local authority.
3. Alternative 3 may still need a license depending on the number of beds (if there are 5 or more beds, a license is required).
4. Alternative 4 would not affect the Department of Health in any way.

Mr. Edwards has also stated that residential places that want to become licensed must submit plans to the Minnesota Department of Health. He also stated that sometimes residential places have issues that make them unlicenseable.

Mr. Edwards was also contacted by phone on August 27, 2007 to determine what the Minnesota Department of Health considered as a minimal length of time for a rental. He stated that depending on the number of beds (five or more) a license would be required. If a lease agreement is in place and there are fewer than five beds the long term rental would be considered an “apartment-like situation”, and some kind of lease would need to be in place.

Department of Natural Resources, Joe Oswald

Mr. Oswald was asked his opinion of the options under consideration given the shoreland regulations. Oswald indicated that seasonal or occasional rental would be acceptable; an unlimited rental of a residential property would be a commercial use and would require a rezoning to commercial.

Minnesota Department of Revenue, Marissa Papineau

The Department of Revenue has responded with the following analysis of the four alternatives that were proposed.

1. **Alternative 1.** Short term lodging and site rentals for a temporary place to stay or live are subject to sales tax. Sales tax must be charged on lodging and related services furnished for a period of less than 30 days. Sales tax must also be charged on lodging furnished for periods of 30 days or more if there is no enforceable written agreement with the customer that requires the lessor and lessee to give prior notice of their intention to terminate.
2. **Alternative 2.** Same as alternative 1.
3. **Alternative 3.** Long term lodging, for a continuous period of 30 days or more, with an enforceable written agreement with the customer that requires the lessor and lessee to give prior notice of their intention to terminate is not taxable.
4. **Alternative 4.** No taxes are applicable.

According to the Minnesota Department of Revenue the key factors in lodging and site rentals are the length of time of the rental (30 days) and whether or not a notice of intention to terminate is in writing between the lessor and the lessee.

The Planning Commission asked staff to determine what the minimum length of time is for renting a property according to the Minnesota Department of Health. It has become evident from conversations with the MDH and from the Minnesota Department of Revenue that 30 days is the minimum time length for a rental without being licensed as long as a lease agreement has been made.

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**Findings of Fact to Consider for Renting Leasing of Property according to feedback from agencies regulating renting/leasing:**

1. Unlimited rental of residential properties, including weekly and weekend rental of shoreline properties would require a lodging or hotel/motel license from the Minnesota Department of Health.
  2. The City of Emily can not license lodging.
  3. If five or more beds are available a license is automatically required.
  4. Residential properties would have to meet Minnesota Department of Health standards for lodging or for a hotel or motel.
  5. An unlimited number of rentals on a residential property would be considered a commercial use and the zoning would have to be changed.
  6. Taxes must be charged on any rental of 30 days or less.
  7. Taxes must be charged on rentals of 30 days or longer if no lease agreement for notification of termination has been made.
  8. No taxes are required for rental situations of 30 days or more if a written notice of termination is in place.
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**Staff Recommendation:** Staff recommends that the Commission discuss the proposed options, listen to the input of the public, and determine what direction to take with the leasing/renting of properties amendment.

## 8. P&Z Administrator's Report

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A. Permits: The following permits were issued by the Planning and Zoning office since the last meeting:

	Name:	Address:	Type:	Permit Fee:
1	Bill Schmidt	22662 South Shore Drive	Land Use	\$275.00
2	Bill Schmidt	22662 South Shore Drive	ISTS	\$150.00
3	Randy Moritz	Robinson Street	Land Use	\$495.00
4	Randy Moritz	Robinson Street	Land Use	\$495.00
5	Terry Sewill	40560 South Bay Drive	Land Use	\$495.00
6	Terry Sewill	40560 South Bay Drive	ISTS	\$150.00
7	Yvonne Beseler	43898 State Highway 6	Land Use	\$165.00
8	Yvonne Beseler	43898 State Highway 6	ISTS	\$150.00
			<b>TOTAL:</b>	<b>\$2375.00</b>

B. Correspondence. The following correspondence was sent or received by the Planning and Zoning office since the last meeting:

	Date:	To:	From:	RE:
1	8/22/07	Gregory Koch	Charles Marohn	Guest Quarters/Second Story in Accessory Structure, Notice of Violation City of Emily
2	8/21/07	Bob Grecula	Charles Marohn	Land Use Violation City of Emily
3	8/21/07	Douglas Starry	Charles Marohn	Land Use Violation City of Emily
4	8/21/07	Keith Nichols	Charles Marohn	Land Use Violation City of Emily
5	8/21/07	Jason Quilling	Charles Marohn	"After-the Fact Permit Payment", Notice of Violation City of Emily

6	8/21/07	Daniel and Judy Marshaw	Charles Marohn	Emily Land Use Violation V-07-0051 Non-permitted Non-conforming dwelling Individual Sewage Treatment System Violation Number of Camper Trailers allowed on property
7	8/20/07	Chris Scott, Proposer	Charles Marohn	Northern Lights over Lake Roosevelt EAW Submittal Information
8	8/20/07	Environmental Quality Board Jon Larsen, Principle Planner	Charles Marohn	Citizen Petition Northern Lights over Lake Roosevelt
9	8/9/07	Emily City Council Emily Planning and Zoning Commission	Lonny Thomas	Chris Scott/Roosevelt Lake
10	8/9/07	Cary LeBlanc	Charles Marohn	Land Use Violation City of Emily
11	8/9/07	Richard Vosen	Charles Marohn	Land Use Violation City of Emily
12	8/9/07	Martin Willmus	Charles Marohn	Certificate of Compliance City of Emily
13	8/9/07	Emily Forest Products, LLC Dan Heggston	Charles Marohn	Land Use Violation City of Emily
14	8/8/07	JoAn Wannebo	Charles Marohn	Dave Figi Installation
15	8/8/07	Dennis Peterson	Charles Marohn	Emily (Pine Shadows) issues
16	8/7/07	North Country Development	Charles Marohn	Preliminary Plat Application
17	8/6/07	Charles Marohn	David Landecker	City of Emily EAW Process Northern Lights over Roosevelt Lake
18	8/5/07	Lisa Woog	Charles Marohn	080207 Pine Shadows Violation letter
19	8/2/07	Mark Wespetal	Charles Marohn	071807 MPCA letter
20	8/2/07	Lisa Woog	Charles Marohn	080207 Pine Shadows Violation letter
21	8/2/07	Laura Leckband	Charles Marohn	Correspondence request regarding City of Emily Rental of Residential Property
22	8/1/07	Randy Rohwer	Charles Marohn	Land Use Violation City of Emily

23	8/1/07	Trent Deboer	Charles Marohn	Certificate of Compliance City of Emily
24	8/1/07	Roger Olson	Charles Marohn	Certificate of Compliance City of Emily
25	7/31/07	Emily Planning Commission	Marissa Papineau MN Department of Revenue	Regulations regarding rental of residential property City of Emily
26		Pat Kestner	Charles Marohn	Randy Moritz

### C. Enforcement Actions

1. **Nancy Cossette.** The Cossette's called and assured that the violation would be taken care of this summer (tree-clearing). We are scheduling a site visit in August to view progress on the property.
2. **Rex Stiner.** This matter (property cleanup) has been referred to the City Attorney.
3. **Jason Quilling.** The property owner has submitted an after-the-fact application. We are waiting for payment of the AFT fee (\$700) to resolve this matter. Mr. Quilling was sent a certified letter informing him he has until the September meeting to pay the fee, or further action will be taken on the violation.
4. **Lake Country Properties.** We received a report of Lake Country Properties providing daily and weekly rentals of residential property within Emily. Lake Country Properties have contacted our office to discuss this matter. Action is pending ordinance amendment.
5. **James and Barbara Szczech.** This property is reported to be leased on a weekly or daily basis through a web site operated by Lake Country Properties. The Szczech's have contacted us about resolving this matter. Action is pending ordinance amendment.
6. **Thomas and Judith Hanson.** These individuals are reported to be involved in leasing of a residential property on a weekly or daily basis through a web site operated by Lake Country Properties. Action is pending ordinance amendment.
7. **Gregory and Wendy Koch.** We received a report that this property has constructed a guest quarters above their accessory structure. This property owner applied for a variance for such and was denied. A site visit was recently conducted on the property and there is a second story in the garage. A letter has been sent to resolve issue
8. **Bob Grecula.** Our office was contacted by Cary Schultz of the DNR, regarding work being done on the Grecula property. An on site inspection was conducted on 5-22-07, and it was documented that landscaping work had taken place. Mr. Grecula stated that he was unaware that a permit was needed to do the work. He has made plans to apply for an after-the-fact permit and submit plans on what he is proposing to complete.

9. **Trent Deboer.** Mr. Deboer has done some significant grading work on his property without the proper permits. The Deboer's have applied for a conditional use permit and a variance for work on their property. **This violation has been resolved with the applications applied for.**
10. **Joe Patterson.** While conducting a variance inspection it was observed that Mr. Patterson had a trench going to the lake. He has been issued a violation letter.
11. **Keith Nichlos.** It has been reported that Mr. Nichlos is operating a solid waste facility. He has excessive debris and garbage on the property. Mr. Nichols has indicated that he is in process of cleaning property.
12. **Douglas Starry.** Property was inspected. Appears to be some wood piles and some debris in yard. Planning Commission can review.
13. **Dan Heggerston.** There is an outside storage violation on the pallet company property. This property has been inspected and found to be in violation. Mr. Heggerston has contacted our office and stated that the materials are for business, and that the saw dust piles will be gradually removed.
14. **Richard Vosen.** Mr. Vosen has done some grading work in the shoreline area of his property. He has contacted our office and said he was unaware that he needed a permit. He indicated that he will submit all application materials and have this resolved as soon as possible.
15. **Judy Marshaw.** There are multiple unlicensed campers, an unapproved dwelling conversion, and an ISTS violation on this property. They have been issued a letter.
16. **Cary Leblanc.** It has been reported that this property has garbage, debris, and abandoned vehicles on it. Mr. Leblanc has been issued a violation letter.
17. **Lisa Woog.** Pine Shadows violation for clear cutting in an area that was not to be. They have been issued a letter.
18. **Randy Rohwer.** Construction of a light within the lake setback area that emits glare onto neighboring properties. He has been issued a violation letter.

#### D. Feedback Surveys

We did not receive any feedback surveys in May.

#### E. Council Action

#### F. ISTS Compliance Testing

Nothing new to report on this item.

## G. CUP and Variance Review

We have reviewed all of the CUP and Variance requests that have not had final inspections and only four remain unsatisfied. A majority of the CUP and Variance requests have been inspected with all conditions being met.

The following conditional use permit and variance properties have not met all the requirements of their permits yet. Further monitoring will take place.

1. **Don Arkell** Variance (2003) A site visit was conducted on the Arkell property in June. One condition from the variance has still not been met. Mr. Arkell has indicated that he is going to submit plans for erosion control this summer, he has had problems due to the slope of the property.
2. **Robert Cincoski** Variance (2005) Construction is still ongoing, it doesn't appear that all conditions have met.

These two site visits have yet to be conducted.

1. **Daniel Springman** Conditional Use Permit (2003)
2. **Dan Sexton** Variance (2004)