

**BOARD OF ADJUSTMENT/PLANNING COMMISSION
CITY OF LAKE SHORE
CITY HALL
MINUTES
JUNE 14, 2010
7:00 PM**

Commission Chair Earl North called the meeting to order at 7:00 p.m. Members of the commission present: Earl North, Dave Baldwin, Dick Miles, Mark Nelson; Lee Martin; Council Liaison Susan Amacher; Zoning Administrator Teri Hastings and City Clerk Patti McDonald. City Engineer Mark Hallan and Alternate Tom Diemert were absent. There were 5 people in the audience. A quorum was present and the Commission was competent to conduct business.

MOTION BY LEE MARTIN TO APPROVE THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MINUTES FOR MAY 10, 2010 AS PRESENTED. MARK NELSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

PUBLIC HEARING

Variance - Ted Matzen requested a variance for the construction of a dwelling at a setback of less than 150 feet from Spider Lake. The proposed dwelling location is on a peninsula. The closest point of the proposed home is 102 feet. The dwelling will have a footprint of 1,716 square feet with an attached 600 square foot garage. A variance will be required for the subsurface treatment system (septic system), a setback of 75 feet is proposed. The property has approximately twenty acres of upland area. The property is described as Tract B, Registered Land Survey 38, Section 16, Township 135 and Range 29. The property is zoned Medium Density Residential (R-2).

The following documents became part of the record – Notice of mailing, notice of publication, notice of public hearing, signed application and attachments and staff reports. There were no written comments received. Mike Burton and one other resident had questions not leaning one way or the other.

Teri's staff report indicated the following: The applicant would like to purchase the property and construct a home on the peninsula portion of the property. The property contains 20 plus upland acres. The setback for the proposed structure is approximately 102 feet where a 150 setback is required. The size of the home would be approximately 1,716 square feet with an attached garage of 600 square feet. The guest home as proposed in the earlier site plan review has been eliminated.

A preliminary ssts (septic system) site evaluation has been done for the property. A variance will be needed for the system. A 75' setback should be sufficient to install a ssts. A complete site evaluation and design will be completed if the variance is granted.

A bluff determination has also been done for that portion of the peninsula where the home is proposed. A letter and sketch are attached pertaining to this matter.

The site plans shows a road out to the peninsula, how would this be constructed? What impacts would the driveway have? How close to OHW (ordinary high water mark) would be the driveway be? Have other variations for road location been looked at to obtain the greatest distance from the lake? In Section 7.13, 5 (page 85) it addresses grading pertaining to roads and drives. Roads and drives shall not be placed within bluff or shore impact zones unless no other reasonable alternative exists. If indeed, the drive needs to be constructed as shown the commission may want to require detailed construction plan, erosion control plan and plans for the

rain gardens specified. In addition, a stormwater permit from the MPCA is most likely needed if the variance were to be granted.

The applicant would need to address access into the property- an easement from Causeway may be needed for the small triangular piece between Lost Lake Road and the platted right of way.

The applicant has indicated the hardship is the unique topography of the property, which limits access, and view of the water when the 150-foot setback is applied.

The applicant should address how the remainder of the property will be utilized? Accessory structures, further subdivisions etc will still be possible if the variance is approved.

The City Engineer's memo indicated the following: The information date May 25, 2010 from Martin Joyce states that locations next to the proposed house area are better options for the septic system. Soil borings 1 and 2 were completed at the two possible locations for the ISTS drainfield. Both proposed drainfield locations have 8 feet of elevation difference and contours vary such that layout of drainfield piping parallel to contours will require considerable grading of either area. In addition, limited access to the building site for construction vehicles will likely cause disturbance of these areas during construction.

The area where soil boring 3 was completed was stated to be 'expensive and would have a high risk of freezing and having future problems.' While the pump and forcemain to this site would be a \$4,000.00 to \$5,000.00 of additional cost as compared to the other sites, 'expensive' is a relative term if compared to the overall development of this parcel of property. Freezing is not a problem as the system can be designed to prevent any such problems. This site should have less 'future problems' as issues associated with building construction activity and future use of the property are not adjacent to the site. The flat area formed by the 1216' contour at the southeast end of the peninsula being considered for development *should be* the area utilized for the ISTS.

The hill or high area being proposed for the residence location has a high point of elevation formed by the 1222' contour. Construction of a residence at this location will require grading outside the 100' setback line and most notably along the west side of the proposed building site. A final site plan showing how all the grading and erosion issues will be handled should be required before a building permit would be issued for this location. It is understood that working out a final site grading plan at this time would be costly for this variance consideration; however, all parties should be aware that if a building is pursued at this location, a detailed site grading plan will be required to address the number of issues related to this specific site. Also, the building elevations provided indicated a large retaining wall coming off the northwest corner of the basement. This is shown in the 'Left/West Elevation'; however, the retaining wall is not shown in the basement floor plan, site plan or the 'Rear/North Elevation'. While not critical at this time, it points out that this unique site will require coordination between the final site grading plan and building elevations to make everything work without a 'fit in field' once construction proceeds.

The proposed driveway, rain gardens and building site will disturb more than one acre of area. An NPDES storm water permit will be required if the proposed or similar project proceeds. The owner should be aware that the erosion control plan for the NPDES storm water permit will be extensive and need to address many issues raised in staff comments. The erosion control plan would cover specifics such as how and where excavated materials for the basement would be stockpiled during construction along with all the intermediate and final vegetation systems.

Earl North read a document into the record stating that Teri Hastings has shared her concern with the perception of a conflict of interest. The administrator and her husband Pat Hastings have had personal business dealings with the present owner of this property and also the realty agent representing the applicant. Because of this potential conflict the findings of fact will be drawn by this committee. The balance of the memo follows:

The following is a short summary of issues regarding this application.

Lake Shore's variance application requires that the property be staked 10 days prior to the committee meeting of June 14, 2010. That had not been done at the time of the site visit on June 10, 2010.

The complexity of the site topographically requires a clear delineation of the proposed structure and features of the affected area.

The OHW setbacks both at 150 feet per ordinance and the requested variance to 100 feet must be delineated. This would apply to both sides.

Access to the peninsula for construction and also the owner's subsequent residential access use must be clearly defined as they relate to potential disturbance to adjacent wetlands.

The design professionals plan for final grades and drainage on the peninsula and also the driveway thru the property.

The City Engineer has submitted a memo to the committee outlining his technical concerns with the proposed variance. Earl is requesting that the owners design consultant and the owner carefully review and consider his comments.

The proposed entry onto Lost Lake Road appears to indicate an unacceptable location. He will not consider a 3rd entry at that corner location. Arrangements with the Causeway Property or others will need to be addressed.

The applicant should be aware that there is a high probability that additional conditions will be imposed on the property restricting future land use if a favorable determination is given. The conditions will address the number and location of structures on the peninsula; the number and location of additional structures on the property other than the peninsula. The committee may address the issue of land conservation within the property as well.

Earl will ask for a motion to deny the variance request before the committee; stipulating that the request maybe resubmitted without additional fees when the property has been properly staked and a new request for a variance has been submitted.

We need a motion, second, then comments on motion, then vote.

Ted Matzen and Mike Angland of Kuepers Construction came before the commission to explain Mr. Matzen's variance application.

Mark Nelson asked if there should be public comment before a motion is made to deny the variance request by ramming this through in one sentence. It is not Earl's intent to or desire to cram this through; he said that the conditions of the application were not adhered to and the property was not staked. Mark said the committee was taken by surprise with Earls comments regarding the application; however, he agrees with the issues that were raised but would like a chance for discussion. Mike Angland asked for clarification for staking as he went out there today to stake. He didn't stake what the commission requires; however, he wasn't aware that the driveway needed wetland delineation flags. Earl also said that a clear and precise hardship should to be made.

MOTION BY LEE MARTIN TO DENY THE APPLICATION FOR THE TED MATZEN VARIANCE WITH THE OPPORTUNITY TO RESUBMIT WITHOUT ADDITIONAL FEES WHEN THE PROPERTY HAS BEEN PROPERLY STAKED AND A NEW REQUEST FOR A

VARIANCE HAS BEEN SUBMITTED. DAVE BALDWIN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Ordinance Amendment - CIC Plats - The Lake Shore Planning Commission will consider an ordinance amendment dealing with land use and subdivisions within the city. The ordinance will pertain to Common Interest Communities. Teri said that the CIC plats or common interest community plats which is similar to the Hunting property that was recorded without city approval.

Ordinance Amendment - Metes & Bounds Subdivision - The Lake Shore Planning Commission will consider an ordinance amendment dealing with subdivisions within the city. The ordinance amendment will require approval of the city before recording a subdivision.

MOTION BY MARK NELSON TO RECOMMEND MOVING FORWARD TO THE LAKE SHORE CITY COUNCIL THE ORDINANCE AMENDMENTS NO. 2010-02, SECOND SERIES AN ORDINANCE DEALING WITH LAND USE AND SUBDIVISIONS WITHIN THE CITY OF LAKESHORE AND ORDINANCE NO. 2010-03, SECOND SERIES AN ORDINANCE DEALING WITH SUBDIVISIONS WITH THE CITY OF LAKE SHORE PER STAFF REPORTS DATED JUNE 3, 2010. DICK MILES SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

NEW BUSINESS

Lot Split - Eveline Douglas – Teri's read her staff report into the record, which indicated the following: The applicant is requesting to adjust a common boundary line to create a buildable lot without variances. The property is zoned Medium Density Residential, Open Space (wetlands) and Low Density Residential. A map showing the existing configuration of the property is attached along with the Registered Land Survey showing the proposed configuration.

Tract B contains a gross area of two acres and tract A contains a gross area of 38 acres. Both tracts have significant wetland features adjacent to the shoreline. The minimum area needed for a buildable lot is 15,000 square feet. The net area for tract B is 1.4 acres. It has been determined that tract B does not contain a bluff. Tract A and B meet the minimum lot size requirements.

The survey has been done by a licensed surveyor and a Registered Land Survey has been prepared according to the provisions of Chapter 508 Minnesota Statutes.

The buildable area of each tract is shown with a dotted line with the exception of the wetland setback which is 30 feet. It appears that there is an adequate building envelope for both tract. Each tract shows a typical home, SSTS (septic system) along with an alternate site.

There are no existing improvements on either tract of property.

The applicant or the applicant's representative should address access into tract b. Archer Road is a platted public road; residents have constructed a road/driveway on a portion of the right of way and are currently privately maintained. A portion of the existing road may be on private property. An easement may be needed to utilize that portion of the existing driveway located on private property. The other option would be to have the applicant construct a road within the platted right of way. This would not be a city maintained roadway unless it was constructed and brought up to city standards. Teri requested the attorney verify this information, at the time of the report she had not received a response.

The near shore aquatic conditions are very sensitive. This is the vicinity of the wild rice and contains large amount aquatic vegetation. It appears from one map that there is some open water for a dock however; this should be confirmed with an onsite visit.

This property will fall under the Lake Margaret Overlay district as well and the recent vegetation removal standards. Photos of the shoreline, shore impact zone, and near shore will be taken for the file.

Chris Hogland with Westwood came before the commission to explain the application of Eveline Douglas requesting a lot split. It is to essentially get a buildable lot as Tract B and in the future to create a conservation easement on Tract A.

Dave Baldwin asked where the access would be. The intended access will be on Archer Road. Teri said that Howard Avenue is a dedicated to the public road. The driveway would have to be constructed on Howard Avenue to get to Archer Road. Teri said the road has not been constructed; however it has been dedicated on the plat. Mark asked if the application could be approved if the road easement isn't on the plat. The dedicated right of way is on the plat. Dave Baldwin suggested that Chris talk with Pat Pomeroy as they did last year to secure an easement on the property. Mark Nelson asked if she was contacted. Teri said that this is not a public hearing notice. Teri said the lot is already there and this is just a lot line adjustment. Chris confirmed that the wetland is above the ordinary high water mark. He also said that this is not a lot split; it is a lot line adjustment. Earl North asked that Dave Baldwin recuse himself from the vote, as there is a potential conflict of interest as he is a neighboring property owner.

MOTION BY DAVE BALDWIN TO TABLE THE LOT LINE ADJUSTMENT FOR THIRTY DAYS FOR MORE INFORMATION. MARK NELSON SECONDED THE MOTION. Earl said that this lot line adjustment and public notice is not a required. Chris asked if there are a few more people at the next meeting that don't like the idea will this help defeat the lot line adjustment. The road access already exists. Teri wants to know what additional information that Chris needs to supply. Dave said that he doesn't know if people know where Howard Avenue is. Chris said that he could indicate and mark where Howard Avenue and Archer Road are. DAVE AND MARK –YES; DICK, EARL AND LEE VOTED - NO. MOTION FAILS.

MOTION BY LEE MARTIN TO APPROVE THE LOT LINE ADJUSTMENT FOR EVELINE DOUGLAS PER SITE EVALUATION DATED 3/23/10. DICK MILES SECONDED THE MOTION. Dave Baldwin recused himself and thinks this is poor judgment as public officials by not notifying the neighboring properties. He said expect another conversation regarding Howard Avenue. Mark feels that Dave shouldn't recuse himself and he doesn't think that Dave has a conflict of interest and it should be proven. Earl said if there is a potential conflict of interest it is in everyone's best interest to recuse himself. Mark asked how close Earl lives. Earl said over 1000 yards. EARL, LEE AND DICK VOTED YES. MARK VOTED NO. Dave didn't vote. MOTION PASSED.

OLD BUSINESS - There is no old business.

REPORTS

City Engineer – Mark Hallan was absent.

Chairman – Earl North said there is a process and when he took the chairman position from what he understands he is to function as a facilitator and generally doesn't make motions. If at anytime any member of the committee feels that he is acting inappropriately or against the best interest of the city they can request a ruling by the chair which can then overturn the decision or any action the chair has done that the vote is requested on. He said that his decision on the Howard Avenue issue is there is a monument in place to make a concrete decision. The reason he can't determine where the house would sit on the peninsula is that it is more difficult than finding a monument. Earl didn't appreciate Marks comments during the earlier discussion. The second issue said that this is not personal business and if the committee doesn't agree on something it doesn't mean that it is against a certain member. He said that Teri followed the ordinance policy for the lot line adjustment.

Council Liaison – Susan Amacher had nothing to report.

Zoning Administrator – Teri Hastings said that over the past year and a half that the police department has received several noise complaints against Zorbaz. A noise meter has been purchased and it has been used to gather the decibels for the voices and the music. When a business is on the lake the noise travels whatever way the wind is blowing. The new problem is a strong-arm game and a bell is rung continuously. A complaint came in after 1:00 a.m. and when an officer asked Lee J. owner of Zorbaz to stop he refused to halt the game. Teri said we would like to work cooperatively to come to an agreement. Lee Martin asked when closing time is. It has been approved by city council to allow Zorbaz the 2:00 a.m. closing. Mark said that it is commercially zoned and asked if this is different from the noisy neighbors caused by the rental of private homes. Teri read from the ordinance regarding noise and the intensification of noise. She said that we hope to work this through cooperatively; she said in the past Lee J. has adjusted his speakers for the loud music to help that matter. Lee J. is trying to figure a way to muffle the sound. Mark asked if the police go to Zorbaz similar to the amounts of barking dogs. Teri said that they are

Ryan Amacher said that he has called the police for noise issues due to fire works. He said that it isn't just around the Fourth of July and after 10:00 p.m. it goes on for days. He said that it has come to leaving over the Fourth of July. The commission agreed that this is unfortunate. Linda Martin said that there are fire works up on Upper Gull too.

PUBLIC FORUM – Dave Baldwin said that it is a single lane going into the Douglas lot line adjustment and asked why it wasn't kept the same length of the entire lot. Teri said so they could access the lot. Lee asked about the riparian rights and how much rice they can collect. Teri said it falls under the Lake Margaret Overlay and a permit is required by the state and the city to harvest wild rice. Dave asked how far Tract A is from being a park. Teri said that the city applied for a Legacy money grant and the land from Tract A is the land that was applied for in the grant proposal. Dave is going to make sure that the landowners know that this commission agreed to the lot line adjustment without landowner's knowledge. Earl said he didn't intend for anything to be done without the awareness of property owners. The proper channels were followed and absent of a sustainable argument the action can't be stopped. Teri said she is open to changing the policy and can't arbitrarily decide who she notifies or not. Dave said that it the impact to the landowners that should be taken into consideration.

Mark Nelson said that it's not a comeback or in defense of himself; he asked who wrote what Earl read for the Matzen variance. Earl wrote his concerns as he reviewed the variance before the meeting to share with the commission. Mark said that he hasn't ever had a a motion brought up by somebody that wrote it themselves, brought to this board without any discussion about it. He said the discussion part is fine, there isn't supposed to be any discussion between this board prior to a public meeting. Mark asked for a motion and said the board could vote for or against it; but he said in Earl's own words if the chairman ever has an influence to the vote of a proposition this board is discussing that the board can make a motion to have what the chairman said or did removed from the record. He said he has never heard anything read like that that went right to a vote with no public comment. He said the memo was from the chair and not from the engineer or and if the board just wants to roll over and vote unanimous like it always does without proper discussion without the person that paid the application fee being informed with what they're being asked to do; just vote it down and table it. Is that what indulgence of the board means? To go with what I'm reading to I'm making a motion; go with me without asking any questions. Mark was sorry how he brought it up the way he did, but dog gone it he meant it. He felt that project was totally denied in the chairman's mind. He won't roll over and not be heard. The riparian rights on the last property didn't expand with the vote. He said it was an adjustment. He said just because a person has an opinion doesn't mean it should affect the outcome of this boards decisions. He said he has been asked why this board is always unanimous when it comes to the

vote. He said check the records he does vote no once in a while. Mark said he feels the whole board should feel insulted by being asked to vote on something without an opinion.

Earl said that he had asked for indulgence to read into the record in his opinion the pertinent facts that needed to be established before sending the applicant out of here with their idea rather than what we're going to require. If there is something in that list of issues that he put before them that is over reaching or inappropriate that can be fixed or taken back, it can be challenged. He said what he was trying to do was establish if Teri had a conflict of interest that needed to be set aside; that there were issues with the property line, one that they hadn't staked it and Teri, Susan, Lee and Earl walked around for an hour and a half before they found the site which was more difficult that walking up to a monumented piece. Mark didn't go on the site visit and Earl said it was difficult to find the site. Earl said there is always an option if someone feels he as the chairman is over reaching or done something wrong to request a no vote. He said he hasn't kept track of unanimous votes; however, he has heard some pretty stiff arguments about a lot of things before this board; most of the members come to the meeting well prepared and ready to argue their point of view and won't apologize for having a point of view. He said wants something good to come out of this piece of property so the property can come off the market and be used. He said he hadn't predetermined anything and reminded the board that no one has ever walked in and out of here with a variance for setback because they wanted a better view (not with raw property).

Dave Baldwin needs to understand that what he asked for was allowable when asking to table or postpone an item at his request without a motion and asked for the city attorney's opinion. He said that in different cities one person/commission member has the capacity to table an issue.

Teri said in response to the unanimous vote comment she has been sitting on boards for 18 years. She said that through the process of the commission they come to middle ground to allow for a consensus, which allows for a unanimous vote.

Mark Nelson said that Teri abstained from the meeting because of what, she doesn't have a vote. Teri doesn't have a vote; however, she does make staff recommendations on an application. She didn't make a recommendation for that application upon her request. Susan said she thought it was a good idea to recuse her.

MOTION BY LEE MARTIN TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF JUNE 14, 2010 @ 8:45 PM. DICK MILES SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald
Lake Shore City Clerk