

Official Lake County Planning Commission
Minutes
Silver Bay Service Center
March 16, 2020

Approved as
submitted
6/15/2020

The Lake County Planning Commission sat in session at 6:00 p.m. on this date and conducted hearings & other business.

Members Present: Mike Hoops, John Bathke, Sue Smerud, and Commissioner Rich Sve.

Members Absent: Dan Zeimet,

Planning and Zoning Staff Present: Christine McCarthy (Environmental Services Director)

Chairman Mike Hoops opened the meeting at 6:00 p.m.

The first hearing, **I-20-004**, was a renewal interim use application for a vacation rental home filed by **Right Path LLC** on property described as: All that part of the SW1/4 of the SW1/4 lying S of the S line of the NLY 339.76' thereof; & N of the N line of W 330' of the S 600' thereof & W & N of Line A & N of line B desc in Exhibit A Bk 135D pg 345; & W of centerline desc. In Exhibit D of said Bk/pg less the W 293.18 ft. in Section 20, Township 52, Range 11, 2.7-acres, zoned R-3/Residential, 2.5-acre minimum, Unorganized Territory 2. PID: 25-5211-20611

McCarthy read the legal requirements. There was one letter of opposition signed by 12 adjoining property owners.

The application was represented by Chad Scott. Scott stated the rental has been successful, it is rated 5-star on VRBO. He responded to the letter: 1) Commercial enterprise: the rental is meant to offset the cost of ownership. The home is also used by family and friends. The property is owned as an LLC [Limited Liability Company] based on the advice of a lawyer. 2) The road was determined to be suitable for emergency vehicles at the time of approval one year ago; staff contacted the Two Harbors fire [chief], who stated it was as good or bad as many other roads. 3) Knife River property is his personal residence, but due to personal reasons, is owned by the LLC. They thought they could do short-term rental, but then found out the property does not meet requirements of vacation rental. They would rent long-term if they found a suitable tenant. 4) Not all neighbors are against the

rental; they are friends with other neighbors. Wotruba's clear the snow from their driveway and parking area. 5) Excessive traffic: they have rented 104 days out of last 365 days, which would mean less traffic than a residence. 6) Smoke from fires: guests are allowed to have small campfires, which seems normal for the area; neighbor has had large fires to remove debris from yard and there have been no complaints about that. 7) Noise after quiet hours: there have been no sheriff's reports of complaints. 8) Comments being made to homeowners as guests drive by – Scott doesn't believe this has happened, they are very clear with guests to be respectful of land and neighbors. 9) Excessive traffic: already addressed, not any more than an average homeowner. 10) The septic system is undersized: the septic system meets the requirements and guest capacity is limited to meet requirements; a flow meter is installed to monitor usage. 11) The intermittent stream is perhaps referring to Peterson Excavating redirecting run-off during construction of the driveway and parking area.

Larry Olsen showed Planning Commission maps of property with the intermittent stream identified. Olsen stated the stream does not have a defined bottom [a unclassified waterway with a defined bottom requires a 50' setback for septic systems and structures]. McCarthy stated that Planning and Zoning has confirmed this waterway does not have a defined bottom.

Hoops opened the hearing to comments from the audience. No one was present to speak in favor. Comments against were opened. Bill Hermanson spoke against the rental and submitted photos to the Planning Commission. He referred to the letter he sent to and to which Scott had just listed his responses. He stated a Fed Ex truck got stuck this winter and needed to call a wrecker. He stated people are speeding on the road. Also, Scott is not contributing to the maintenance of the road. He has seen garbage on the road, which he assumes is from renters, because no one else uses the road. He expressed concerns with drainage from intermittent stream. He believes the septic system is undersized because a review on VRBO mentions "4-bedrooms". He stated pets have been

an issue with noise. He also had concerns about the tax classification. He referred to the letter sent by neighbors for the initial approval a year ago, stating except for Joe Wotruba, they all remain against this rental. He is also concerned about the identical cabin Right Path is building on the adjacent property and if it will also be a vacation rental.

Vicky Gorman expressed concerns over renter's dog that got onto their property when they had their dog out, fires that send smoke into her window at night, a karaoke machine being used right before 10 PM, lack of communication from Scott, concern with traffic, she heard he is moving to the Cities and will rent out the other cabin, maintenance of the road, and garbage on the road. She expressed her concerns that this section of Salakka Rd. is private, and privately maintained and he, as a business owner should contribute to the maintenance.

Byron Gorman stated their house is closest to the rental. He stated the intermittent stream is an issue because it has been diverted, and with heavy rain it washes out the road. He stated there is a 3-foot culvert under the road for a reason.

McCarthy addressed the intermittent stream. She clarified that it was not an issue for location of the septic system. She stated as far as drainage and the road, that is something that can be looked into.

Hoops asked if anyone had called the Sheriff with complaints. Vicky Gorman stated they hadn't called the Sheriff, but they did contact Planning and Zoning. McCarthy asked when that happened. Byron Gorman stated they came to the office last summer [2019].

McCarthy addressed the size of the septic system. She stated the flow meter readings were submitted and were within the limits for that size system.

Byron Gorman stated when there are a lot of people at the rental cabin he can smell a sewer smell, which shouldn't happen. McCarthy stated Planning and Zoning did follow-up on the complaint of a sewer smell and they didn't find any smell or evidence of seepage from the mound. She asked to be notified when it happens. He stated it happened twice. She reminded him that the guest capacity is based on the septic size. Hoops stated it had 11,600 gallons over 10 months on a 9000 gallon per month system. Hoops stated the call

needs to be made right away so it can be investigated. He also stated that roof vents can give off a smell as they are the vent for the septic system. He stated an air inversion can push the smell towards the ground.

McCarthy asked Scott about his property in Knife River on Skiff Landing Road that he had listed as a short-term rental, and why he didn't think it was short-term rental. Scott responded the property was his family's residence until his divorce. He was required to sell it as part of the divorce. His small group of friends, which makes up the [Right Path] LLC, bought it so he and his daughter could continue to live there. He hasn't rented it, but initially thought he could. The County [Planning and Zoning] said it didn't meet requirements. McCarthy asked why he thought he could rent it, since he had already been through this process [for short-term rental Interim Use permitting]. She stated this rental was recent, the letter to you was sent in February 2020. Scott insisted they are only offering it for 30 days or more. McCarthy asked about their Salakka Rd. rental advertisement where they say if looking for accommodations for more than 6 guests to contact you? McCarthy stated her point is the difficulty communicating to Scott what is and isn't short term rental and what is allowed.

Scott stated the ad for the Skiff Landing Rd. house had 15 to 30-day rental to allow people to search for the house, but the reservation calendar would only allow 30 days. He stated the Skiff Landing House has not been rented for even one day.

Smerud asked Scott how many places he and the LLC are renting. Scott stated the LLC owns the place [Skiff Landing] where he is living. She referred to the minutes from last year where he states the 2nd cabin on Salakka Rd. will be where he will live and manage the rental next door. He stated the 2nd cabin isn't finished.

Sve asked about his plans for the 2nd cabin on Salakka Rd., adjacent to this rental. Scott stated the plan is for he and his daughter to live there. He explained that when they started this plan to do vacation rental 2 ½ years ago, they planned to rent the lake home [Skiff Landing], but now they can't, so they have listed that house for sale.

Smerud clarified she is interested only in how many rentals Right Path LLC has, and if they have

3 rentals is that still considered vacation rental.

Sve stated he didn't see that living next door was a condition of last year's approval.

Hoops stated it was part of the discussion and there was an understanding Scott would be next door to manage the property.

Bathke stated he didn't think it mattered how many properties the LLC owns and/or rents. Hoops stated it would only matter if they were on the same property, then it would be a resort.

Smerud asked about the rental for 9 guests, they have a 6-guest limit. Scott stated he had transposed the number of days and number of guests; he stated it was 2 guests for 9 days.

Sve stated the number one concern is that vacation rentals should not impact the neighbors. Sve asked about the culvert and if the drainage way was diverted away from it. He is concerned about how the road is flooding. A neighbor asked to respond. He stated the place where the stream used flow was to the north and that area has been filled causing the stream to flow along the side of the property to the culvert. The culvert can't handle the heavy rains, so it flows across the road. Scott stated Peterson Excavating put in a larger culvert last summer to handle the heavy rain and it looks like it is handling the spring run-off so far.

Bathke asked if the runoff would be addressed as part of the [Land Use] permit that was issued. McCarthy stated that engineering for run-off and roads is not part of the Land Use permitting process.

Sve stated campfires with vacation rentals has been an issue before. There was discussion about relocating the fire ring or limiting hours. Sve emphasized the need to be a good neighbor.

Sve addressed the comment about taxes; taxes are not part of this Board; the Assessor's office that classifies properties for taxes.

Sve stated trespassing of animals or people is unacceptable; demarcation of boundary lines is required for vacation rentals.

Scott stated he does not want neighbors to be bothered, and if they contact him, he can be there

in 5 minutes. Hoops stated Scott should be sure to give neighbors his contact number. Hoops stated that at the initial approval the understanding was Scott would be living in the cabin being built next door, and neighbors would be able to go and talk to him.

There was general discussion about the road/shared driveway. Mr. Hermanson stated for 20 years if the road needed gravel, everyone contributes. They do not wish to establish a road association because of potential liability issues. Hoops stated this is a civil matter. Sve asked Scott what he contributes to the road. Scott said they are willing to contribute equally to road maintenance. He stated they have provided sand and gravel for neighbors, Joe Wotruba and Jim Easterbrook.

Smerud stated the condition from the initial approval to establish vegetation by June 1, 2019. She stated pictures taken by Neva Maxwell for this hearing shows exposed soil. There was general discussion about establishing vegetation and making that a condition. Planning and Zoning will follow-up in the spring.

There was discussion about how to address issues regarding the road. McCarthy suggested working with someone to address drainage issues. Sve suggested a one-year renewal to ensure concerns are addressed. Hoops stated the importance of vacation rentals not impacting neighbors.

Motion by Smerud supported by Bathke to recommend County Board approval for the Interim Use application for one (1) year with the findings & conditions:

Findings:

1. Safe access from Salakka Rd. exists and there is appropriate parking available.
2. The property meets impervious surface requirements. Concerns about stream/drainage onto road were discussed. Applicant should seek recommendations from Soil and Water Conservation District to correct drainage onto the road.
3. The property does not have established vegetation yet from construction.
4. Construction is complete and vacation rental will not impact public waters or wetlands.
5. The septic system was installed in 2018 and received a Certificate of Compliance

on 10/29/2018 for 3 bedrooms. Septic is designed for limited water use. Flow meter records indicate use is appropriate for the design. Planning and Zoning investigated odor complaint and did not find evidence of septic seepage.

6. Vacation Rental activity has not proven to be harmful on neighboring properties if conditions are met; this property is not meeting all conditions.
7. Vacation rentals have not proven to be detrimental to neighboring properties. Improvements need to be made per conditions.
8. Vacation Rentals are permitted through Sections 6.16 and 27.06 of the Lake County Land Use Ordinance.

Conditions:

1. All exposed soils stabilized, seeded, mulched by June 1, 2020. Vegetation must be maintained to permanently stabilize soils.
2. Quiet hours from 10 PM to 7 AM.
3. No discharge of firearms or fireworks.
4. ATV's/Snowmobiles must be trailered while on the property.
5. Outdoor fires must be in a designated fire ring. Fire ring must be relocated so smoke is not an issue for neighbors.
6. Occupancy limited to 6 guests maximum.
7. Property demarcation signs must be placed per requirements of Section 6.16 of the Land Use Ordinance.

Motion carried. Sve, Bathke, Smerud voting in favor. **(PCR-20-008)**

The second hearing, **I-20-003**, was an initial interim use application for a vacation rental home filed by **BJ Hilton** on property described as: 03 acres out of SW ¼ of NE ¼, 1.65 acres out of Outlot 1 of Gov't Lot, & Nly 50' of Sly 200' of Outlot 1 of Gov't Lot 2 as desc. in doc no. A000168128 in Section 20, Township 55, Range 6, 2.25 acres, zoned R-C/Resort-Commercial, two-acre minimum, Unorganized Territory #1. PID: 24-5706-20160/20795/ 20800.

McCarthy read the legal requirements. There were no items of correspondence. She stated Hilton had a vacation rental approval in 2017, but due to issues with the well, she never rented.

The application was represented by BJ Hilton.

Hilton described her property. She has spoken with her neighbors about the rental. She has experience with vacation rentals, she has one at Superior Shores Lake Homes and one in Cook County since 2005. She has not had problems with renters. She has clear rules and keeps in contact with her renters. She uses Jones Cleaning Service. She is familiar with the conditions and requirements.

There was no one in the audience to speak for or against the application.

Sve asked what happened after the 2017 approval. Hilton stated she had a lake water system that was damaged in a storm. She didn't get a well drilled until fall of 2018 and didn't get the water connected to the house until spring of 2019. She then had issues with her septic system pump, which didn't get fixed until February 2020.

Motion by Hoops supported by Bathke to recommend County Board approval for the Interim Use application for one (1) year with the findings & conditions:

Findings:

1. Safe access from Hwy. 61 exists and onsite parking is in place.
2. The lot meets impervious surface requirements.
3. Established lot with good vegetation coverage.
4. There is no evidence of impacts to Lake Superior.
5. There is a new well and the septic system has passed a compliance inspection 8/17/2019 with a Certificate of Compliance for 3 bedrooms.
6. Vacation Rental activity has not proven to be harmful on neighboring properties if conditions are met; this property is not meeting all conditions.
7. Vacation rentals have not proven to be detrimental to neighboring properties. Improvements need to be made per conditions.
8. Vacation Rentals are permitted through Sections 6.16 and 27.06 of the Lake County Land Use Ordinance.

Conditions:

1. Quiet hours are observed from 10:00 PM to 8:00 AM.
2. Renters are not allowed to bring pets.

3. No discharge of firearms/fireworks.
4. Property boundaries are clearly marked along boundaries, with special attention to the beach area.
5. ATVS/snowmobiles must be trailered while on the property.

Motion carried. Sve, Bathke, Smerud voting in favor. **(PCR-20-009)**

The third hearing, **C-20-004**, was a conditional use application for an existing building to be used for a warehouse and retail business for owner's business or rental filed by **JBL Industries** on property described as: All that part of NE ¼ of NE ¼ which lies NWly of R/W of US Hwy 61 as desc. in doc. no. A000162112 in Section 10, Township 52, Range 11, 6.43 acres, zoned C-R/Commercial-Rural, 2-acre minimum, Unorganized Territory #2. PID: 25-5211-10020.

McCarthy read the legal requirements. There was one (1) item of correspondence with concerns about noise and junk cars in the property. McCarthy stated she would like to see his operations outside the building included in the permit. She explained since he is already seeking a Conditional Use Permit, it would be good to include that part of his business in the permit so there is no confusion as to what has been approved for the property.

Jack Lax represented the application. He purchased the building 3 years ago. There was an existing Conditional Use Permit for the property, so he didn't know he needed a new permit. He rents space to Fastenal and Castle Danger Brewery and uses space for his own business as a septic installer.

McCarthy explained that the CUP had gone unused for more than 12 months so that is why a new permit is needed. She also explained the use is different from the original Conditional Use Permit.

Hoops asked about Lax's personal business. Lax stated he stores his trucks on site. Hoops asked if there would be additional storage or stockpiling of materials. Hoops also asked about fuel tanks, scrap metal, and equipment repair. He stated it would be best to have the permit encompass all Lax's plans so he doesn't have to come back for a new permit. Lax stated he doesn't plan to grow beyond what there.

McCarthy stated one concern is impervious surface and storm water run-off. She calculated about 3.15 acres of disturbed or impervious surface out of the 6.43-acre lot. This is near the 50% impervious surface limit. McCarthy state she thinks a storm water management plan would be appropriate for this property. She also stated he is not applying for a junkyard, so he cannot store more than 4 junk [unlicensed] vehicles on the property. McCarthy stated the fuel tanks are being leased by Lax, and she informed him of the need for an MPCA permit. She would like to see that as a condition.

Hoops opened the hearing to public comments in favor. Brian Lax (Jack's father) explained the complaint about noise from a neighbor was regarding snow removal that Jack was doing at night. He stated Jack wants to be a good neighbor. There was no one to speak in opposition.

Sve stated the complaint referred to abandoned vehicles and junk on the property. He looked at the property and didn't see anything out of line. He saw some snowmobiles, an old car, and a few items of junk, which he should clean up. He would like to address hours of operation. He stated nothing has changed on this property, there is no new construction, and he hasn't exceeded the 50% impervious surface, so his opinion is that Lax shouldn't need a storm water plan.

There was general discussion about the history of the development of the site and how to obtain a storm water pollution protection plan (SWPPP).

McCarthy explained the finding of e. coli in a water sample that was taken in the drainage ditch by his property when the Sonju septic system (across the hwy) was being evaluated. McCarthy explained the source couldn't be determined, but she will follow up in the spring.

Sve asked if there are living quarters in the building. Lax stated there were, but now it is his office.

Motion by Bathke, supported by Sve to approve the Conditional Use application with the following findings and condition:

Findings:

1. Safe access exists off Stanley Road and

there is adequate parking.

2. Meets current impervious surface requirements. A stormwater plan will be required before expanding or storing materials on site. [This was a misreading of the Land Use Ordinance. See Article 15, Section 15.01, C. Maximum impervious surface is 40% in Commercial-Rural District. Anything in excess of 15% requires a storm water plan]
3. The development of the lot is pre-existing; vegetation is established around the impervious area.
4. The operation is existing with no activity that will impact public waters or wetlands.
5. Utilities and buildings in place. Septic system is compliant and drainage adequate.
6. The Land Use Ordinance addresses signage and lighting requirements. This is a commercial-zone; however, applicant has been advised to be a good neighbor and do noise-generating activities such as loading/unloading in the daylight hours. The yard must be kept orderly and junk may not be allowed to accumulate.
7. This is in the Commercial-Rural Zone and will not impact surrounding properties; it has been a commercial operation for a long time.
8. This use is allowed under the Land Use Ordinance and Comprehensive Plan.

Conditions:

1. MPCA permits required for fuel tanks.

Motion carried. Sve, Bathke, Smerud voting in favor. **(PCR-20-010)**

Motion by Sve supported by Bathke to approve the February 24, 2020 minutes as corrected. Motion carried. Sve, Bathke, Smerud voting in favor.

Other Business:

There was discussion about a current rezone on the north side of Garden Lake from Residential-2 (5 - acre minimum) to Residential-Recreational (1-acre minimum). The application is for the property owned by Deer Ridge Resort. McCarthy stated that property adjacent to Recreational Development classified lakes is typically R-R. McCarthy recommended, to avoid spot-zoning, that the Planning Commission initiate a rezone request for the area to the north and west, owned by Minnesota Power. All members agreed to initiate a rezone

request from R-2 to R-R.

There was discussion about gravel pits that existed before zoning and are operating as "grandfathered". There was general discussion about permitting requirements when these operations expand beyond the use that existed at the time zoning came into place.

McCarthy introduced discussion about a Bed and Breakfast with a Conditional Use that has had complaints from neighbors of guests trespassing. This has happened for the past few years. McCarthy spoke with the B & B owners after a complaint last year. Now it has happened again. Hoops suggested a trespassing complaint should be filed with the Sheriff's office before the Planning Commission takes any action.

Sve explained the actions being taken by the County to deal with the COVID-19 crisis. Sve is on the Response Committee which also includes the Human Resources Director, Human Services Director, Emergency Management Director, and County Administrator. They are meeting 3 times a week. He said all non-County meetings in County meeting spaces have been canceled.

There was general discussion about whether Planning and Zoning should continue to accept applications that require public hearings. Sve thought this would be a County Board decision.

Motion by Sve supported by Smerud to adjourn the meeting. Motion carried. Sve, Bathke, Smerud voting in favor. Meeting adjourned at 9:45 p.m.

Respectfully Submitted,

Jill Paron
Environmental Services Specialist