

**BOARD OF ADJUSTMENT/PLANNING COMMISSION  
CITY OF LAKE SHORE  
LAKE SHORE CITY HALL  
MINUTES  
FEBRUARY 14, 2022  
9:00 AM**

**Commission Members in attendance:** Arla Johnson, Gene Hagen and Pat Hastings; Alternate Glen Gustafson; Council Liaison John Terwilliger; City Engineer Joe Dubel, City Attorney Dan Hawley; City Zoning Administrator Teri Hastings and City Clerk Patti McDonald. Absent were Chair Jim Woll and Bob Toborg; Alternates Shawn Hansen and Pam Poston. A quorum was present and the Commission was competent to conduct business. There were 12 people in the audience at City Hall including Mayor Krista Knudsen.

Arla Johnson called the meeting to order at 9:00 a.m.

Approval of the January 10, 2022 Regular Meeting Minutes – MOTION BY GENE HAGEN TO APPROVE THE MINUTES FOR THE JANUARY 10, 2022 BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

**PUBLIC HEARING** – Arla reminded the audience this meeting will follow meeting procedures established for a city council or planning commission meeting and that there are copies next to the agendas.

Variance Request – Juliene Wood/Lakes Area Surveying – Juliene Wood/Lakes Area Surveying requested a variance for the purpose of constructing a two story 1475 square foot home with a 690 square foot attached garage at a setback of 10' feet from the south property line and 15' from the edge of the delineated wetland. The home will be 75' from Upper Gull and will not exceed the impervious coverage limits. The property is legally described as Part of Lot 2, Block 2 Clark's Addition (property is located between addresses 7468 and 7480 Doyle Parkway) and is zoned medium density residential.

The following documents became part of the record – Notice of mailing, notice of publication of public hearing, signed application and attachments and staff report. Teri read a letter (on file) of opposition into the record from Ryan and Allison Vandewiele, 7480 Doyle Parkway; the adjacent property owner to the south and oppose the 10-foot sideyard setback. Teri did hand out an addendum to the staff report recommending to deny the request for a 10' sideyard setback and approve the request of the wetland setback of 17' as the variance is necessary due to the topography (wetland) of the property. She explained the lot is a preexisting, pre-platted lot from the 1960's; so, if this was platted today, it would look a lot different.

Paul Herkenhoff from Lakes Area Surveying came before the Commission to explain the application and answer any questions or concerns of the Planning Commission.

Teri's staff report indicated the following: The applicant is requested a variance to construct a 2165 square foot home which includes an attached garage at a 10' sideyard setback from the southerly property line and 17' setback from the delineated wetland (after fill). The proposed home will be 75' from Upper Gull Lake.

The property is a pre-existing platted lot. It was platted in 1969 as a residential lot. This lot could not be platted today as the city's ordinances require a minimum of 20,000 square feet of buildable area. Newly platted lots should be able to be built on without variances. This property has a lot area of 49,716 square feet.

A large area of the property is considered to be wetland. The wetlands have been delineated by Brinks Wetland Service. The applicant is working with the Cass County Soil Water Conservation District for a 400 square foot

wetland exemption. Property owners are allowed to fill 400 square feet of a wetland with approval from the SWCD. The Cass County SWCD administer the Wetland Conservation Act on behalf of the city.

The site does have an irregular shaped building envelope due to the large amount of wetland. The wetland creates a practical difficulty for situating a home on the property.

The survey shows the proposed septic and well location however, due to winter conditions a septic site evaluation and design is not possible. Soil boring are necessary for the evaluation and design. The licensed designer, Martin Joyce has conveyed to the surveyor the amount of area needed to accommodate a typical system which is shown on the survey but the soils will have to verified in the Spring. Soils in this area can vary especially with the wetland.

The amount of impervious surface for the property is approximately 11% with the proposed home and driveway. The maximum amount of impervious surface allowed is 25%.

The applicant has included elevation drawings of the proposed home which meet the ordinance requirements. The proposed home is a two-story home.

The property is well screened from the lake, there is a large white pine at shore which provides natural screening. This screening or buffer shall remain.

Due to the small buildable area, a drainage plan showing how runoff will be handled should be submitted.

#### STAFF RECOMMENDATION

Recommend approval of the variance due to the topography (wetland) of the property. The circumstances of the property were not created by the property owner and the property will be used in a reasonable manner; residential. The variance if granted will not alter the essential character of the area which is residential lake homes.

The following conditions should be made as part of the approval:

- A complete septic system site evaluation and design should be submitted and approved prior to the issuance of the permit. If a design cannot be approved, the variance will become void.
- Evidence of the Cass County SWCD approval of the 400 square foot wetland fill/exemption submitted prior to the issuance of the permit.
- The significant white pine at the shore shall not be removed. The tree may be limbed to a height of 10' from the ground.
- A drainage and erosion control plan should be submitted prior to any permit being issued for the property. Silt fence should be placed around the perimeter of the wetland and lakeside.
- The applicant should participate in the Lake Steward Score Your Shore Assessment and Lake Steward program (GCOLA has this information).

Pat Hastings recused himself from the application as the company he works for is representing the sale of the property.

**MOTION BY GENE HAGEN TO APPROVE THE VARIANCE TO THE 17' WETLAND SETBACK REQUEST DUE TO THE TOPOGRAPHY (WETLAND) OF THE PROPERTY; WITH THE CONDITIONS SET FORTH IN TERI'S STAFF RECOMMENDATION AS PRESENTED. THE VARIANCE WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE AREA WHICH IS RESIDENTIAL LAKE HOMES. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED.**

Arla asked Teri if there were any more concerns. Teri said that in her addendum was included the rational for the denial of the 10' sideyard setback after reviewing the concerns of the adjacent property owner and the

dwelling width could be decreased by 5' and still meet the minimum width of 24' for a dwelling, which would allow for the 15' sideyard setback requirement.

Paul asked if the square footage for the structure would still be allowed, no closer than 17' to the wetland. Teri said it would as long as they meet the impervious coverage and still meet the 15' sideyard setback, no closer than 17' from the wetland and maintain the 75' lake setback.

Paul explained the reasoning of the request for the 10' sideyard setback. Ryan Vandewiele thanked Teri and the Commission for listening and considering his concerns as well as reading them into the record.

**MOTION BY GENE HAGEN TO DENY THE VARIANCE REQUEST FOR A 10' SETBACK FROM THE SIDEYARD AS REQUESTED AS THE STRUCTURE CAN BE DECREASED IN WIDTH TO MEET THE CITY'S 15' SIDEYARD SETBACK REQUIREMENT. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED.**

Spider Ridge – Conditional Use Permit/Conservation Subdivision/Preliminary Plan – Thomas Steffens requested approval for a Conditional Use Permit, Preliminary Conservation Subdivision Plat known as Spider Ridge. The proposed plat consists of nine dwelling units and approximately 21 acres of open space (conservation easement). The property has approximately 35.2 acres of land. The property is described as Tract B, Registered Land Survey No. 38, Section 16, Township 135, Range 29. The property is zoned Low Density Residential (R-1) and open space.

The following documents became part of the record – Notice of mailing, notice of publication of public hearing, signed application and attachments and staff report. Teri read fifteen letters with questions and concerns into the record; these letters will be filed in the property file. The letters were from Darrin Hoverson, MN DNR Hydrologist; Michael and Elizabeth Grossman, 8012 Lost Lake Road; Kevin and Kathy Kosobud, 8030 Lost Lake Road; Lise Herren, 7512 Doyle Parkway; David Neighbor, Lake Margaret; Scott and Bonnie Laugen, Upper Gull Lake; Tom and Mary Cameron, 986 Bass Lake Road; Doug Kaspar, Upper Gull Lake; Julie Hepburn, Lake Margaret; Sheila Johnston, 7693 Lost Lake Trail; Dave Duit; Linda Harrier, GCOLA Chair; Kris Driessen, 1390 Pinehurst Lane; Sheila Johnston, MN Loon Restoration Project GCOLA; and, Carol, Don, Scott, Robyn, Brad and Derek Birkeland, 972 and 924 Bass Lake Road.

Arla Johnson said that there have been many concerns stated within the letters that were read into the record. She called out the comment suggesting the homeowner put up signs regarding the Loons. Linda Harrier replied that GCOLA puts up those signs.

Arla asked that the audience keep their questions to additional concerns and try not to duplicate which has already been stated.

Teri suggested that the developer, Tom Steffens and his engineer, Cindy Hidde, Stonemark Land Surveying, summarize what is intended for the property. She also said that she had copies of her staff report by the agendas for those that would like the information; since it was written on January 25<sup>th</sup>, she has gathered more information that she will discuss as the meeting moves forward.

Glen Gustafson suggested that Teri read into the record her staff recommendation with the suggested approval of the CUP and Preliminary Plat to include the 11 conditions listed in the recommendation. Teri read her staff recommendation with the 11 conditions along with the 3 additional conditions in her addendum. In addition, she has been in contact with Travis Collette from the Sheriff's department regarding the dock placement. Travis is willing to meet for a final site visit with the developer, possibly the DNR and/or a Conservation Officer to site the dock in the best location for navigation in the channel. Linda Harrier asked if there is any definition of the length of the docks. Teri said 28-feet is indicated on the site plan. Side note: This includes 4 docks, which is 8 slips that would be one watercraft slips available for the development leaving one day slip position available.

Tom Steffens answered questions regarding the length of the dock. Cindy Hidde confirmed the dock from the shore to the slips is 32' and the slips are 28' long.

Gregory Cameron, 4513 Lower Roy Lane, Nisswa, explained his concerns with the dock system as proposed for navigation through the channel and it would be even more narrow if they are allowed to have a boat lift. Arla thought they were not allowing boat lifts. Teri said there was talk of that during the site plan review; however, based on the shoreline from the aquatic report, they could possibly have a boat lift in that particular location where there is 28' to the center of the channel from the end of the dock. Greg said his copy says that it's 17'. Cindy Hidde, said the dock system has been reduced from the original proposal. Greg asked if there will be a limit as to how far the lift could extend from the end of the dock. Teri said that could be a condition during approval. Linda Harrier GCOLA Chair, commented that GCOLA recommends they limit a maximum of two-feet for a canopy and/or boat lift to be extended past the dock into the channel to be put in their by-laws. She said that their main concern is the environment. Teri said basically we all feel there is a safety issue here and the channel is often congested. She shared an example of an area on Upper Gull that is heavily congested with boat traffic at Point Narrows and asked Travis Collette if there have been any boating mishaps in the area. She didn't hear back from Travis.

To touch on another concern, Teri clarified the section from the Cultural Report, completed in 1985 by Douglas Birke, that has been referred to in the letters; she read what has been found and documented on the Cultural Indian Sites. She said that there are two specific sites that have been indicated in the report where the shovel testing was done. She said this site has been thoroughly reviewed in the past with very specific findings. She has spoken with Dylan Goetsch from MIAC and he is not overly concerned and doesn't think anything else of great significance will be found. He and Terry Kemper from the Mille Lacs Band will set up a site visit with Teri. Their main concern is if any cultural artifacts are found, they could be turned over to the Mille Lacs Band. Tom Steffens has agreed.

Tom Cameron, 986 Bass Lake Road, commented on the size of the structures offered to be built as they are proposed; are they single family homes. Tom Steffens said that the structures meet city code and they are individual homes. Tom Cameron also commented on roads being Public or Private. Teri said that this road would be privately maintained by the Association and included in the by-laws of the Association. She said the sewer system within the development will also be privately maintained up to the city connection at Lost Lake Road.

Arla asked if Teri could share what a Conservation Easement is. She summarized that the ordinance requires that a majority of the open space will be put into a conservation easement and most of this property and the sensitive areas will be within this space. The document will be created by an attorney.

Colleen Both, 7980 Lost Lake Road, commented on the structures and the golf cart parking areas and patios being so large. She is concerned about the bluffs that aren't bluffs and their protection. Teri said the city allows patios of any size as long as they are 50 feet from the OHW. Between 50' and 10' of the water, the allowable patio size is 150 square feet. The proposed patio meets the setback requirements of the ordinance. The golf cart parking has been changed to a pervious area being just grass. Teri said the city will remain consistent with the definition of bluffs; we are more restrictive than the DNR.

Roger Beaubien, 7772 Lost Lake Road, asked how much more water frontage there is that goes eastward, that is still in Lake Shore, of undeveloped land stating he is concerned about future development of a sensitive area. Teri said the neighboring property, going to the city boundary, is already in a conservation easement. He asked about the gravel pit eventually having water access. Teri said the gravel pit property is non-riparian.

Teri's staff report indicated the following:

**Background:**

- The applicant has submitted an application for a Preliminary Plat/Conservation Subdivision known as Spider Ridge. This applicant previously came before the Planning Commission for three site plan reviews. Prior to that the Planning Commission heard two site plan reviews from another applicant. The Area Hydrologist, has walked the property and has been consulted about the proposed developments. The request today involves developing the property which is 35 acres with 9 residential units along with recreational amenities. The subject property is located north of the Anderson Brother's gravel pit (Whitney Pit) and east of the Causeway development. The developer is not seeking any variances from the city ordinances.
- The property is zoned low density residential (R-1) and Open Space (wetlands) and is located on Spider Lake which is a Natural Environment Lake. The minimum lot size for a Natural Environment lot is 80,000 square feet. A Natural Environment Lake has a setback of 150 feet from the ordinary high-water mark.
- The Conservation Subdivision (Lake Shore's form of a planned unit development) requires clustering of the homesites on smaller lots and with the remainder of the property put into a conservation easement. This is a good tool when developing property with difficult topography. The Conservation Subdivision process is Section 38 of the Zoning Ordinance. The Conservation Subdivision utilizes a method of dividing the property into tiers (400' in depth for a Natural Environment Lake) and taking the suitable land area (no wetlands or bluffs) and dividing it by the lot size (80,000 square feet for a NE lake). This gives a base density of units for the development.
- The applicant has made revisions to the development based on the comments from the January meeting. Those changes include relocating unit 9 out of the steep slope, aligning the pathway with the existing path and changing the material from bituminous to granite chips (both are acceptable to the DNR), removing the cart parking near the dock, utilizing a level grass surface for cart parking near the patio.

**Shoreland Conservation Subdivision-38**

- **Submittals.** Submittal for a Conservation Subdivision shall contain the Preliminary Plat submittal items, along with the following:
  - Documents that explain how the project is designed and will function. These shall include all covenants, operating rules and procedures of any property owner's association, all easements associated with the development and a concept statement describing the project. *The applicant has provided the following draft documents Declaration of Covenants, Conditions and Restrictions and Easements; Spider Ridge Homeowners' Association Bylaws, Articles of Incorporation of Spider Ridge Homeowners' Association; Spider Ridge Association projected budget, Perpetual Conservation Easement. These documents are currently being reviewed for compliance by the city attorney.*
  - For proposals containing conservation easements, a statement of preliminary acceptance from a qualified holder as defined in Minnesota Statutes, section 84C.01-02. *The applicant has included a proposal for the how the conservation easement of land will be handled. The open space will be placed into the conservation easement. The area to be placed in the conservation open space is 17 acres of upland area. Total upland area is 21.5 acres for the property.*
  - **Density Evaluation.** *A density evaluation calculation has been shown utilizing the method described by the ordinance. Tiers are shown based on a Natural Environment Lake (400') then the lot area divided by the suitable area (minus wetlands and bluffs) which gives a base density. The applicant is not requesting any density increases nor does it qualify for any density increases. Based on the density calculation, seven units will have riparian rights (a dock slip-one watercraft).*
  - **Design Criteria.** *The conservation subdivision meets the design criteria established by the ordinance. The development has a lot width of 400 feet and 3 contiguous acres of suitable area. The development has a lot width of 600 feet and approximately 17 acres of contiguous suitable area. In addition, the development will have in excess of 50% of the project area as open space. The open space does include the wetlands, bluffs, as required since they are unsuitable for development. The open space does contain at least 75% of upland area (85%) and contain at least*

33% contiguous land. The open space does not include the dwelling sites, roads and area between the dwelling units. The pickle ball court and future pool building, patio and path may be included in the open space. The pool building and pickle ball court have been excluded from the open space calculation.

- **Outdoor recreational facilities.** *The plat shows the cart path to the lake, patio area on the peninsula, dock system, pickle ball court and future pool building as recreational amenities for the property.*
- **A shoreland vegetation buffer.** *The developer intends to keep the majority of the property in its natural state. The declaration should include language concerning the buffer listed below. In addition, the declaration shall state the 36" large white pine at the northeasterly tip of the peninsula shall be preserved.*

A shoreland vegetation buffer shall be maintained within the common open space. The vegetation buffer shall include all areas within the Shore Impact Zone impact zone excluding a recreation area no larger than 20 feet in width along the shoreline for each 100 feet of shoreline, the depth of the Shore Impact Zone impact zone. The shoreland vegetation buffer shall include consist of trees, shrubs, and low ground cover of native plants and understory in a natural state.

- **Appearance of Open Space.** *The declaration document does address some of the open space; however, language may need to be added to the document to ensure the development meets the ordinance requirements listed below.*

The appearance of common open space areas, including topography, vegetation, and allowable uses, shall be preserved by use of permanent easements, public dedication and acceptance, or other equally effective and permanent means. For permanent easements, a willing party for receiving easements must be declared; otherwise, a party may be assigned pursuant to Minnesota Statutes 375.18, Subd. 12, or amendments thereto.

- **Residential lots shall be grouped and not assembled in a linear configuration.** *The development has clustered the dwelling units in a 5-acre area which is the most suitable land for the location of the dwelling units. This configuration avoids the bluff, steep slope and wetlands of the property. The homesites are not considered to be in a singular, long, narrow design. A linear configuration refers to a site design for the residential portion of a development which may be described as long and narrow. It should be noted that unit 9 has been adjusted so that it outside of the steep slope area adjacent to the bluff, this was done at based on discussion from the site plan review held in January.*
- **Minimum Lot Size.** *There is not a minimum lot size for a conservation subdivision, therefore, steep slopes are not required to be taken out of the buildable area for each lot as it would be required in a standard lot and block subdivision.*
- **Setbacks.** *Setbacks are met for the proposed developments with a minimum of 20 feet from the adjacent properties. The closest unit (7) is approximately 70' from the Kosobud property to the north. There does appear to be an encroachment on the property of a sandbox along the north property line. The other units are approximately 80' from the Causeway property. Individual units are separated a minimum of 10' as required by ordinance. All units exceed the waterfront setback of 150 feet.*
- **Maximum Coverage by Structures/Stormwater Plan.** *The amount of impervious surface for the development is 10.6% where a maximum of 25% is allowed. The applicant has shown several drainage basins for the property to handle a 100-year storm event. The applicant will be required to complete a NPDES permit prior to construction (this is to the MPCA).*
- **Roadways.** *The proposed roadways for the development will be private roads and will be maintained by the association. The roads will need to be named for E911 purposes. The roadway will enter off of Lost Lake Road, where there is an existing driveway that has an easement across the applicant's property. The roadway width appears to be 22' in width which is accessible for emergency vehicles.*
- **Sanitary Sewage Collection.** *The applicant has provided a preliminary plan for a sanitary sewer collection system that will connect to the city's sanitary system. Andrew Schwartz, City Sewer Operator has indicated there is enough capacity for the nine units. The collection system for the units will be private until the sewer line connects with the*

city sewer line. This will need to be included in the declaration. The city engineer will also need to review and approve the plans prior to construction.

- **Water Supply.** The applicant has provided information on the water supply system. The system will consist of a community well and pumphouse and a 1" hdpe pipe. The applicant was also asked to provide information on the adequacy of domestic water supply. The applicant has provided information from a local well drilling company along with information provided by the DNR Hydrologist. - Exhibit xx
- **Single owner riparian lots.** The proposed development does not contain any single owner riparian lots (this would be your lot/block subdivision where lots extend to the water).
- **Shore Recreation Facilities.** The shore recreation facilities consist of a docking system and cart path to that system. The applicant has provided a near shore aquatic report outlining the vegetation, water depth and lake bottom. The report includes photographs of properties across the channel including their dock system. It appears from the report that the area will support a typical dock system. There was some concern with the narrowness of the channel in this area. Based on aerial photos and a previous RLS survey the channel width is 163' in the area of the dock. This area is a no wake zone which should help in navigating in and out of the dock system. The location of the proposed dock system is over the least amount of wetland area.
- **Boating Facilities.** The docking facilities are located in a sensible area based on the aquatic report. There may be some slight adjustments based on previous concerns discussed at the site plan review. The dock system consists of 4 docks or 8 slips. There are no individual docks, which are not allowed by ordinance. Seven units (the number of units allowed within the first tier) are allowed riparian access. Only one watercraft is allowed within each slip. The last slip can be used as a day dock but may not be used for continuous mooring. Since the Gull Chain has several public accesses for boat launching; a private boat launching facility would not be allowed.
- **Structures, parking areas and other facilities.** The dwelling units of the proposed development will not be visible from the lake due to the unique topography of the property, the units will be approximately 600 feet from the traveled channel (Spider Lake). The applicant is proposing an eight-foot-wide granite chip cart path to the docking facility. The pathway will follow an existing trail which will require minimal clearing and grading. A golf cart parking area is proposed on the peninsula which will be a grass area. A pathway is necessary due to the distance from the dwelling units to the dock system. The proposed pathway has been discussed with the DNR Area Hydrologist, Darrin Hoverson. In addition, there is a small (8'x12') wetland crossing at the peninsula where a boardwalk will be needed to traverse this area. This has been discussed with the Cass County Soil Water Conservation District (SWCD). The developer is also proposing a patio which will meet ordinance setbacks on the peninsula for the owners to enjoy the lake. The peninsula is well treed so these improvements should not be visible with summer leaf on conditions. It should be noted the 36" white pine on the point of the peninsula should be preserved. Grading for the path should be very minimal as it is an existing trail. The patio and parking area should only need leveling. Based on past reviews of the property there is a decent plateau on the peninsula for these improvements.
- **Drainage and Grading.** The applicant has submitted a drainage and grading plan. The plan identifies the clearing limits along with proposed drainage basins. These plans will be reviewed by the city engineer. As mentioned above a NPDES permit will be required prior to construction of the units. Copies of this information should be provided to the city. The drainage and grading shall be compliant with section 56.1-56.9.
- **Administration and Maintenance.** The applicant has provided information related to the proposed conservation area and how it will be managed. The Declaration provided by the applicant is currently being reviewed by the city attorney. There are areas within the declaration that should be strengthened or better addressed for compliance with the city ordinance in regard to the items listed below.
  - Deed restriction, public dedication and acceptance or other equally effective and permanent means to ensure perpetual preservation and maintenance of common open space.
  - Vegetation and topographic alterations, other than to prevent personal injury or property damage and for restoration efforts based on an approved shoreland vegetation buffer plan, shall be prohibited;
  - Construction of additional buildings, impervious surfaces, or storage of vehicles and other materials shall be prohibited;
  - Beaching of motorized watercraft shall be prohibited; and

- Dumping, storage, processing, burning, burying or landfill of solid or other wastes shall be prohibited.
- Prohibition on amendment without the consent of the Planning Commission.
- **Establishment of an association is mandatory and shall meet the following standards:** *The applicant has provided the Homeowners Association document which satisfies the following requirements for the most part with the exception of the last four items which will need to be added to the document or further clarified.*
  - The association shall consist of all benefited lot owners.
  - The association shall be responsible for all costs of maintenance and replacement of the facilities.
  - The costs shall be uniformly divided by lots served.
  - The costs shall be lienable against the lots by the association if payment is not forthcoming.
  - The association documents shall include provisions for an annual independent audit of the association.
  - Provisions shall be made for emergency access or emergency maintenance by the City with subsequent reimbursement by the association.
  - The association shall be responsible for enforcing covenants, deed restrictions, and easements.
- The association must have a land stewardship plan for common open space areas greater or equal to 10 acres. The plan shall address the long-term management of these open space lands.

### **Preliminary Plat-49**

- **Existing Conditions.**
  - *Existing conditions have been shown on the preliminary plat and include boundary lines, boundary survey done by a Registered Land Surveyor, legal description of the property, total acreage, name of fee owner, developer, and north arrow and scale.*
  - *Contour information, tree limits, and specimen tree locations are shown.*
  - *Soils information has been addressed.*
  - *Adjacent property owners and zoning has been identified along with wetlands.*
  - *There are no known significant historical sites on the property according to the applicant based on a search by the Minnesota State Historical Preservation Office. The applicant should provide documentation of this search to the city.*
  - *The applicant has requested verification from the DNR that there are no known significant wildlife habitat areas within the 5 acres to be developed. There are wildlife corridors within the proposed open space areas.*
  - *The applicant has requested from the DNR confirmation that there are no known endangered, threatened, rare or critical species both flora and fauna identified within the property.*
  - *Location of existing driveways, and structures are shown along with the proposed well, pumphouse and sewer lines.*
  - *Zoning classifications for the property and adjacent properties are indicated on the plat.*
- **Proposed Design**
  - *The preliminary plat indicates proposed, driveways, buildings/lots, structure setbacks, the amount of open space.*
  - *Buildable areas of proposed lots are not shown as there is no minimum lot size for a conservation subdivision. The applicant has provided the detail for each lot which 64'x83' (5312 square feet) and the proposed typical home will be 3226 square feet including garage and porch/deck. Three different elevation drawings of the proposed homes to be built have been provided.*
  - *Structure setbacks have been shown that they exceed the 150' setback from Spider Lake along with meeting all setbacks from wetlands and bluffs.*
  - *Anticipated vegetation removal or clearing limits have been shown on the plat. The applicant has indicated additional tree plantings will occur to provide additional screening from adjacent property to the north.*
  - *The applicant has not provided an estimated depth to the water table since the development will be served by city sewer and not an individual ssts (septic system).*
  - *The applicant has provided information regarding the adequacy of domestic water supply.*
  - *Proposed stages of development have been addressed in documents provided by the applicant.*
  - *The proposed development should not cause the city to incur any costs.*
  - *A report by Ben Meister has been prepared regarding near shore aquatic conditions along with a wetland delineation report.*



- *Access to the property is through Lost Lake Road which is a publicly maintained roadway. There are no public improvements proposed with the plat.*
- *Survey standards- a plat check by an independent party will be required (final plat approval).*
- *As mentioned earlier, a plan for the sewer and well have been submitted and will need to be reviewed by the city engineer for acceptability. A permit will be needed from the MPCA to connect the units.*
- *Drainage/Grading - Preliminary grading and drainage plan have been submitted. The plan will be reviewed by the city engineer for compliance with the city ordinance (100-year, 24-hour storm event). There shall be no discharge of untreated stormwater to a water body. Erosion control measures and drainage should be address both during and after construction.*
- *The proposed street will be private and not public. The Homeowners Association will be responsible for maintenance. Street names will be required for E911 purposes and conform to the county's requirements.*
- *Evidence of Authority to subdivide will need to be provided to city in consisting of fee ownership or written concurrence of fee owners.*
- *Park Dedication: The City will require a park dedication fee prior to Final Plat approval. The fee will be \$250 per unit payable to the City of Lake Shore.*
- *Professional Costs: The applicant/developer is responsible for all professional costs the city incurs (city engineer review, sewer inspector, city attorney review). These costs shall be paid prior to the signing of the final plat.*
- *An acceptable title opinion will be needed prior to signing the final plat.*

### **Conditional Use Permit-68**

- In permitting new conditional use permits; the Planning Commission may impose, in addition; to the standards and requirements expressly specified by the ordinance, additional conditions that the Planning Commission considers necessary to protect the best interest of the surrounding area or the city as a whole. This may include the following:
  1. Increasing the required lot size or yard dimension.
  2. Limiting the height, size or location of buildings.
  3. Controlling the location and number of vehicle access points.
  4. Increasing the street width.
  5. Increasing or decreasing the number of required off-street parking spaces.
  6. Limiting the number, size, location or lighting of signs.
  7. Requiring berming, fencing screening, landscaping or other facilities to protect adjacent or nearby property.
- ❖ The following should be met for the conditional use to be approved: the use must be appropriate for the zoning district (low density residential). The use with conditions would be compatible with the city's Comprehensive Plan. The use with conditions would be compatible to neighborhood. The use would not be injurious to the public health, safety, welfare, decency, order and comfort, convenience, appearance or prosperity of the city. *The proposed improvements will be utilized as residential development which is allowed under the low-density residential district. The property does have area that are zoned open space (wetlands) which are proposed to remain as open space. The property to the east is a timeshare/resort known as Causeway on Gull and is zoned waterfront commercial, the property to north is zoned medium density residential. is a similar use (timeshare). The property to the south is currently a gravel pit and zoned wooded residential. The proposed use should not be injurious to the public health, safety, welfare, decency, order and comfort of the community.*
  - The proposed use would be consistent with the Comprehensive plan as this type of property with its many wetlands, bluffs and steep slopes is best suited as a conservation subdivision versus a typical lot/block development. The following excerpts from the Comprehensive Plan support this statement.

*Maintain ordinances to limit high density or multi-family structures to those areas that are compatible with and have the infrastructure to support this type of development but recognizing the need for different housing types.*

*Require screening and vegetative buffers for new developments to protect the wooded, quiet nature of the City, particularly in the less densely developed areas of the community.*

*Maintain standards for conservation design for subdivisions and large tracts using the principle of density instead of lot size.*

*Encourage cluster-style residential development incorporating open spaces as a method of protecting natural resources and open spaces*

*Require that wetlands and natural drainage systems be maintained and preserved when accommodating new growth or redevelopment*

*Require that areas within proposed developments that are unsuitable for development be protected as open space*

*Discourage the use of wetland mitigation as an alternative to conservation design. Instead, strive to preserve and work around wetlands*

*Maintain setbacks and vegetation buffers around wetlands.*

*Limit development on unsuitable soils, including steep slopes, bluffs, wet soils, floodplain soils, and other environmentally-sensitive areas.*

*Discourage the use of wetland mitigation as an alternative to conservation design. Instead, strive to reserve and work around wetlands.*

*Encourage cluster-style residential development incorporating open spaces as a method of protecting natural resources and open spaces*

*Require that interconnecting wildlife corridors be set aside when subdivision or development of larger parcels occur*

- In addition, the Planning Commission should consider the following:

1. The Conditional use should not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted on that property, nor substantially diminish or impair values in the immediate vicinity. *The proposed development is residential and conforms to the density requirements of the zoning district and lake classification. The proposed home styles should fit in with the surrounding area and not diminish or impair values in the vicinity.*
2. The Conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area. *The proposed development should not impede the orderly development of surrounding vacant property. The only other vacant property is to the south which is the gravel pit. This development and the development east of the gravel pit which are both conservation subdivisions set a tone for the redevelopment of the pit where open space is preserved.*
3. The Conditional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. *The feasibility of city sewer was reviewed briefly and it is most likely not cost effective at this time.*
4. The Conditional use will have vehicular approaches to the property which are so designed as not to create traffic congestion or indifference with traffic on surrounding public thoroughfares. *The applicant will utilize an existing*

*approach on Lost Lake Road for entrance to the property, this entrance will be improved to better accommodate the additional dwelling units. This roadway will be privately maintained. Options of utilizing the private Causeway roadway were suggested, however, this has not been well received by Causeway/Narveson Mgmt.*

5. Adequate measures have been taken to provide sufficient off-street parking and loading space to serve the proposed use. *The applicant has discussed parking within the HOA and declaration. There is sufficient room for provided an updated parking plan. The plan appears to meet the ordinance requirements for residential parking. The applicant may want to address boat trailer parking and storage.*
6. Adequate measures have been taken or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so none of these will constitute a nuisance and to control lights and signs in such a manner, that no disturbance to neighboring properties will result. *The development is residential and will need to adhere to city ordinances regarding nuisances. Dark Sky lights are to be a condition.*
7. The Conditional use will not result in the destruction, loss or damage of a natural, scenic or historical feature of major significance. *The development will disturb approximately 5 acres of land. The majority of the land will be dedicated open space and be preserved. The proposed dwelling units will not be visible from the traveled channel during summer leaf on conditions. Language in the declaration about vegetation removal and buffers are required.*
8. The Conditional use will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients provided an adequate erosion control plan and stormwater plan is submitted. *The proposed site does have steep slopes, bluffs and the applicant will need to address those items as a MPCA permit will be required. The dwelling units are a significant distance from the OHW, however, protection of the steep slopes and wetland are critical.*
9. When costs to the City involved in processing and reviewing an application exceeds the original application fees, the applicant shall reimburse the City for any additional costs. Such expenses may include, but are not limited to, payroll, mailing costs, consultant fees and other professional services the City may need to retain in reviewing permits.
10. Conditional Use Permits may be transferable where requested by an applicant and approved by the Planning Commission.
11. Violations of the conditions of a Conditional Use Permit shall automatically suspend the permit. A review of the violation shall be conducted by the Planning Commission. The Planning Commission shall determine conditions for reinstating the permit or revocation, if applicable
12. Failure by the owner to act on a Conditional Use Permit within twelve (12) months, or failure to complete the work under a Conditional Use Permit within two (2) years, unless extended by the Planning Commission, shall void the permit. A second extension shall require a new public hearing. This provision shall apply to any Conditional Use Permit outstanding at the time of the Ordinance adoption

**STAFF RECOMMENDATION:**

The proposed development conforms to the city's ordinances. There are areas within the Homeowners Association Documents and Declaration that will need to be revised to better address some of the requirements of the city ordinances such as vegetation buffer, open space, specifically address the number of watercraft allowed, clarify the sewer collection system will be private and privately maintained until it connects with the municipal line in Lost Lake Road, no boat launching facilities will be allowed, dark sky compliant lighting and the requirement that the city must approve all changes to the HOA and Declaration. The applicant will need to complete the ordinance requirements related to final plat approval.

**Recommend approval of the Conditional Use and the Preliminary Plat/ Conservation Subdivision:**

1. No additional vegetation removal within the bluff or shore impact zone unless a demonstrated hazard is shown and city approval is given (condition to be included in the declaration as required).

2. Prior to the issuance of any permit, the city shall be provided with verification of issuance of an MPCA NPDES Permit.
3. Grading and Drainage plans are to be approved by the city engineer.
4. Sanitary Plans approved by the city engineer and a sewer line extension permit must be approved by the MPCA.
5. All lighting for development shall comply with ordinance standards and be downcast lighting (dark sky compliant). This should be included in the declaration.
6. Landscaping around each unit/cottage shall be completed within 6 months of completion of the unit/cottage.
7. The open space shall be maintained and adequately preserved (condition to be included in the declaration).
8. Any changes to the Homeowners Association or Declaration shall be approved by the city. The HOA and Declaration shall include such a statement.
9. There shall be no changes to density unit without city approval and compliance with applicable city ordinances.
10. The applicant will need to provide title opinion, financial security and a development contract prior to signing the final plat (Section 50.8).
11. All professional costs incurred by the city relating to the plat shall be paid prior to city signing the final plat. Additional charges incurred after the final plat has been signed shall be paid prior to issuance of any permit.

**Additional Conditions for Preliminary Plat/CUP Spider Ridge:**

1. Review and approval of the association documents, by laws, declaration, HOA, and conservation easement by the city attorney prior to the final plat.
2. Site visit and review by the Cass County Sheriff Water Patrol and DNR on final dock location.
3. Site visit and review by MIAC (Minnesota Indian Affairs Council) and Mille Lacs Band Historical Preservation Officer, Terry Kemper.

Glen asked if the conditions in the letters from Sheila Johnston and Brad Birkeland should be considered in a motion put forward. Teri said some of their concerns have been addressed in the conditions; there are certain items that can be addressed in the HOA documents.

Teri said the Planning Commission has been reviewing this property with site plan reviews for over a one-year period from different developers. There have been numerous proposals and the Planning Commission has remained firm to not change the ordinance to fit the proposed plan to mirror the DNR's PUD requirements; not entertain any option with a variance to our ordinances and shy away from developing into a lot and block development.

Gene Hagen asked if the 9 properties would be owner occupied. Tom said they are and would be restricted by Lake Shore's short-term rental ordinance if they plan to rent their property out.

Mike Grossman, 8012 Lost Lake Road, clarified that they are owner occupied, but would be restricted to follow the short-term rental ordinance. Tom confirmed it would.

Planning Commission Liaison, John Terwilliger, commented that channel navigation obstruction, environmental impact of habitat, possible lake degradation, and neighborhood aesthetics broadly covers the negative concerns. He said it sounds like the plat meets the ordinance requirements. Teri had a couple more questions, one as to whether there would be electricity to the peninsula. Tom didn't plan on it; however, if there were to be any, they would follow the path down to the channel. There are other options to have power at the water for lighting. Are the roadways and lots to be cleared at one time? Tom said he plans to clear at one time. Teri said this would allow for open lots with no structure.

Colleen Both asked if the clearing be done separately and not utilize the scorched earth approach. Cindy Hidde, Stonemark Land Surveying, said there would be difficulty for the utilities, i.e., sewer, water lines, etc. to be piece milled. Tom doesn't plan to bull doze the entire site; they will keep a lot of the trees. They did perform at tree inventory during the site plan review process; Tom interjected that a lot of the trees are going to remain. Teri understands that getting the infrastructure in place and suggested the grading and clearing plan be approved by the city engineer.

Roger asked for clarification of whether they will be hooked up to city sewer or have independent systems. Teri said the development will be hooked up to the Municipal System.

Arla called for more questions or concerns before a motion is made. Pat Hastings asked if the Preliminary Plat is approved, can conditions be added later? No, they cannot.

Kevin Kosobud, 8030 Lost Lake Road adjacent property owner, commented the Commission is really up in the air and are totally naive to think they can put 8 docks into the channel and allow for safe navigation. He appreciates the conservation easement; however, most of it going into the conservation easement couldn't be built on anyway. He thinks that the 9 units in a concentrated area would allow for clear cutting as he looks at the proposal and as an engineer himself, he can back up his comments. He feels an approval would be short sighted and would change the culture of our environment.

Tom Steffens said they are within the ordinance and meet and comply with all the requirements. These neighbors have had every opportunity to purchase the property themselves. He would like to see preliminary approval with the 11 conditions from the staff report and the additional 3 conditions on the addendum. He agrees with the 2' limit for extending past the dock. The DNR has approved the dock plan. Linda Harrier said that she hasn't seen the dock plan. Teri read it into the record and the beginning and will forward the email to Linda.

Teri explained they have tried to balance where the docks are placed as not to be in a more critical environmental area. She reiterated what the DNR's comments were; this is limiting the docks to 7 slips; a single residential lot could have numerous docks with no restrictions, so this is a better option.

Roger Beaubien asked if Mr. Steffens would consider less structures. Tom said he would not.

City Attorney Dan Hawley said the 60-day rule began on the CUP/Preliminary Plat at the end of January when the application was submitted and have time to table; 60 days for the CUP and up to 120 for the Preliminary Plat. Dan has reviewed the documents for the HOA, by-laws, declaration, conservation easement, etc. and one of the conditions is that the City Attorney approve such documents. Tom has already agreed to the 2-foot limitation of the extension on the docking structure as an additional condition to Teri's conditions on the staff recommendation and addendum. Tom said this has been a long process and they would like to see it move forward.

Pat Hastings called the question. Arla agreed. However, some in the audience don't feel that everything has been answered. Linda Harrier asked if they could have a list of the conditions. Teri said the list of conditions was in the staff report and addendum provided to the audience with the agendas.

Arla asked if it is not acted on today, how long can it be put off. Teri said it would have to be acted on next month. Arla asked what issues have been overlooked. Teri said that specifically two letters called out restrictions; some of those concerns are already dealt with within the documents, she went over the suggested restrictions in the Johnston letter: clear cutting will not be allowed, the 30-foot white pine on the peninsula being preserved; native grasses preserved; Eco grass will not be a restriction; no pavilion is being built; could add the no fertilizers be allowed, no rip-rap it is not allowed on the shoreline; to minimize impervious surface the path not be paved, it is not; the bocce ball, pickle ball all be located by the house, which will be covered in

the conservation easement; addressed already, one common dock and no more be allowed; the wake boat issue isn't something the city can do, it cannot be policed, but could be addressed in the HOA documents; and last, the dark sky was addressed in the staff report. The Birkeland letter: the lot size was addressed and could be arbitrary; changing the way we configure the bluff definition, could be arbitrary; impose stricter sewage maintenance requirements, city couldn't be more constrictive, so not an appropriate condition; require an EAW; prohibit riparian owners from leasing the dock slips to short-term occupants; prohibit short-term rentals; require annual water testing near the dock; install signage of critical loon nesting habitat; partner with the MN Loon Restoration Project; prevent ATV's from golf cart path and peninsula. Teri said if you're going to limit Golf cart, ATV, Side by Sides for this development, it may as well be restricted city wide. Arla said the developer has done everything the city has requested and feels the Commission can move forward.

There were no more questions or concerns from the Board, the City Engineer, or the audience.

**MOTION BY GLEN GUSTAFSON TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT AND THE PRELIMINARY PLAT WITH THE 11 CONDITIONS IDENTIFIED IN TERI'S STAFF RECOMMENDATION, THE 3 ADDITIONAL CONDITIONS ON THE ADDENDUM AND THE ADDED CONDITION OF A 2-FOOT EXTENSION LIMIT FROM THE DOCK SLIP. GENE HAGEN SECONDED THE MOTION. MOTION PASSED.**

**NEW BUSINESS** – There was no new business.

**OLD BUSINESS** – There was no old business.

## **REPORTS**

City Engineer – Joe Dubel had nothing to report.

Chairman – Jim Woll was absent.

Council Liaison – John Terwilliger thanked the Planning Commission. He said he has been, as well as Pat, involved with the city planning business like the Comprehensive Plan, which have resulted in our Ordinances, which resulted in the Conservation Development part and the developer has done what he needed to do to meet the requirements of the city. Pat Hastings said there was some concern about the density, but if you look at the rules and the guidelines, they followed that. The DNR would allow a density increase for a property being sewerred, which we don't. In addition to that, there are some density increases for setbacks that most of the DNR allows and we don't allow that. We encourage this type of development and we don't even have any incentives to do that. We have to approve what the ordinance allows and if this is not acceptable, maybe the ordinance needs to be revisited. Joe commented that it's a challenging piece of property.

Zoning Administrator – Teri Hastings had nothing to report.

**PUBLIC FORUM** – There was no public forum.

**MOTION BY PAT HASTINGS TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF FEBRUARY 14, 2022 @ 11:16 AM. GENE HAGEN SECONDED THE MOTION. MOTION PASSED.**

Transcribed by Patti McDonald  
Lake Shore City Clerk