

**BOARD OF ADJUSTMENT/PLANNING COMMISSION
CITY OF LAKE SHORE
LAKE SHORE CITY HALL
MINUTES
JUNE 10, 2024
9:00 AM**

Commission Members in attendance: Chair Jim Woll, PJ Smith, Alex Kuhn, Sean Weldon and Pat Hastings, Council Liaison John Terwilliger; City Engineer Dave Reese; City Zoning Administrator Teri Hastings, and City Clerk Laura Fussy. A quorum was present, and the Commission was competent to conduct business. There were seven people in the audience including 3 alternates Dave Riegert, Kevin Egan, TJ Graber; Robert & Sue Payette, Justin Honer and Brent Anderson.

Chair Jim Woll called the meeting to order at 9:00 a.m.

Approval of the April 8, 2024, Regular Meeting Minutes – MOTION BY PJ SMITH AND SECONDED BY ALEX KUHN TO APPROVE THE MINUTES FOR THE APRIL 8, 2024, BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. MOTION PASSED.

PUBLIC HEARING –

Conditional Use Permit – Robert Payette of Holiday Resort requests a conditional use permit for moving more than fifty cubic yards earth within the shoreland and more than ten cubic yards of earth within the shore impact zone to replace existing rock retaining walls and to stabilize the area. The property is described as Part of Government Lot 4, Section 9, Township 135, Range 29 (site address is 8000 Ridge Road) and is zoned Waterfront Commercial.

The following documents became part of the record – Notice of mailing, notice of publication of public hearing, signed application and attachments and staff report. There were no written comments or inquiries received regarding this application from the public or the DNR.

Robert and Sue Payette along with Justin Honer of Honer Excavating came before the Commission to answer questions regarding the request.

Robert Payette briefly gave an overview of the project and why the project is necessary; he is also requesting to update the sidewalks, retaining walls and the flagstone patio. Robert explained the project will start with rip rap along the shoreline in August and then continue with the retaining walls working up towards the home. The use of temporary ground cover will be used as they go. Erosion control will consist of silt fence and bioroll logs.

Jim Woll requested comments from the City Engineer, Dave Reese. Dave Reese asked about the size of the project being less than 1 acre otherwise he would need a special NDPES permit. He also asked about the height of the proposed retaining walls. Robert Payette stated that the wall closest to the lake is 6-7 feet in height and they are planning to keep the walls less than 4' in height. be done.

Teri's staff report indicated the following: The applicant, Robert Payette of Holiday Resort is requesting a Conditional Use Permit to move more than 10 cubic yards of earth within the shore impact zone (0-37 ½ feet back from the lake) and to move more than 50 cubic yards within the shoreland zone (within 1000 feet of the lake). The purpose of the earth movement is to remove and replace the existing retaining walls that were originally constructed in the 1940's (walls closest to the lake) and some in the 1960'-70's (further from the lake) and the sidewalks/steps. In addition, the applicant is proposing to construct a water oriented shed of 120 square feet and a flagstone patio; replacing a paver/concrete patio near house #2. There are some new retaining walls proposed on the north side of the property as well.

The applicant has submitted a plan showing the grading amounts needed for each feature as well as a stormwater plan for the site. The plan indicates the height of each retaining wall; some of the retaining walls have a height exceeding four feet in height. Retaining walls over four feet in height typically have an engineered design.

The plan also shows the areas of new sidewalks which will be less than 4' in width.

In reviewing the site with the property owner, stormwater basin #5 may need to be slightly altered to avoid a drainfield that is located in that area.

The proposed flagstone patio located within the shore impact zone may need to be decreased in size in order not to exceed the 250 square feet allowed for water oriented accessory structures within the shore impact zone. The proposed shed (labeled boathouse) will require 35 cubic yards of earth movement. I have reviewed with the applicant that the shed must be used for storage and no habitation of any kind. It should be noted the property is not considered a bluff. There currently is an area on the northside of the property that is utilized for a fire pit gathering area and I believe this will be eliminated and the new flagstone patio will have a firepit.

The applicant is also proposing to replace the paver/decking area off the corner of house #2; the area will be approximately the same size. Patios are allowed at a 50' setback.

The applicant will be reshaping the beach area which will require 9.3 of cubic yards of earth movement.

The applicant's proposal also includes adding additional rip rap along the shoreline; however, the DNR only allows 200 lineal feet of riprap. The rip rap will need to conform to the DNR requirements.

The impervious surface for the site with the proposed improvements is 23.2%.

The applicant is not proposing any improvements in the rear of the property (behind house 1 and 2) other than stormwater depressions. The existing gravel driveway will remain gravel but has been calculated into the impervious surface area.

Listed below is a portion of the city ordinance as it pertains to grading within the shoreland area:

- Grading within the Shore Impact Zone, including the placement of fill material along the shoreline, shall not be authorized if the grading creates or expands a shoreline recreation area, such as a beach. Beach Sand blankets are prohibited except for resorts.
- The smallest amount of bare ground is exposed for as short a time as feasible.
- Four inches of topsoil is placed, temporary ground cover such as mulch is used and permanent ground cover such as sod is planted.
- Methods to prevent erosion and trap sediment are employed.
- Fill is stabilized to acceptable engineering standards and must not create an unstable slope.
- Plans to place fill or excavated material on steep slopes must be reviewed by a qualified professional for continued slope stability and must not create finished slopes of 30% or greater.
- Fill or excavated material must not be placed in bluff impact zones.

- Fill placed in public water below the ordinary high-water line requires a Department of Natural Resources Waters Permit and a Corps of Engineers Permit.
- Excavation in the bed of public waters requires a Department of Natural Resources Waters Permit and a Corps of Engineers Permit.
- Only clean fill consisting of sand, gravel or rock will be allowed where contact with water is anticipated. Mineral soil may be allowed elsewhere.
- Alterations to topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties.

The proposed project is quite a large undertaking but it can be seen that there is a need to stabilize the area with new retaining walls and sidewalks as they are clearly deteriorating. The applicant should be asked about the timing of the project; will the work be done in phases? What methods will be utilized for erosion control during construction? After construction? Will silt fence be utilized and where? Will any additional landscaping of trees, buffer etc. be planted? Will the disturbed areas be seeded, sodded, or planted with native flowers etc.?

Planning Commission Direction:

The planning Commission may decide to approve the application, deny the application, or table the application if further information is required. If the decision is for approval or denial the findings of fact should be cited.

Findings-CUP: *Answers have been provided by City Staff in italics.*

Findings shall be made in either recommending approval or denial of a conditional use application. **The following findings must be met:**

- The use must be appropriate for the zoning district (waterfront commercial).
Grading within the SIZ and shoreland is a conditional use in the WC district.
- The use with conditions would be compatible with the city's Comprehensive Plan:
 - ❖ *Maintain standards specific to resorts for continued use and expansion and maintain standards for resort conversions to residential use.*
 - ❖ *Encourage development that supports Lake Shore as a year-round community for residents and an attractive destination for visitors.*
 - ❖ *Facilitate the coexistence of residential properties and recreational businesses as well as educate property owners on the value of recreational and service-oriented commerce to the community.*
- The use with conditions would be compatible to neighborhood. *The neighborhood is predominantly residential however there are two resorts (Lost Lake Lodge and Causeway) and a cluster of waterfront commercial businesses located across the lake.*
- 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 project would enhance the appearance of the community and would not be injurious to the public health, safety, and welfare. The property is a resort which should be kept in a safe manner for the public.*

In addition, the Planning Commission should consider the following:

- 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 project would not diminish the use or enjoyment of surrounding properties but may enhance the value of those properties.*

- 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 use would not impede the development or improvement of surrounding properties in the area.*
- The Conditional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. *There should be no cause for public requirements or facilities and not cause a detriment to the economic welfare of the community.*
- 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. *No changes are planned in this regard and currently there are no issues with traffic from the resort.*
- Adequate measures have been taken to provide sufficient off-street parking and loading space to serve the proposed use. *There appears to be no issue with parking for the resort; there is not a formal parking layout on the property. Resort guests park near their assigned unit and is typical of a “mom and pop resort.”*
- 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 proposed project will generate noise with the use of heavy equipment and machinery but only during constructions. The applicant should be asked about any planned lighting for the property, including landscaping lights. The property is a resort, so some lighting is needed for safety.*
- The Conditional use will not result in the destruction, loss, or damage of a natural, scenic, or historical feature of major significance. *The proposed use would remove retaining walls that add character to the property; however, they are a safety issue. There are no other known historical features on the property.*
- The Conditional use will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients. *The applicant is addressing an issue with the retaining walls to prevent sediments and nutrients from entering the waters. In addition, the applicant has provided a stormwater plan for the property to prevent any pollution.*

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:

- Increasing the required lot size or yard dimension

- Limiting the height, size, or location of buildings.
- Controlling the location and number of vehicle access points.
- Increasing the street width.
- Increasing or decreasing the number of required off-street parking spaces.
- Limiting the number, size, location, or lighting of signs. *The applicant did not provide information related to additional signage, but it should be confirmed if any additional signage is planned.*
- Requiring berming, fencing screening, landscaping, or other facilities to protect adjacent or nearby property.

Other items from the Waterfront Commercial District to be considered:

- **Landscaping:** *The applicant should be asked about the specifics of the landscaping lakeside; images have been submitted showing landscaping with shrubs etc. on the lakeside and is it the intent to plant as shown on the pictures?*
- **Trash handling equipment:** *The application should not impact the handling of trash location/equipment.*
- **Mechanical Equipment:** *Same as above*
- **Exterior Lighting:** *Lighting should be used that adequately addresses safety but not cause impact to surrounding properties. The lighting should be downcast and meet the ordinance requirements of the WC district.*
- **Signage:** *The applicant has not addressed signage. Will any additional signage be added?*
- **Architectural Appearance:**
- **Sewer:** *The resort has a conforming SSTS system consisting of four separate systems that serve the resort units. The proposed project will not impact the systems other than the notation to the stormwater depression #5 as noted above.*
- **Outdoor Storage:** *This item has not been addressed and there appears to be no change in storage for the property due to the proposed project.*
- **Drainage.** *Drainage has been addressed with the stormwater plan submitted.*
- **Access.** *There is no proposed change in access.*

THE FOLLOWING MAY BE POTENTIAL CONDITIONS:

- No excavation or fill below the ordinary high-water mark with the exception of the rock riprap.
- Flagstone patio/shed should conform to the dimensions allowed by ordinance (250 square feet for water oriented accessory structures).
- Stormwater depression #5 adjusted slightly to avoid the drainfield in the vicinity.
- Steps should conform to a width of not more than 4' as proposed and shown on the plans.
- A natural native vegetative buffer should be planted behind the rock riprap.
- A timeline for the project should be submitted prior to the permit being issued and along with the phasing of the work to be done.

- Any lighting shall conform to the city's ordinance and not cause a nuisance. Dark sky lighting should be considered.
- The smallest amount of bare ground is exposed for as short a time as feasible.
- Four inches of topsoil is placed, temporary ground cover such as mulch is used and permanent ground cover such as sod is planted.
- Prior to a permit being issued; a plan showing areas of silt fence, erosion control barriers should be submitted.
- Prior to a permit being submitted a landscape plan should be submitted and approved by staff.

Jim Woll asked about the stormwater ponds. Robert stated the two ponds closest to the shore would be done first after the retaining walls. Dave felt this was good as the ponds would be operational if needed.

Justin Honer added that temporary erosion control measures will be used when necessary.

Teri's staff report indicated a concern with the drainfield location and the stormwater pond #5. Robert stated that area is already an area that collects stormwater and would be enhanced. The work should not impact the drainfield nor will any heavy equipment be driven over the drainfield.

There was a concern with the flagstone patio and the amount of water oriented accessory structure allowed (250 square feet). Robert Payette stated it should be no problem to comply with the ordinance.

Pat Hastings asked if the property was zoned commercial since previously the commercial district had more less restrictions. Teri stated it was zoned commercial, but there is not much difference anymore with the shoreline district.

PJ Smith commented on the pictures and asked if it will look that good.

Jim asked if Teri feels comfortable with the pictures. Teri stated it will not be at 100% the same but the biggest issue is to establish ground coverage. Justin Honer emailed over the number of plants being put in and there were no questions or concerns.

Robert stated he is not planning on additional signage and went over the proposed lighting Teri read off where the solar lights will be from an email she received from Robert.

The question regarding 250ft of riprap along the shoreline was brought up but Robert stated his shoreline is only 200ft so there should not be an issue with the DNR requirements and there will not be any rip rap in the beach area.

There were no further questions or concerns from the Commission.

MOTION BY PJ SMITH AND SECONDED BY SEAN WELDON TO APPROVE THE CONDITIONAL USE PERMIT OF ROBERT PAYETTE OF HOLIDAY RESORT WITH THE FOLLOWING CONDITIONS.

- No excavation or fill below the ordinary high-water mark apart from the rock riprap.
- Flagstone patio/shed should conform to the dimensions allowed by ordinance (250 square feet for water oriented accessory structures).
- Stormwater depression #5 adjusted slightly to avoid the drainfield in the vicinity.
- Steps should conform to a width of not more than four' as proposed and shown on the plans.
- A natural native vegetative buffer should be planted behind the rock riprap.
- A timeline for the project should be submitted prior to the permit being issued and along with the phasing of the work to be done.

- Any lighting shall conform to the city's ordinance and not cause a nuisance. Dark sky lighting should be considered.
- The smallest amount of bare ground is exposed for as short a time as feasible.
- Four inches of topsoil is placed, temporary ground cover such as mulch is used and permanent ground cover such as sod is planted.
- Prior to a permit being issued; a plan showing areas of silt fence, erosion control barriers should be submitted.
- Prior to a permit being submitted a landscape plan should be submitted and approved by staff.

MOTION PASSED.

NEW BUSINESS –

1. Lot Split – Alan and Maureen Albrecht

The applicant is applying for a lot split. The applicant owns Part of Government Lot 8, of Section 20. The property is zoned R-1, Low Density Residential which has a minimum lot size of 40,000 square feet and 20,000 square feet of buildable area. Buildable area excludes bluffs and wetlands. The property contains over three acres of land. Tract A has an area of 2.1 acres of land and Tract B has an area of 1.2 acres of land. Each tract exceeds the minimum lot size for the R-1 district. Brent Anderson from ReMax was in the audience to represent the Albrecht's.

Teri's staff report indicated the following: The applicant is applying for a lot split. The applicant owns Part of Government Lot 8, of Section 20. The property is zoned R-1, Low Density Residential which has a minimum lot size of 40,000 square feet and 20,000 square feet of buildable area. Buildable area excludes bluffs and wetlands. The property contains over three acres of land. Tract A has an area of 2.1 acres of land and Tract B has an area of 1.2 acres of land. Each tract exceeds the minimum lot size for the R-1 district.

The applicant has submitted a survey by a licensed surveyor. Legal descriptions have been prepared for the property (Tract A and Tract B).

The proposed Tracts, meet the minimum width for the zoning district of 150'. Both tracts have access onto a public right of way. Tract A will have access to County 107 and Tract B is currently accessed from Majesta Lane.

The property does not appear to have any wetlands according to the Cass County GIS site. The surveyor has noted there are no wetlands on the survey.

Monuments have been placed marking the boundaries of the proposed tracts.

Building envelopes have been shown on the tracts and there is adequate room for a typical home and two subsurface treatment systems (sst).

The survey checklist indicates there are no slopes over 12% on the property.

There is a structure located on Tract B and is shown on the survey.

The survey does not provide soils information; however, soils information has been provided on the SSTS compliance inspection for the septic system on Tract A.

STAFF RECOMMENDATION:

Recommend approval of the lot split as the proposed split meets the requirements of the zoning and subdivision ordinance.

Pat Hastings asked if there would be a possibility of splitting Tract A again. Teri indicated it was possibility after a 3-year period. There were no other questions from the commission regarding the split.

MOTION BY PAT HASTINGS AND SECONDED BY ALEX KUHN TO APPROVE THE LOT SPLIT FOR ALAN AND MAUREEN ALBRECHT.

OLD BUSINESS – There was no old business.

REPORTS

City Engineer – Dave Reese stated the road projects are underway as of 6/10/24. The Trail punch list is also being worked on as well.

Chair – Jim Woll asked about permit activity and the difference between 2023 and 2024. Teri stated 2024 is a little higher but not anything too out of the normal. She stated in 2023 we had a late spring, so the permit activity was lower.

Council Liaison – John Terwilliger had nothing to report.

Zoning Administrator – Teri expects a July meeting will be needed.

PUBLIC FORUM – There was no public forum.

MOTION BY PAT HASTINGS AND SECONDED BY SEAN WELDON TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF JUNE 10, 2024, AT 9:24. MOTION PASSED UNANIMOUSLY.

Transcribed by Laura Fussy
Lake Shore City Clerk