

**BOARD OF ADJUSTMENT/PLANNING COMMISSION  
CITY OF LAKE SHORE  
LAKE SHORE CITY HALL  
MINUTES  
JUNE 14, 2021  
9:00 AM**

**Commission Members in attendance:** Jim Woll, Arla Johnson, Glen Gustafson, Bob Toborg and Gene Hagen; Council Liaison John Terwilliger; City Engineer Joe Dubel, City Zoning Administrator Teri Hastings and City Clerk Patti McDonald. Absent were Alternates Shawn Hansen and Pat Hastings. A quorum was present and the Commission was competent to conduct business. There were 19 people in the audience at City Hall.

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

Approval of the May 10, 2021 Regular Meeting Minutes – MOTION BY GLEN GUSTAFSON TO APPROVE THE MINUTES FOR THE MAY 10, 2021 BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. GENE HAGEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

**PUBLIC HEARING –**

Rezone/Preliminary Plat – Agate Woods Addition – Dale Spohn requested approval for a preliminary plat known as Agate Woods Addition consisting of six residential lots. The property has approximately 17.14 acres of land. The property is described as Part of Lot 5, Block 1 Auditors Plat of Rocky Point. In addition, the applicant is requesting to rezone the area of the property that is currently zoned wooded residential (5 acre) to R-1, low density residential (1 acre). The approximate area to be rezoned is 5 acres. The property is located behind the Gull Lake Motel between Agate Lake Road and Anderson Road.

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 seven written comments read into the record in opposition of this application; one from Severson, Porter Law, representing Vince Driessen, one each from Jane Kolden, Kevin and Sandy Hays, Lynne Miller of Pebble Beach Road, Carmen Wilson 9136 Pebble Beach Road, and two from Dan Paul 9168 Pebble Beach Road, these letters are on file at City Hall.

**Teri's staff report indicated the following:** The applicant requested a zoning change and a Preliminary Plat consisting of 6 residential lots. The majority of the property is currently zoned low density residential with the exception of the southwest corner of the property which is zoned wooded residential. The size of the wooded residential portion of the property is approximately 330'x660' (approximately 5 acres). The rezoning issue should be reviewed first then the preliminary plat.

**REZONE:**

The minimum lot size for the R-1 district is 40,000 square feet and 20,000 square feet of buildable area. The minimum lot width for this district is 150'. The lot size for the wooded residential district is 5 acres, 2.5 acres of buildable area and a lot width of 300 feet.

There are a number of factors that the ordinance lists in considering a rezoning request (Section 11.5).

The property to the north and east surrounding the area to be rezoned is R-1, Low Density Residential. Property to the south and west is currently zoned wooded residential. Adjacent to the subject property there is property zoned neighborhood commercial (Gull Lake Motel). The area does have residential homes around the property (the properties labeled Eigen, Moriarty, Herbert and Anderson all have single family homes). The Smith, Anderson and Gulf Lima Six properties are vacant.

The property is heavily wooded and does not have any wetlands or lake shore.

The topography of the site is fairly level with some grade change near the northwest corner of the proposed Lot 3.

There is no public sewer for this area. The property would need to be served by subsurface treatment systems.

The proposed site does not have any significant historical or ecological value that is known by the city.

The property is served by Agate Lake Road, a publicly maintained roadway.

The Commission will need to determine if a potential conflict could arise between the subject property and the surrounding property. It is my opinion that there would be none too little conflict between the surrounding properties.

The rezoning would not be considered spot zoning since a majority of the subject property is zoned R-1.

The City's Comprehensive Plan indicates the following:

**Policies**

**Promote compatible land use development to protect investments and to protect the high quality of life in Lake Shore.**

Lake Shore is a beautiful place to live and, largely because of that, people have invested a lot of money in the community. For the health of the community and to attract additional quality investment, it is important to protect those investments that have been made by ensuring all new development is compatible with the community.

**Support growth patterns that reinforce the lake-oriented and rural development that defines the character of Lake Shore.**

The growth of the city has been driven by the scenic amenities and rural feel of the community. This is the community's brand. All new development should reinforce that brand by preserving or enhancing the rural recreation character that distinguishes Lake Shore from other local communities.

**Ensure that new residential development and redevelopment is efficient, orderly, environmentally sensitive, and fiscally responsible.**

With the high demand to live in Lake Shore, there is no need for the taxpayers to directly, or even indirectly, subsidize the cost of development. New growth and development should pay for itself, not just through the development process but also the increased valuation must pay for the increased demand for services. Degradation of sensitive environmental features will have a negative economic impact on the city and must be avoided.

## STAFF RECOMMENDATION

Based on the criteria established in the City's Zoning Ordinance it appears to be justifiable to rezone the property from Wooded Residential to Low Density Residential (R-1).

Jim Kramer, Kramer Leas Deleo Land Surveyor, representing Dale Spohn came before the Commission to answer questions regarding the application of Mr. Spohn. He explained their application, stating the density presented is less dense than allowable; if this application is not approved, they will present a plan that will possibly be denser. They are more than happy to submit a stormwater plan upon approval. Jim Woll asked Teri to explain to the audience what the possible outcome would be if this application is approved; he also asked what would be allowed if the applicant is denied and revisits the application with a new plan. Gene Hagen asked if the lots, as proposed, could be split. Jim Kramer answered that upon approval, the lot widths would not allow further subdivision of the individual lots.

City Engineer, Joe Dubel said because of the area, the hydrology should be looked at as a condition. Jim Kramer said they could provide that information.

Gene Hagen asked if the owners of the Gull Lake Motel could make a comment. Sue Scherpelz said she is concerned about wastewater runoff and doesn't want to see anything clear cut as the property is well wooded. She would like to see all the issues looked at.

Vince Driessen, immediately east of the property, purchased his property to preserve the rural aspect of the neighborhood. They would like to see this property be maintained to the most rural wooded lot as possible. And if the application approved, they would like to see conditions placed on the approval. He gave his interpretation of the conditions that should be placed on the application.

Dan Paul, Pebble Beach Road, is concerned with the driveways entering onto Agate Lake Road and would usually drain toward the road, which would in turn, be draining west towards Pebble Beach Road; he feels this drainage would affect their septic mound systems.

Brian Mark, 9334 and 9344 Interlachen, asked for confirmation of density/lot size between the zoning districts. Teri explained WR, R2 and R1 lot sizes. Mark asked, if there are restrictions made as this moves forward, if this will start a cascade of development of this type. He would like to see the Comprehensive Plan followed. Teri explained that she has been part of five Comprehensive Plan reviews and adoptions in some aspect for approximately 30 years, all of which have kept the rural aspect of the community. She explained this project is a good transition of the density.

Vince Driessen suggested the ability of not allowing the subdivision of 17 individual lots as a condition of the plat to be put into perpetuity.

Katie Arverson asked for the definition of clear cutting. Teri explained Wooded Residential allows a more aggressive cut of the woods; but suggest the select cut process of allowing for the driveway and the home. The possibility of intensive cutting is not allowed.

Chuck Driessen commented their family has been in Lake Shore over 60 years and he and his wife own a property on Gull Lake for over 22 years. He read a prepared statement to the Commission sharing his view of the negative impact a development, like the one proposed, would create and the reason why the application should be denied.

As there were no more comments, the Chair entertained a motion for the Rezoning. Teri noted the rezoning and preliminary plat have to be acted on separately and the rezoning cannot be conditioned; however, the preliminary plat can be conditioned.

Arla Johnson commented that everyone on the Commission understands the concerns of the people that are here today; we all love our community and we can't say 'OK, we're here, no nobody else can be here,' we have to go forward sharing what we've got, but in a very careful way to protect what we do have. She continued, that this developer is trying to do this development the best way they can with this area and not overbuild on it. She suggested, to keep that in mind, the developer is creating generous size lots that most people wouldn't consider when presenting a plat they have the ability to create many more buildable lots.

Gene Hagen has concerns with the deforestation, the impact of the traffic, the water runoff and the density of the project is an issue.

Arla asked Jim Kramer how long it would take for a stormwater management plan to be prepared. Jim Kramer said they would provide a stormwater management plan for the Commission's review during final plat approval. He also said the Pebble Beach Road residents have a valid concern and the intent is not to exacerbate the situation of stormwater runoff towards Pebble Beach Road. They will do everything they can do to retain the stormwater on the site and there are two natural holding areas on the property they will utilize.

Brian Mark said it would be easier to digest if the restriction of not allowing further splitting to one acre lots was added to the deed. He would like to see the community remain a place that attracts people to the area with the parameters in place set forth by the city council and commission.

Kris Driessen (Pinehurst Lane) added to Brian's comments that it's not about keeping people out; it is about the forests and the wildlife and maintaining the respect for them (the wildlife).

Vince Driessen asked Teri, procedurally, how the rezoning and the preliminary plat will be addressed; i.e., with the preliminary plat as the second item being addressed and the conditions to that action.

Teri said we have done this in the past with each being done in conjunction and today's actions will be recommended to the City Council for their approval.

Gene Hagen asked if the application could be deferred until there is more discussion among the Commission. Bob Toborg would like to learn more about the water problem. Kris Driessen explained the stormwater runoff after the County 77 road project.

Sue Sherpelz said she doesn't want to have more of a water problem than they were left with after the County 77 road project and would hope they have a more specific plan for water retention. Pat Siedel shared that they were left with a mess and chastised the city for their water problem.

Jim Woll explained this is not the issue at hand, the Commission is discussing a rezoning application. He said it is the role of the Commission to review and adequately enforce the zoning ordinances of the City of Lake Shore. He said again, this request is for a rezone and that Mr. Kramer's non-threatening comment is important because the potential for compliance with the Lake Shore zoning ordinance as it exists today without a rezone has a potential for 11 or 12 lots to be built in that area; he thinks this is a reasonable alternative, at least from a rezoning standpoint and followed with a motion.

MOTION BY JIM WOLL TO APPROVE THE REZONING AS REQUESTED BY MR. SPOHN BASED ON THE CRITERIA ESTABLISHED IN THE CITY'S ZONING ORDINANCE. ARLA JOHNSON SECONDED THE MOTION. Arla shared this is the best possible option as compared what the applicant could present if denied this application. MOTION PASSED WITH GENE HAGEN OPPOSED.

Teri went over the Preliminary Plat – She pointed out that the City doesn't enforce covenants that are placed on a property (as was suggested in the letter by the attorney for Vince Driessen) and they would have to have a very strong homeowners association to enforce such covenants.

### **Preliminary Plat**

The property is described as Part of Lot 5, Block 1 Auditor's Plat of Rocky Point and is approximately 17.14 acres of land. The property is zoned low density residential (R-1) and Wooded Residential. The developer is proposing a zoning change which is discussed above. If the Planning Commission recommends denial of the zoning change, then the applicant would need to revise the preliminary plat design.

The minimum lot size for the R-1 zoning district is 40,000 square feet. The developer is proposing six residential lots exceeding the minimum lot size requirement. The minimum lot width is 150'. The buildable area for each lot is 20,000 square feet and each proposed lot exceeds this minimum requirement.

There are no structures or improvements on the property.

There are no proposed roadways, walkways or other public improvements with this plat.

Each of the proposed lots shows a potential principal structure with an attached garage and driveway. A variance should not be needed for a structure for the proposed lots.

The building setbacks are shown for each of the proposed lots; there is no greenspace for the plat. Each lot will not be able to exceed the impervious surface requirements which is 20%.

Boundary lines, north area, scale, date of survey is shown on the preliminary plat.

Contours are indicated on the plat.

Soil borings (2 per proposed lot) have been done. Lots 1-4 consist of sandy loam to loamy sand to a depth of 48" and lots 5 and 6 vary from a loam to gravelly loam with a sandy loam showing redoximorphic features at 30". All lots are able to support a subsurface treatment system (septic system). Two potential subsurface treatment systems are on shown on each of the proposed lots. A full site suitability report for each of the lots is on file from a licensed site evaluator and designer.

Vegetation limits are not shown on the plat. The property is heavily wooded and an aerial view is included from the Cass County GIS site. Anticipated vegetation removal has not been addressed. Clear cutting within the R-1 district is prohibited. Select cutting is allowed within the R-1 district along with clearing for permitted structures, driveways and septic systems.

A stormwater plan or erosion control plan for the proposed development has not been addressed.

A wetland delineation has been performed for the property and indicates no wetlands on the subject property.

Covenants have not been submitted with the plat and are not planned for this development.

*(Items 14-17, referenced in staff recommendation)*

A satisfactory title opinion is needed (approved by the City Attorney).

An independent plat check is required for the plat (prior to signing the final plat).

The developer is required to pay all professional costs incurred for the development (must be paid prior to the city signing the final plat).

A park dedication is required for the plat. Based on the plat, a cash payment in lieu of land is recommended (\$250 per lot). This must be paid prior to the city signing the final plat.

#### STAFF RECOMMENDATION

The Preliminary Plat of Agate Woods is in compliance with the city subdivision ordinance; preliminary approval is recommended contingent upon items 14-17 being completed prior to the signing of the final plat and the rezoning of the southwest portion of the plat from WR to R-1. City Council approval of the rezoning and preliminary plat is required.

Vince Driessen, 9474 Rocky Point Trail, asked if this is the appropriate time to place restrictions on the plat. Teri said this is the appropriate time. Vince strongly urged the Commission to do so.

Arla asked the process for doing so. Jim Kramer said the Preliminary Plat approval would include the restrictions of not allowing any more than six independent lots. He did say this is a tough condition to enforce. He commented they are open to have deed restrictions to be filed. Teri said this could be a condition of the Preliminary Plat approval.

Katie Arverson asked if any of the lots are attached lake shore or any rights to water access including adjacent lots and lakes. Teri said these are non-riparian lots and have no easements for lake access. Katie asked are there any plans in the future by the developer to obtain private rights to lake access. Teri said the ordinance protects from that. Teri asked Jim Kramer if the developer has intentions to ask anyone for riparian rights to gain water access. Jim said he did not.

Jim suggested the stormwater plan to be a condition, condition the deed restriction of not allowing one-acre lots. Jim Kramer said their plan is to put forth the plan that they are asking for approval.

**MOTION BY JIM WOLL TO APPROVE THE PRELIMINARY PLAT OF AGATE WOODS ADDITION SUBMITTED BY DALE SPOHN CONTINGENT UPON ITEMS 14-17 BEING COMPLETED PRIOR TO THE SIGNING OF THE FINAL PLAT AND THE REZONING OF THE SOUTHWEST PORTION OF THE PLAT FROM WR TO R1; TO ALSO INCLUDE A STORMWATER EROSION CONTROL PLAN, DEED RESTRICTIONS ON THE FINAL PLAT AGAINST FURTHER SUBDIVISION, WHICH LIMITS THE PLAT TO NO MORE THAN SIX LOTS; DEED PORTIONS OF ANDERSON ROAD AND AGATE LAKE ROAD TO THE CITY. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.**

## **NEW BUSINESS –**

Site Plan Review – David Baudler – Teri’s staff report indicated the following: The applicant is seeking a site plan review (feedback) for the purpose of reviewing a potential request to expand a nonconforming structure (boathouse). The applicant would like to add a second story and to increase the length of the boathouse by going into the bluff.

The applicant has provided pictures of the site and rationale for the request. The city has not allowed such improvements/expansions to boathouses in the past. The city has encouraged property owners to make necessary repairs to existing boathouses including foundation repair work. Changes in roof pitch have been allowed (flat to a pitch) provided no additional living space is added. In the past 20 years, the city has had two requests for major changes to boathouses which both had been denied. One request did include a second story and one request for an additional 2 feet in length (lakeward). Both of the requests were denied.

David Baudler came before the Commission to receive feedback for the potential expansion of his boathouse that needs attention.

Bob Toborg asked if the plan was to go further into the bluff. David answered, yes, that is the plan, he wants to make the boat house longer as he doesn’t want to go closer the water. He said by going into the bluff and up, it would provide more support than it has now. He said the boathouse is in need of repair.

Jim Woll verified that Teri’s staff report indicated that there have been two requests for major changes to a boathouse and they have both been denied. Teri confirmed the two other denials of boathouses. Jim asked for the logic behind the denials. Teri answered, one was asking to move further into the bluff, which was denied; the other was an expansion and it was found they had reasonable use of the property.

Arla asked what erosion control plans would be put into place for his project. David said he hasn’t got to that part of his plan, if he moves forward, that information would be included in a formal variance application.

Gene asked the integrity of the bluff. David said it is all natural and pretty good on the steep slope. He won’t have to remove the stairs to the boat house.

Arla asked if he would be totally replacing the original boat house. He said he would replace the entire structure given the condition of the current boathouse. She asked what boat would be stored there. He answered he doesn’t have the boat yet. He said the new boathouse would be better than what is there today as this structure is in very poor repair; he will leave the stairway.

Teri explained what the next course is for Mr. Baudler if he is going to move forward. She said it will probably be a very difficult request because of the disturbance into the bluff and the MN DNR will also comment on a formal application. Teri sent this site plan review to the DNR and didn’t receive a response.

Jim Woll said he feels the proposed plan will significantly impact the bluff and commented on the reasons for the previous two denials with similar requests.

Joe asked if there will be any trees removed. David doesn’t think there would be any tree removal. Joe gave his guesstimate of what the DNR may need on an engineering level before they make comment. Teri is concerned about the roots of the trees of the adjacent Sherwood Forest property.

Joe also asked if the peak of the roof would be above the bluff. David said it will not be above the bluff.

John Terwilliger commented that the ordinance doesn't allow for total replacement of a boathouse; it does allow for repairs and upkeep of the structure. Teri shared examples of boathouse alterations over the past 30 years that have been approved.

David Baudler said his intent is to restore and make the boathouse better than the condition that it is in today. He received the Commission's feedback to determine if he will move forward with his project. Gene suggested that we should wait for the DNR's input. Teri will share any feedback she receives from the DNR to David to determine if he wants to move forward with the project.

Site Plan Review – Lakeshore Properties, LLC – Teri's staff report indicated the following: The applicant is seeking a site plan review for subdividing property into a conservation subdivision. The property is 34 acres with 21.9 acres of upland area. The property is located east of the Causeway multi plex units on the east side of Lost Lake Road and north of the Anderson Gravel Pit. The property is located on Spider Lake which is considered a Natural Environment Lake (NE). A Natural Environment Lake has a minimum lot size of 80,000 square feet and a minimum buildable area of 40,000 square feet. The topography of the property is difficult. It has steep slopes, bluffs and wetlands. Due to the topography and wetlands, it would require boardwalks for each lot over sensitive wetland areas and traversing bluff areas.

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 ordinance does grant very minor density increases if additional requirements are met, for example, increasing the setback by 100%. A density calculation sheet has been provided in the packet from the previous site plan from Jethro Carpenter. Based on the information for the site, it appears 10 units would be allowed by ordinance and it would be stretching it for 11 units (10.154 is the density allowed).

**Issues for the Planning Commission to address:**

- A density calculation sheet has been provided in the packet from an earlier site plan review this year and based on the information for the site, it appears 10 units would be allowed by ordinance and it would be stretching it for 11 units (10.154 is the density allowed). A density analysis has not been done by the applicant according to the city's ordinance (utilizing tiers). The density calculation done by the applicant has taken the usable area of the property and divided it out by the number of units coming up with 96,725 square feet per unit. Tiers are needed to demonstrate the number of units allowed riparian access and potential density increases.

Criteria	Density Increase, Tier 1	Density Increase, Tier 2	Density Increase, Tier 3 and Beyond
Dwelling setback from lake increased 50% over minimum	5%	N/A	N/A
Dwelling setback from lake increased 100% over minimum	10%	N/A	N/A



Common Open Space increased to 60%	0%	0%	0%
Maintain predevelopment peak runoff rate for the 50-year, 24-hour storm event	0%	0%	0%
Maintain predevelopment peak runoff rate for the 100-year, 24-hour storm event	0%	0%	0%

**38.1.1.1** Increases in unit or site densities shall not exceed the following maximums:

Tier	Maximum Density Increase
First	5%
Second and each subsequent tier	10%

- Will the cottages be served by city sewer or a community sewer system? There is a possibility of connecting the development to city sewer. A very preliminary study shows the city may have capacity for an additional 10-12 units without requiring the city to make costly upgrades to the system.
- The applicant should be asked what if there any plans for the peninsula.
- Lake access or docking rights is only granted to the number of units allowed in tier 1.
- The applicant is proposing a new access road parallel to the existing Causeway access road. The second proposed road does encounter some steep topography along with the first tier of units. This would require significant dirt moving and tree removal. The site plan submitted by the applicant does not show the topography.
- It should be noted there is a 30 setback from a wetland, this would be applicable to the units shown on the plan in the first tier.
- If the plan moves forward, a detailed plan on the boardwalk and topographically alterations will be required along with the proposed roadways.

Cindy Hidde from Stonemark Engineering came before the Commission seeking feedback for Tom Steffens, Lakeshore Properties, LLC. She said this plan was mirrored from the plan that was done by Lakes Area Surveying which was presented earlier to the Commission. She said Tom may not want to put a lot of effort into going forward if they don't like the plan included. Cindy shared how the calculation was made for the 11 units. She shared it is definitely a challenging site.

Joe Dubel asked Cindy if she has seen the site plan that Teri included for topography referral as it looks like that plan could make the proposed plan very challenging. Cindy said she did not see the plan that Joe referred to. She did pull the aerial contours from the Cass County website.

Gene asked if there will be walkways over the wetlands. Cindy said they will need to get to the lakeshore, but wasn't sure there would be a boardwalk. She said there is a gazebo on the peninsula down by the docks that they will need to get to. She hasn't walked the property to see if there are wetlands where they would go down to the docks. Teri said she has walked the property and you can walk all the way out to the end of the peninsula; there will be some steep slopes on the pathway to get to the peninsula, which will be challenging with the topography. Teri noted that they are

requesting 11 docks slips, however, only the first tier is allowed one mooring space (three docks would allow six mooring spots).

Arla commented that 11 units is kind of pushing the limit. Cindy shared how they calculated to get to that number and that doesn't take into consideration the calculation for removing wetlands and/or bluffs. She said 11 units is by far the maximum.

Jim Woll said as it relates to the previous reviews of this site by the Commission, the response has been that we would not issue a variance for density, and we would require that all structure distances, permeability and all the other issues be met so there are no other variances associated with the constructions of the buildings.

Teri asked if the developer has talked to Causeway about potentially using the existing access road to eliminate the addition of another road. Cindy replied that she will check with the developer. Teri shared some of the aspects of the previous site plan reviews on the same property. She also shared that Darrin Hoverson from the DNR has walked the project and he may be a good source to talk to. Bob Toborg is concerned about the placement of the docks.

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

#### **REPORTS**

City Engineer – Joe Dubel had nothing to report.

Chairman – Jim Woll had nothing to report.

Council Liaison – John Terwilliger had nothing to report.

Zoning Administrator – Teri updated the Commission on the violation on Upper Gull; the property owners have paid a fine and will re-establish the vegetation. They are pursuing a variance in the future.

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

MOTION BY GLEN GUSTAFSON TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF JUNE 14, 2021 @ 10:58 AM. ARLA JOHNSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald  
Lake Shore City Clerk