

**CITY OF EAST GULL LAKE
MEETING MINUTES
PLANNING AND ZONING COMMISSION**

February 24, 2004 - 6:30 PM

1. Call to Order - 6:30 PM
2. Roll Call

Commission: Sam Marohn, Craig Buchholz, Rob Mason (Chairman), Peter Dunphy (Dennis Lang was not present.)

Staff: Jennifer Shillcox, Charles Marohn (P&Z Administrators)

3. Public Hearings - None
4. Additions or Deletions to the Agenda – Update on the Hegedus/Ahern issue from Chuck Marohn.
5. Approval of Minutes
 - a. January 2004 Minutes - **Motion to approve by Commissioner Dunphy, seconded by Commissioner Marohn. Motion passes unanimously.**
6. P&Z Administrator's Report
 - a. Permits

Shillcox informs the Commission that three permits were approved and that staff is currently working with two other applicants – Johnson and McNair – who will be applying for a variance and a CUP respectively.

- b. Correspondence

Shillcox informs the Commission that correspondence with Scott Hoffman at Maddens dealt with Maddens' plans to redesign their Classic, East, and West golf courses. She states that she and Chuck Marohn have met with Scott about possible vacation of a portion of Deerpath Road on the West course and have advised him to work with John Maxon, an adjacent property owner, prior to petitioning the City to vacate the road.

- c. Potential Violations/Enforcement Action
 - i. Ryan Violation

Shillcox informs the Commission that the matter has been turned over to Tom Fitzpatrick, the City Attorney, but that Anne Ryan had contacted her to let her know that her property was still under investigation by the Brainerd Fire Chief. Shillcox called Kevin Molly, the Fire Chief, who informed her that the investigation on the Ryan violation is now closed, and that he recommended the City move forward with resolving the violation since the remainder of the structure left after the fire poses a health and safety hazard.

Shillcox states that she has informed Tom Fitzpatrick of these discussions and he will decide how to move forward with this violation.

Chairman Mason asks if Ms. Ryan was sent a certified letter.

Shillcox responds that she is not sure what correspondence Tom Fitzpatrick has had with Ms. Ryan.

ii. Lonny Thomas, attorney, to discuss future action on Sedgwick violation.

Tom Sedgwick is present in place of Lonny Thomas. Mr. Sedgwick states that he lives on Green Gables Road. A sign near the lot blocks visibility from his driveway. A 30-mile/hour speed limit sign has also been posted. Green Gables Road is a County Road. To deal with safety and visibility issues, Lonny Thomas, WSN, Borgert, and Anderson Brothers came up with a solution to meet the impervious limit by installing the Eco-stone pavers. Engineers informed Sedgwick that he was in luck because his lot was flat with sandy soils – an ideal situation for pavers. The pavers were installed properly by the landscaper in accordance with instructions from the manufacturer. They were put in very close to the specifications. Dave Johnson from Anderson came and made sure it was in compliance. The house is pulled back from the lake over 100', which makes it appear bigger from the road. Sedgwick states he did something different to solve a problem, and it has raised issues.

Chairman Mason states that if Sedgwick does this, how is the City going to deal with other citizens in East Gull Lake?

Sedgwick states that he has worked with the City for 18 months on the solution. He requests an amicable solution. States that Lonny Thomas pointed out that the City is worrying about what is being done too much. Sedgwick wants to know if a CUP would work. Why not use a CUP for permeable paver to get approval by the City to exceed the limit? People should have to pay to be able to meet heavy performance standards. The city needs a way to regulate what comes next.

Chairman Mason asks how much the Sedgwicks are over the impervious coverage.

Sedgwick doesn't know how much they have, but doesn't want to go there. He states that the City needs to refine its definitions of "driveway, deck, sidewalk".

Chairman Mason replies that the Commission is researching information on pervious paver systems to better address that issue.

Staff member Marohn estimates Sedgwicks are at 30%.

Chairman Mason clarifies that what is at issue is what do you do with 5% over impervious limit. The issue is that Sedgwick's interpretation of the ordinance,

Chairman Mason asks staff member Marohn about how to deal with Sedgwick's.

Staff member Marohn replies that while Sedgwick meets some performance standards, they don't meet all which would justify meeting the Ordinance.

Staff member Marohn states that people want flexibility. He is looking into building height envelope as a way of addressing the other issues of bulk and density. Looking at parallel standards through prism of Sedgwicks is not the way to do things, otherwise the City is trying to make standards that fit the Sedgwick's property and apply to the entire city, which is not the right way to do things. We need to look at this at this as a city-wide planning issue and make the Ordinance more flexible.

Staff member Marohn goes on to say that if the interpretation of the Ordinance is in question, the staff's job is to interpret the Ordinance. People can appeal staff interpretation.

Sedgwick responds that the staff is taking on a "current interpretation of the Ordinance" which implies that it is a moving target. The City needs to do a better job of defining impervious.

Commissioner Buchholz responds that they are getting into definition games reminiscent of Bill Clinton. Buchholz responds that he doesn't agree with the attack on the definition of impervious. Sedgwick's house was built too big for the driveway and he knew beforehand what the interpretation does and put it in anyway.

Sedgwick states that staff member Marohn told him that he looked at the plans and didn't like them.

Chairman Mason asks Sedgwick if Marohn told him that he couldn't install his driveway with pervious pavers.

Sedgwick states no.

Sedgwick asks how the city determines if someone is in violation?

Staff member Marohn states that we don't require a permit to construct a driveway, and we don't inspect after construction. Are there other violations? Probably, but we're not a hunting forum.

Sedgwick asks how many times was the Ordinance used to promote green space and aesthetics? We can certainly draft an Ordinance that specifically addresses that.

Commissioner Buchholz asks if we will need to hire aesthetics police?

Commissioner Dunphy states that the City has tried very hard to be consistent with its interpretation of the Ordinance. It's hard to give credit when they don't have hard numbers or all the facts about pervious pavers and runoff.

Sedgwick thinks what distinguishes him is that he went ahead and provided a solution to a problem. If the City wants a list of properties exceeding the limit, would the city then find them all in violation? He doesn't want to do that, but it's not fair that he is being targeted.

Commissioner Buchholz states that he is not sympathetic to the Sedgwicks because they knew what they were doing.

Chairman Mason states that the fact is that the Zoning Administrator told Sedgwick he couldn't do it, and he went and did it anyway. He should have applied for a variance beforehand rather than jumping to a solution.

Sedgwick asks if the pervious pavers were not used as a driveway and placed elsewhere on the property, then would they still be considered impervious surface?

Commissioner Dunphy states that he does not know what the right answer is to that question, but that there are other concerns with pervious pavers besides run-off.

Sedgwick says that the major concern with pervious pavers was "stormwater run-off" when he was first found in violation, but now the City has changed its story.

Chairman Mason says that the interpretation was made by staff and wasn't followed by Sedgwick. That is the issue in this case. The staff said nothing in Ordinance addresses pervious pavers, so they weren't allowed to meet the impervious coverage limit. He states that the Planning Commission will be more sympathetic with landowners if they apply for a variance ahead of time rather than just doing it and applying later. That is not something the Commission wishes to encourage. The point is that Sedgwick knew the staff's interpretation beforehand, but went forward regardless.

Sedgwick states that if he's in violation, then so are many other people, and the City needs to consider that.

Commissioner Buchholz says no. Tonight we're talking about this property. Complaints can be made at a separate meeting about every other property that may or may not be in violation, but tonight is only about the Sedgwicks.

Chairman Mason proposes a resolution to the Commissioners, wondering if they would consider an after-the-fact variance for this property heavy with conditions and an extra after-the-fact fee.

Commissioner Buchholz states that he is not sympathetic, but that he will consider a motion.

Commissioner Dunphy states that he would like Staff and Sedgwicks to come to an agreement. He still thinks the issue is that the Planning Commission and staff considered the pervious pavers as “impervious” and Sedgwicks knew that but did put in their driveway anyway.

Staff member Marohn states that he suggested an after-the-fact variance to Lonny Thomas, but that he said the Sedgwicks didn’t want to apply for one since it would mean admitting that they did something wrong.

Chairman Mason asks if there could be an after-the-fact fine and if staff could work on conditions. He suggests that perhaps Sedgwick’s property is used as a test case.

Sedgwick states that he would apply for an after-the-fact variance to resolve the issue.

Commissioner Marohn asks if the CD Sedgwick’s got with their pavers explained maintenance.

Staff member Marohn responds that he’s seen it and that it doesn’t directly address a long-term maintenance strategy.

Chairman Mason asks how does the city enforce that people are properly maintaining their driveways?

Sedgwick suggests maintenance agreements or Escrow funds.

Commissioner Dunphy replies that this is costly and difficult to administer.

Chairman Mason wants to resolve this so it doesn’t drag out any longer and to avoid legal action.

Commissioner Dunphy wants to measure how pervious the driveway systems stay, but we don’t have the resources to monitor and evaluate how these systems are managed.

Staff member Marohn states that he could come up with a list of conditions before the Sedgwick’s apply for an after-the-fact variance.

Sedgwick states that they would like to apply in May.

Chairman Mason directs the staff to put together a list of conditions to present to the attorney Lonny Thomas before the Sedgwick’s apply for the after-the-fact variance in May 2004.

Staff member Marohn states that he will work with Lonny Thomas between now and then.

d. Craguns Legacy – Meeting February 4th and next one in October.

e. Council Action - None

7. Open Forum

8. Old Business

a. Update on pervious pavement systems. –

Gary Severson is present.

Chairman Mason asks him if he would like to say anything.

Severson states that he is there to listen. He states that the Lindner’s house was built in the early 1900s. There have been no alterations in size to the structure since the 1950s.

States that he met with Shillcox at the Lindners' property earlier today and found out for the first time that he'd need a variance to add a porch to the house.

Chairman Mason asks if he didn't think he'd need one based on past experience?

Severson replies that he knew that he would probably have to get a variance for the front porch, but that all communities are different. He was disappointed that Staff didn't inform him that he needed one when he submitted the application in December.

Chairman Mason asks if we can use a CUP for a pre-existing condition to bring it closer into compliance. We may require the use of Grasspave as a condition itself.

Staff member Marohn states that people won't use it as a condition because it is more costly than most other conditions to meet the 25% impervious coverage.

Chairman Mason asks if a variance system would work.

Staff member Marohn states there is no hardship.

Severson explains that he has reworked the plans and has reduced the impervious coverage to ~26% not including a Grasspave turn around in that percentage. He asks what will the City deem as a driveway?

Commissioner Dunphy doesn't see this as reducing percentages. Pervious paving systems should not be used to reduce the percent of pervious coverage based on feedback from independent sources.

Severson asks how can we help a citizen to meet the Ordinance? Can he do it through a CUP, which he didn't know was an option until today?

Chairman Mason clarifies that if a property has more than 25% impervious coverage, then it would need a variance, if 20-25% then a CUP and stormwater management plan.

Chairman Mason advises Severson to submit a variance for the porch addition and to try to get the impervious coverage down to as close to 25% as possible with a stormwater management plan. Normally a CUP is required to get to 25%. If over 25%, Severson must go through the variance process and conditions will be put in place.

Severson states he doesn't think he can get a stormwater management plan done in time to meet the application deadline.

Staff member Marohn states that he will work with WSN to submit a stormwater management plan.

Chairman Mason gives Staff direction to work with the clients to help them achieve objectives. He asks Severson if this is clear.

Severson states it is clear as mud. States he thought this discussion was tabled. Sticking to 25% is something that is different than what he was made to understand at the last meeting.

Staff member Marohn states that Staff's policy is to be upfront about variances and limitations right from the start.

Chairman Mason thinks this product will help with the 20-25%. In some lots, Grasspave might be the only solution to meet the impervious limit. It shouldn't allow people to go over 25%; however it should be a tool to help people way out of compliance get back in.

- b. Update on temporary boat structures research.

Shillcox presents update. Says she spoke with Peder Otterson at DNR waters who stated that the state used to regulate docks and temporary structures, but now it is under local government control. In general, the state supports local regulation of such structures, particularly where there are negative impacts to wildlife habitat, fisheries, and aesthetics.

Jim Erickson presents on temporary structures. He states that we need to be proactive. Last fall there were two temporary boathouses. In five years there could be a lot more. What do we want our lakes to look like in the future? He presents pictures of structures on Gull Lake.

Erickson has spoken with Mike North, regional environmental assessment specialist for DNR, who feels that there is a need to regulate boat tents. Ron Morreim, state hydrologist, concurs.

Erickson states that we need to do what's right, not what's popular.

Commissioner Dunphy states that there are covered boat lifts and marinas that are more obtrusive. Current marina definition does regulate how many there can be to seven.

Chairman Mason asks Staff to do some research on DH Docks on the common size of these boathouses.

Shillcox What is the problem? Size – Obstruction of the view – how do we start? Covered boat lifts are allowed and they

Commissioner Dunphy states that the Ordinance should deal with setbacks.

Staff member Marohn suggests site-lines.

Commissioner Buchholz asks what about shorelines that aren't straight - what about coves?

Shillcox suggests that before changing the Ordinance, we should define the problem. If size is an issue, why? Is it the attitudes of people about appropriate shoreline development? Natural aesthetics? Degraded shoreline ecology? This may mean having to look at other parts of the Ordinance that don't meet these problems, but it is important to understand the central problem rather than just trying to make a regulation for temporary boathouses fit.

Erickson states that lights are also a problem.

Chairman Mason states that situations with lay of the land dictate the location of the dock. Height and setbacks may be the best solution. He wants the Staff to give them some language. Look at total picture.

Commissioner Dunphy states that he doesn't want to break new ground.

Chairman Mason adds that the danger is to regulate too heavily and not allow people to reasonably use their property. How do we regulate that? The best approach is to start with manufacturers of the products.

Staff member Marohn states that there are two issues – the physical view on top of the water looking toward the shore, and the view from the property and adjacent properties. Each needs to be addressed.

Shillcox suggests incentives to do the right thing as an alternative to regulation.

Staff member Marohn also suggests that education also helps and points to the rip rap ordinance as an example. Many people didn't know rip rap was bad until they had to get a permit to install it and then learned why it wasn't a good thing.

Commissioner Dunphy asks if we will have permits for everything? We can only educate people if they have to come in for a permit. He cautions that we shouldn't create an ordinance that we can't enforce.

Chairman Mason states that requiring a permit would provide an opportunity for staff to meet with people and to educate them. Asks staff to do more research and provide some language for them to work with.

9. New Business – Hegedus/Ahern Access Issue

Staff member Marohn brings the Planning Commission up to speed on the Hegedus/Ahern issue. States that the two parties can't come to agreement and now the Hegedus' want the City to condemn part of Ahern's property to provide access to their lots. The City approved the creation of the lots, so Hegedus should be provided with access as stipulated by the Ordinance.

Chairman Mason says the City can require that the lots be re-consolidate into one buildable lot.

Staff member Marohn cautions about avoiding a regulatory taking. States that if City agrees there's a public need, it would go through with a condemnation process. Since the City created lots, it has some responsibility to allow reasonable use of the property and to provide access to the property owners.

Commissioner Buchholz doesn't think that two houses should be built on the two shoreland lots.

Staff member Marohn states that Hegedus can't do anything without a variance, but that he has a true hardship. The Planning Commission can negotiate how many structures can be built through the variance process. He states there is a public interest for the City to condemn property. Hegedus owns all three lots and will pay the assessment for creating the road.

Nadine Wittkop states that she thinks it's unfair for Hegedus to pay for problem.

Staff member Marohn says it is and there's public interest in making this happen.

Commissioner Buchholz thinks that more restoration of the bluff is needed.

Chairman Mason feels that one house with an easement to the property would be the ideal outcome.

Staff member Marohn offers to meet with Hegedus and Ahern to try to negotiate a deal, and then it will come to the Planning Commission if need be.

Chairman Mason states that he is concerned by the City stating it made a mistake. The lots along the lake are fairly long. The building sites would be behind the wetland.

Staff member Marohn states that, from a legal standpoint, the City didn't err because it followed the stipulations. The lot line ends at the top of the bluff. However, from a planning stand point, the right thing for the City to do is to provide access since it approved creation of the lots.

Chairman Mason states that the big advantage we have is that all three lots are owned by Hegedus.

Staff member Marohn thinks an agreement would be a house up top and a guest house on the lot below. Especially since the owner does not plan to sell off the lots but rather use it as a family encampment. Lot consolidation could be considered as a condition in a variance.

10. Adjournment – meeting adjourned at 8:57 PM

Respectfully submitted,

Jenny Shillcox
Planning and Zoning Administrator