

AGENDA
GREATER BEMIDJI AREA JOINT PLANNING BOARD
317 4th Street NW

Wednesday, November 14, 2018 REGULAR MEETING – 6:00 p.m.

- **Roll Call** **Chair**
- **Pledge of Allegiance**
- **Approval of the Agenda**

1. MINUTES **Chair**
Approval of October 10, 2018 Minutes

2. CONSENT AGENDA
Items in the Consent Agenda are approved with one motion without discussion/debate. The Chairman will ask if any Board member wishes to remove an item. If no items are to be removed, the chairman will then ask for a motion to approve the consent Agenda.

- 1. Approve/Pay Bills (see attached list of bills) **Chair**
- 2. **Resolution 2018-20** - Approval of 2019 Meeting Calendar **Chair**
- 3. **Resolution 2018-22** – Approval of First Amendment to 2018 Zoning and Subdivision Ordinance **Chair**

3. VISITORS **Chair**

4. NEW BUSINESS
1. **Northern Township –Resolution 2018-19** - V-18-31.01012.00 – Ruttger’s Resort **CM**

5. OTHER BUSINESS
1. Paving Discussion
2. **Resolution 2018-21** - Approval of 2019 Budget/Preliminary 2020 Budget **Chair**
3. **Ordinance 2018-07** - Approval of 2019 Fee Schedule **Chair**

6. DIRECTOR’S REPORT **CM**

7. UPCOMING MEETINGS **Chair**

| | | |
|----------------------|---------|---------------------|
| 1. November 29, 2018 | 6:00 pm | JPC Regular Meeting |
| 2. December 12, 2018 | 6:00 pm | JPB Regular Meeting |
| 3. December 20, 2018 | 6:00 pm | JPC Regular Meeting |
| 4. January 9, 2019 | 6:00 pm | JPB Regular Meeting |

8. ADJOURN **Chair**

GREATER BEMIDJI AREA JOINT PLANNING BOARD
Meeting Minutes
November 14, 2018

Pursuant to due call and notice, a regular meeting of the Greater Bemidji Area Joint Planning Board, Beltrami County, Minnesota, was held on Wednesday, November 14, 2018, at 6:00 p.m. in City Hall Council Chambers. Chair Meehlhause presiding called the meeting to order and roll call was taken.

Upon roll call, the following members were declared present: Meehlhause, Erickson, Kelly, Chambers (alternate), Albrecht

Members absent: Frenzel (utilized alternate)

Staff present: Casey Mai, Terri Ball

Others in attendance: Joe Braun, Nick Kramer, Andy Mack, Geri Hickerson

Pledge of Allegiance was performed.

AGENDA

Motion by Erickson, second by Albrecht, to approve the agenda as presented.

Motion carried unanimously.

MINUTES

Motion by Kelly, second by Chambers, to approve the October 10, 2018, JPB minutes.

Motion carried unanimously.

CONSENT AGENDA

- 1) Bills for the total amount of \$11,772.99 were presented for payment.
- 2) Resolution No. 2018-20 – Approval of 2019 Meeting Calendar
- 3) Resolution No. 2018-22 – Approval of First Amendment to 2018 Zoning and Subdivision Ordinance

Motion by Erickson, second by Albrecht, to approve consent agenda as presented.

Motion passed unanimously.

VISITORS

None

NEW BUSINESS

RESOLUTION 2018-19 V-18-31.01012.00 – Ruttger's Resort

Mark and Karrie Nelson of Ruttger's Resort are requesting an after-the-fact variance for the expansion of a non-conforming structure in the (R-3) Suburban Residential zoning district

(unsewered) and within the Shoreland Overlay at 7598 Bemidji Rd NE in Northern Township. A variance is being requested in order to increase the pitch of the roof from thirty-four (34) feet to thirty-eight (38) feet and to enclose the two exterior stairwells to preserve the longevity of the structure and to provide safety to the people on the resort campus.

BACKGROUND

The Nelson's recently purchased the existing resort from Randy Ruttger and took ownership in February of 2018. The purchase only included the west half of the resort; however, all parties entered into a lease agreement on February 20th of 2018 that allowed the Nelsons of Gold Coast of Bemidji, LLC ("Tenant") to tenant the east half of the resort premises from Randy Ruttger of Birchmont, Inc. ("Landlord"). This lease agreement runs until December 31st, 2022 unless terminated earlier. According to the Nelsons, they plan to purchase the remaining half at a later date.

Throughout this past year, Mark Nelson has stopped into the JPB office on several occasions to discuss his future plans of the main lodge as well as the resort as a whole. Staff has stated several times that no expansion or site alterations could take place without the approval of a variance or through a commercial Planned Unit Development (PUD), which would require the Ruttger's Resort campus to be rezoned to commercial. After consulting with the JPB Attorney, the alterations to the main lodge would only require a variance to enclose the exterior stairwells and to increase the pitch of the roof. Any alterations to the site would trigger the commercial PUD. On August 20th, 2018, JPB staff responded in an email to Mark Nelson and their design consultant, regarding their email which included the proposed elevations for the main lodge remodel. In this response, staff asked for existing elevations in relation to the proposed elevations so staff could compare. Staff also informed the applicant that increasing the height of the structure would not be allowed or permitted and that no land use permit would be issued until septic systems were brought into compliance. See the email in the planning case attachments.

On October 2nd, 2018, JPB staff observed structural alterations taking place to the main lodge with new rafters being installed increasing the height of the structure. A Stop Work Order was issued to the Nelsons for violating Sections 1204 & 1206 of the Greater Bemidji Area Zoning & Subdivision Ordinance. A land use permit has not been issued for any work alterations to take place on the roof or stairwells. No land use permit required for interior remodeling.

PLANNING CONSIDERATIONS

Existing Conditions & Proposals

Based on conversation with the Nelsons and review of the plans that were submitted, the height of the main lodge will increase from thirty-four (34) feet to thirty-eight (38) feet. The change in height to the current roof is in large part due to altering the pitch of rafters from 4/12 to a 6/12. The reason for altering the pitch height, is the current 4/12 pitch accumulates too much snow and ice load and in the past has caused severe damage to the structure and presents a danger to the public with falling snow or ice chunks. Per Section 902 of the Zoning & Subdivision Ordinance, the maximum building height of a structure in the shoreland overlay, except for religious institutions and agricultural structures, shall not exceed thirty (30) feet in height.

Also through this variance request, the Nelsons plan to enclose the exterior stairwells on the main lodge. These exterior stairwells are utilized to access the second and third floor of the lodge. One stairwell is located on the west side of lodge and the other is located on the east side. Revised site plans shall indicate the height of the stairwell roofs and shall not exceed thirty-eight (38) feet in height unless requested for through the variance process.

The Nelsons also plan to remodel the interior of the structure bringing the building into compliance

with all Minnesota State Codes.

Septic Systems / Minnesota Pollution Control Agency (MPCA)

On November 22, 2017, the previous owners, the Nelson's and the Planning Director of the JPB signed a stipulation agreement that all non-compliant septic systems would be brought into compliance within one year's time or would at least be making substantial efforts in updating the failing systems with a plan in place for the remaining systems. At this time, over half of the systems on the property are deemed non-compliant per a compliance inspection completed by Ken Ramondo of H&R Septic Designs on November 13th, 2017.

There are three separate septic systems that serve the main lodge. System 1 was deemed non-compliant and consists of flows from half of the main lodge, the cedar lodge, cabins 1, 2, 3, 4, 39 and the indoor pool. System 2 was deemed compliant and consists of flows from the women's restrooms in the main lodge. System 3 was also deemed compliant and consists of flows from the remaining half of the main lodge, restaurant and bar. System 1 at this time would need to be brought into compliance prior to a land use permit being issued for the remodel of the main lodge.

Although the east half of the resort premises is still owned by Randy Ruttger of Birchmont, Inc., those cabins are still owned by the resort and will count in this determination and will need to be inspected and updated as part of this process, per MPCA requirements. Nicholas Kramer of the MPCA has indicated that a state permit will be required as the resort is open year around and uses over 10,000 gallons per day. An engineering firm will need to be hired as a certified engineer shall sign off on all designs.

Setbacks

For a General Development Lake outside City limits, the Lake Bemidji setback from the OHWL in an unsewered district is one-hundred (100) feet. The closest wall/overhang of the main lodge currently sits approximately ninety-eight (98) feet from the OHWL. This portion of the main lodge is not altering in size or area, just altering of the exterior façade. The portion of the lodge that is increasing in height is the roof of the third floor, which is roughly one hundred and thirteen (113) feet from the OHWL. Any alterations to the building or enclosing of the stairwells shall maintain a ten (10) foot setback from other structures or buildings.

Stormwater

A stormwater mitigation plan as well as an erosion control permit shall be submitted for approval. All stormwater runoff shall be collected and properly directed so it doesn't impact or run toward Lake Bemidji or any septic systems on site. Staff encourages gutters to be placed on the structure to help guide the stormwater.

Mississippi Headwaters Board (MHB)

Tim Terrill of Mississippi Headwaters Board had the following to say about the proposed project and the provided site plan:

The increase of the pitch of the roof would exceed MHB standard height of 35' for a General Development Headwaters Lake so it would be noncompliant.

According to state and MHB standards, impervious may not exceed 25% on a parcel, so I recommend that an impervious surface calculation be done on the parcel to see if the added enclosed stairwells would increase the impervious over the standard.

According to the packet, three out of the five septic systems are non-compliant and failing. This is a violation of state and MHB standards, so replacement with a type 1 septic or improvement to

existing septic systems to bring them up to code is recommended. Because this is causing a cesspool of sewage, I would set up emergency procedures to keep sewage from entering Lake Bemidji. I recommend that the GBA contact Beltrami Soil & Water Conservation District to see if there is any cost share to help replace any existing failing septic systems.

And finally, because this is an after the fact Variance request and the owner has allegedly known about this issue, the Greater Bemidji Area JPB should factor this in to their decision.

Development Team (Fire Department)

The main lodge will be required to be inspected by the Bemidji Fire Chief to review for code compliance.

Neighborhood Comment

At the time of writing this report, no public concerns were identified.

Comprehensive Plan References

The current GBAJPB Land Use Plan encourages commercial uses to utilize best planning practices when redeveloping a site or bringing a structure into compliance to protect and conserve the value of buildings throughout the Greater Bemidji Area. Through the variance process, this is in keeping with the spirit and intent of the Land Use Plan as well as the Zoning & Subdivision Ordinance upon positive findings of fact.

RECOMMENDATION

Staff recommends approval of an after-the-fact variance in order to increase the pitch of the roof from thirty-four (34) feet to thirty-eight (38) feet and to enclose the two exterior stairwells to preserve the longevity of the structure and to provide safety to the people on the resort campus. The resort campus is located in the (R-3) Suburban Residential zoning district (unsewered) and within the Shoreland Overlay at 7598 Bemidji Rd NE in Northern Township. Approval recommended with the following conditions:

1. An after-the-fact land use permit shall be submitted with the associated fees.
2. Stormwater mitigation and erosion control plan shall be submitted and inspected by JPB.
3. All noncompliant septic systems shall be redesigned by a certified engineer and brought into compliance immediately per MPCA requirements.

Findings for Approval

1. Has the applicant demonstrated a practical difficulty?

Yes. The main lodge has experienced damage in the past due to the current pitch of the roof. The applicant is requesting to alter the roof pitch and enclose the exterior stairwells to preserve the longevity of the main lodge structure and to provide safety to the people on the resort campus.

2. Are there exceptional circumstances, unique to this property, which have not been created by the land owner?

Yes. The main lodge structure was built prior to today's building code and zoning ordinance standards. In order to bring the complete building into compliance, whether it is plumbing, electrical, structural, fire or zoning, a variance would be needed to preserve the structure or to provide safety to all clientele.

3. Can the variance be granted and that such action will be in keeping with the spirit, purpose and intent of the Zoning Ordinance?

Yes. These proposed building alterations are anticipated to have a positive impact to the building as it will gradually be brought into conformity with all codes as well as protect the

public health, safety, comfort convenience and general welfare of the area. This complies with both the Zoning & Subdivision Ordinance and the Land Use Plan.

4. Can the variance be granted without altering the essential character of the surrounding area?

Yes. This property has been operating as a resort and will continue to do so. The building alterations will have no impact on the surrounding neighborhood or with the Greater Bemidji Area.

MPCA Representatives Nick Kramer and Joe Braun answered questions from the Board:

- Current flow calculations of water use for the site are estimated at around 19,000 gallons per day. Anything over 10,000 gal/day requires state permitting and all septic designs completed by a certified engineer.
- Immediate concerns with site conditions include Imminent Threat to Public Health due to known presence of sewage on the ground surface, non-conforming septic systems, and existing cesspools.
- No construction is allowed on these septic systems until a state permit is issued
- Entire permit process is very involved and will include a 30 day public notice, as well as site specific reviews, and could take up to six (6) months to complete.
- Minnesota Department of Health (MDH) will be contacted through the MPCA. The Imminent Threat condition can effect a business owner's food and beverage license. MDH does have the authority to close a business.
- The MPCA contacted the owners on October 30th with a Request for Information, which was returned November 13th. The next communication with owners will be handled by Joe Braun.
- The cabins located on leased land are considered to be owned by the Nelsons as part of Rutgers Resort.
- The number of septics on this campus would include each cesspool and cabin, thus totaling 29.

Board members made the following comments:

- Kelly repeatedly stated his frustration with the applicant's lack of effort to make corrections as promised in the septic stipulation agreement with the JPB; their disregard for the variance process as well as a stop-work order from JPB staff; no attempt at contact with Northern Township at any point during their project; and not attending tonight's meeting.
- Erickson asked staff if work ceased once the stop-work order was presented, which it did not.
- Albrecht commented that space should be available for alternate septic systems within the 20 acres present.
- Discussion about the effect of failing septics on the neighboring wells and their water quality.
- Several comments about disliking "after-the-fact" variances because they are difficult to approve knowing that some violations appear purposeful. Several questions about additional penalties or alternative consequences to the owners.
- City Attorney Al Felix urged the Board to contact their legal counsel, but did identify some typical types of penalties. These include administrative fines (only for use within the city limits), civil legal action (remove the new roof), or criminal legal action (restitution and criminal fines.)
- Albrecht stated concern with the presented conditions. Several additions were offered, including requiring evidence of weekly septic pumping, providing a reasonable date to complete stormwater plan with more specific requirements, and to require gutters.
- Discussion about extending the 60-day rule to seek legal counsel and revise conditions.

Motion by Kelly, second by Albrecht, to extend the 60-day rule for planning case V-18-31.01012.00 which will allow time for staff to seek legal counsel review and to revise conditions.

Roll call vote:

Ayes: Chambers (alternate), Kelly, Meehlhause, Erickson, Albrecht

Nays: None

Absent: Frenzel (utilized alternate)

Abstain: None

Motion carried unanimously.

OTHER BUSINESS

Paving Discussion

Mai summarized events which led to the JPB vote to eliminate the proposed driveway paving requirements for new homes in the recently adopted Zoning and Subdivision Ordinance Updates, as well as his recent presentation to the Bemidji City Council and their recommendation.

- Commissioner Erickson presented Building Department construction totals of new single family homes built since 2016. She spoke in support of not amending the ordinance to insert paving requirements as it would be an added burden for many in our community.
- Meehlhause stated that three (3) new City Council members will begin their term in January, and suggested waiting on a decision so as to include their feedback. He also spoke of the benefits to our community in creating paving requirements aimed at improving stormwater conditions.
- Kelly commented that it is not right to make new City Counselors enact a decision that has had ongoing discussion for some time. He encouraged Board to come up with a decision as all departments have given an opinion. Kelly spoke in favor of not including paving amendment at this time.
- Geri Hickerson, Executive Director for Habitat for Humanity, thanked staff for their work and the Board for their support.
- Andy Mack, volunteer for Habitat for Humanity, thanked the Board for their support and suggested that sanding the streets in the winter provides more problems for the stormwater system than unpaved residential driveways.
- Meehlhause urged consideration of future paving requirements for the long-term, best interests of Bemidji.

Motion by Albrecht, second by Erickson to re-affirm the September 12th approval of the Zoning and Subdivision Ordinance for the Greater Bemidji Area.

Roll call vote:

Ayes: Albrecht, Erickson, Meehlhause, Kelly, Chambers (alternate)

Nays: None

Absent: Frenzel (utilized alternate)

Abstain: None

Motion carried unanimously.

Resolution No. 2018-21 – Approval of 2019 Budget/Preliminary 2020 Budget

Mai discussed presentations to the Northern Town Board and Bemidji City Council, and has incorporated suggestions into this proposal. Also, Mai stated he has support for the following purchases from our reserve fund:

- Automobile for staff use
- Electronic Tablets for Board and Commission use so as to eliminate printed binders of meeting information.

These items will be selected and presented for purchasing approval at the December 12th JPB meeting.

Motion by Albrecht, second by Chambers to move Resolution No. 2018-21 for approval of the 2019 Budget/2020 Preliminary Budget.

Motion carried unanimously.

Ordinance No. 2018-07 – Approval of 2019 Fee Schedule

Mai presented the updated fee schedule which only contained one change, eliminating Site Analysis Review fee on projects less than half an acre. Board members discussed After-The-Fact fees and the possibility of increasing the amount. Albrecht requested that staff pose this question on the MN APA website in an attempt at learning how other communities confront this.

Motion by Erickson, second by Albrecht to approve Ordinance No. 2018-07 updating the Fee Schedule for 2019.

Motion carried unanimously.

DIRECTOR'S REPORT

Mai summarized upcoming planning cases, current development projects, and the Comprehensive Plan Open House scheduled for next Tuesday. Mai also proposed a Joint LGU meeting in January and will email options for meeting dates. The newly hired Planning Assistant, Jamin Carlson, was also announced, with his first day being November 26th.

UPCOMING MEETING DATES:

November 29, 2018 -- JPC Regular Meeting @ 6:00 p.m.
December 12, 2018 -- JPB Regular Meeting @ 6:00 p.m.
December 20, 2018 -- JPC Regular Meeting @ 6:00 p.m.
January 9, 2019 -- JPB Regular Meeting @ 6:00 p.m.

ADJOURNMENT:

There being no further business, motion by Albrecht, second by Kelly, to adjourn the Joint Planning Board meeting at 8:19 p.m.

Motion carried unanimously.

Respectfully submitted,

Terri Ball
Planning Administrative Assistant

JPB Minutes Approved and attested by: 
Joint Planning Board Representative

