

**GREATER BEMIDJI AREA  
REGULAR JOINT PLANNING COMMISSION MEETING**

**Thursday, August 23, 2018  
6:00 P.M.**

**Council Chambers, City Hall  
317 4<sup>th</sup> ST NW  
Bemidji, MN 56601**

**AGENDA**

- |  |              |
|--|--------------|
| <b>➤ Call to Order/Roll Call</b>                 | <b>Chair</b> |
| <b>➤ Pledge of Allegiance</b>                    |              |
| <b>➤ Approve Agenda</b>                          |              |
| <b>➤ Approve Minutes</b>                         |              |
| • <b>Thursday, July 26, 2018 Regular Meeting</b> |              |

**NEW BUSINESS**

- |                    |              |
|--------------------|--------------|
| <b>1. Visitors</b> | <b>Chair</b> |
|--------------------|--------------|

**Public Hearings**

- |  |           |
|--|-----------|
| <b>1. <u>City of Bemidji</u> - IUP-18-80.04522.00 – Bob’s Towing</b>                       | <b>CB</b> |
| <b>2. <u>City of Bemidji</u> - V-18-80.01388.00 &amp; 80.01389.00 – Vince VanAntwerpen</b> | <b>CM</b> |
| <b>3. <u>City of Bemidji</u> - CUP-18-80.06731.00 – John Peterson</b>                      | <b>CB</b> |

**OTHER BUSINESS**

- |  |              |
|--|--------------|
| <b>1. Ordinance No. 2018-06 - Zoning and Subdivision Ordinance Update</b>              | <b>Chair</b> |
| <b>2. Director Report</b>  |              |
| <b>3. Upcoming Meetings</b>  | <b>Chair</b> |
| • Sept. 12, 2018                      6:00 pm                      JPB Regular Meeting |              |
| • Sept. 20, 2018                      6:00 pm                      JPC Regular Meeting |              |
| • Oct. 10, 2018                      6:00 pm                      JPB Regular Meeting  |              |
| • Oct. 25, 2018                      6:00 pm                      JPC Regular Meeting  |              |
| <b>4. Adjourn</b>  | <b>Chair</b> |

**MINUTES  
GREATER BEMIDJI AREA  
REGULAR PLANNING COMMISSION MEETING**

**August 23, 2018  
6:00 p.m.**

**City Hall  
Council Chambers**

**CALL TO ORDER:** Chair Nicki Lemmer called the regular meeting of the Greater Bemidji Area Joint Planning Commission to order at 6:00 p.m., roll call was taken and the pledge of allegiance was recited.

**MEMBERS PRESENT:** Lemmer, Faver, Steffen, David, Heinonen, Lahn, Smith, Miller, Berg

**MEMBERS ABSENT:**

**STAFF PRESENT:** Casey Mai, Cory Boushee, Teresa Hanson

**OTHERS:** John & Trudy Peterson, Tracy Pogue, Grant Bauer, Kim Schulz, Mary Hartje, Vince VanAntwerpen, Dave Kurtz, Brent Mason, Mark Variano, Matt Murray, Mary Forney

**APPROVAL OF AGENDA:**

Motion by Heinonen second by Smith, to approve the agenda as presented.

Motion carried unanimously.

**APPROVAL OF MINUTES:**

Motion by Miller, second by Heinonen, to approve minutes from the July 26, 2018, Greater Bemidji Area Regular Joint Planning Commission.

Motion carried unanimously.

**NEW BUSINESS:**

**VISITORS:**

No one addressed the commission.

**Public Hearing:**

**Boushee presented the first case:**

**PLANNING CASE - IUP-18-80.04522.00 - Bob's Towing**

Bob's Towing is requesting an Interim Use Permit (IUP) for an automotive impound lot located on parcel 80.04522.00 in the (I-1) Light Industrial Zoning District within the City of Bemidji.

**BACKGROUND**

The applicant approached staff with a proposal to use the existing contractor storage yard as an automotive tow impound lot. In the (I-1) Light Industrial Zoning district this is an allowed use with

an approved IUP from the JPB. Staff informed the applicant that the change in use will require some updating to the property, as well as a public hearing. The applicant has a purchase agreement on the property pending the outcome of this request.

## **PLANNING CONSIDERATIONS**

### **Existing Conditions**

The existing site is a fenced in contractor storage yard.

### **Screening**

The applicant is planning to screen the impound area, with an opaque material that is meant to be used with chain link fencing. This materials meets the requirements of Section 1002 and Section 1005 of the JPB ordinance.

### **Signage**

A small sign will be placed on the gate to identify the property for customers.

### **Development Team (Public Works / Engineer; Building Official; Fire Department)**

At this time no concerns exist with this proposal.

### **Landscaping**

The applicant intends on planting trees to meet the tree requirements.

### **Comprehensive Plan References**

Approval of an IUP with conditions to mitigate any potential negative impacts is in keeping with the intent and purpose of the land use plan.

## **RECOMMENDATIONS**

Staff recommends approval of the Interim Use Permit (IUP) for an automotive impound lot located on parcel 80.04522.00 in the (I-1) Light Industrial Zoning District within the City of Bemidji.

1. Screen the entire impound area in accordance with Section 1002 & Section 1005 of the JPB ordinance.
2. Obtain a sign permit for any signage on the property.
3. Add trees to meet landscaping requirement, four (4) frontage and five (5) total. JPB will hold a landscaping escrow in accordance with the fee schedule for one (1) year after the trees have been planted.
4. The entrance to the tow yard will be bituminous or concrete.
5. No vehicle should be kept on site for greater than ninety (90) days.
6. All storage on the property will be within screened area.
7. Obtain an address from the City of Bemidji.

### **Public Hearing opened at 6:10 p.m.**

Dave Kurtz, General Manager for Bob's Towing, answered questions from the commissioners. He noted most car accident spillage occurs at the scene, so he doesn't anticipate contamination exposure at the impound facility site. If there is, they eliminate potential hazards by using proper absorbent materials. He added they plan to install two more outdoor light fixtures to meet standard lighting requirements as well as security cameras.

Grant Bauer, whose rear property line abuts the subject rear property line, indicated he's concerned with any potential leaking of contaminants and security of the area. Overall, he

approves of the plan if lighting and security measures are addressed.

**Public Hearing closed at 6:17 p.m.**

Motion by Smith, second by Steffen, to approve the Interim Use Permit (IUP) for an automotive impound lot located on parcel 80.0452200 in the (I-1) Light Industrial Zoning District within the City of Bemidji, subject to the following conditions:

1. Screen the entire impound area in accordance with Section 1002 & Section 1005 of the JPB ordinance.
2. Obtain a sign permit for any signage on the property.
3. Add trees to meet landscaping requirement, four (4) frontage and five (5) total. JPB will hold a landscaping escrow in accordance with the fee schedule for one (1) year after the trees have been planted.
4. The entrance to the tow yard will be bituminous or concrete.
5. No vehicle should be kept on site for greater than ninety (90) days.
6. All storage on the property will be within screened area.
7. Obtain an address from the City of Bemidji.
8. Install outdoor lighting to meet JPB requirements.

And with findings:

**1. Whether the proposed use adversely affects the public safety, health, morals, convenience and general welfare of the occupants of the surrounding land.**

No. An auto impound lot is allowed through an Interim Use Permit.

**2. Whether the proposed use adversely affects traffic conditions and parking on adjacent streets and land.**

No. Adverse effects to traffic conditions are not expected.

**3. Whether the proposed use adversely affects property in the surrounding area.**

No. Auto repair, auto tow impound, and outdoor storage exist on surrounding properties.

**4. Whether the proposed use is in conformance with the community's Comprehensive Plan or Land Use Plan.**

Yes. The proposed use is consistent with the goals and policies of the JPB Land Use Plan. Per the GBAJPB Zoning Ordinance, auto impound lots are allowed pursuant the issuance of an Interim Use Permit by the JPB, and the subject parcel is appropriately zoned for the proposed use.

**5. Whether adequate utility, drainage and other such necessary facilities have been or can be provided.**

Yes. Adequate facilities exist to support the land use.

Motion carried unanimously.

**Public Hearing:**

**Mai presented the second case:**

**PLANNING CASE- V-18-80.01388.00 & 80.01389.00 - Vince VanAntwerpen**

Vince VanAntwerpen of Construction, Consulting and Inspection Services, LLC is requesting five (5) variances in order to rebuild a recently demoed structure into a new duplex in the (R-5) High

Density Residential zoning district at 1018 Bemidji Avenue N in the City of Bemidji. The variances being request are as follows:

1. An expansion of a new structure on a substandard lot;
2. An increase of twenty-eight percent (28%) in the allowed maximum impervious surface coverage of twenty-five percent (25%);
3. A side yard setback reduction of six and one-half (6.5) feet of the required twelve and one-half (12.5) feet;
4. A side yard setback reduction of seven and one-half (7.5) feet of the required twelve and one-half (12.5) feet; and
5. A front yard setback reduction of three (3) feet from the required thirty (30) feet.

### **BACKGROUND**

The applicant has recently purchased the former Edward Jones building that was just demoed due to the severity of damage from a car accident. Prior to demolition, the applicant had purchased the property with the hopes of converting the existing building into a duplex without needing any variance request; however, with the expansion of the structure and not piecemealing it together, it was in the best interest to apply for a variance to have a structure that blends with the architectural appearance of the surrounding neighborhood. A duplex is an allowed use of land in the (R-5) High Density Residential zoning district. This property owner faces challenges as this property is zoned for high density, but lot sizes and the shoreland overlay make developing difficult. This neighborhood is made up of mostly rental properties ranging from single family to multi-family, a small amount of owner occupied homes do remain. Redeveloping structures to accommodate a higher density has been a trending theme in this neighborhood as the college has continued to grow. The neighborhood serves primarily college students as it is in walking distance from Bemidji State University.

### **PLANNING CONSIDERATIONS**

#### **Existing Conditions**

The conversion from a commercial use to residential duplex will bring the property into compliance. The intent of the ordinance is that all nonconforming uses shall be encouraged to eventually be brought into conformity. The current conditions of the neighborhood consist of nearly all rental housing of various densities. With many homes being modified or renovated over the years to have multiple units. Some of the units were developed before any standards, such as parking were in place for rental properties or JPB standards, and others were developed after. The following map outlines rental properties in yellow and the number indicates the number of dwelling units in each structure. Not to be confused with the number of bedrooms in each unit. The study area consists of forty-six (46) rental properties and fourteen (14) owner occupied properties, eighty-seven (87) percent of the units are rentals. Thirteen (13) of the forty-six (46) rental properties have multiple units.

#### **Setbacks**

The applicant is requesting three (3) setback variances. The proposed structure will make a setback improvement from the existing structure, but still requires a couple of variances for construction. The proposed setbacks do not seem out of the ordinary for the neighborhood and no negative impacts on property safety, right-of-way, or stormwater are anticipated. The setback variances will also create further separation from existing structures, both on the property and with neighboring properties.

#### **Parking**

The proposed site plan meets the parking standard requirements with one parking space per

bedroom for a rental complex. The existing parking lot will be removed as well as the access off of Bemidji Avenue N / Highway 197. A permit has been obtained from MnDOT for the removal of the access.

#### **Landscaping / Greenspace / Stormwater**

The existing site will be reducing impervious coverage and adding additional greenspace, as the property will go from seventy-four percent (74%) impervious coverage to roughly fifty-three percent (53%) impervious coverage. The applicant also plans to add four (4) additional trees to the property within the front yard setback. The property will be graded to handle snow melt and stormwater on-site, a stormwater mitigation plan shall be submitted for approval along with entering into a stormwater BMP maintenance agreement.

#### **Lot Combination**

The applicant has been approved a lot combination to combine the two (2) parcels into one (1) contiguous lot of record.

#### **Development Team (Public Works / Engineer; Building Official; Fire Department)**

The property will be subject to the City of Bemidji rental property ordinance. The property will also have a change in the E911 address to 11<sup>th</sup> Street NE instead of Bemidji Avenue N.

#### **Neighborhood Comment**

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

#### **Comprehensive Plan References**

The current GBAJPB Land Use Plan encourages a wide variety of housing opportunities and to increase density when appropriate to encourage multimodal transportation. This request is increasing density and providing safe and affordable housing near downtown Bemidji and Bemidji State University and is in keeping with the intent of the Land Use Plan as well as the Zoning & Subdivision Ordinance.

#### **RECOMMENDATIONS**

Staff recommends approval of five (5) variances in order to build a new duplex on parcels 80.01388.00 & 80.01389.00 within the (R-5) High Density Residential zoning district and shoreland overlay of the City of Bemidji. The following variances are as follows: 1.) An expansion of a new structure on a substandard lot; 2.) An increase of twenty-eight percent (28%) in the allowed maximum impervious surface coverage of twenty-five percent (25%); 3.) A side yard setback reduction of six and one-half (6.5) feet of the required twelve and one-half (12.5) feet; 4.) A side yard setback reduction of seven and one-half (7.5) feet of the required twelve and one-half (12.5) feet; and 5.) A front yard setback reduction of three (3) feet from the required thirty (30) feet. Approval recommended with the following condition:

1. Stormwater mitigation and final landscaping plan shall be submitted and inspected by JPB.

#### **Public Hearing opened at 6:31 p.m.**

Vince VanAntwerpen noted the setback variance is requested in order to meet fire ratings in the Fire Code, which will help protect neighboring properties in case of fire.

#### **Public Hearing closed at 6:32 p.m.**

Motion by Steffen, second by Heinonen, to approve five (5) variances in order to build a new duplex on parcels 8001388.00 & 80.01389.00 within the (R-5) High Density Residential zoning district and

shoreland overlay of the City of Bemidji. The following variances are as follows: 1.) An expansion of a new structure on a substandard lot; 2.) An increase of twenty-eight percent (28%) in the allowed maximum impervious surface coverage of twenty-five percent (25%); 3.) A side yard setback reduction of six and one-half (6.5) feet of the required twelve and one-half (12.5) feet; 4.) A side yard setback reduction of seven and one-half (7.5) feet of the required twelve and one-half (12.5) feet; and 5.) A front yard setback reduction of three (3) feet from the required thirty (30) feet. Approval recommended with the following condition:

1. Stormwater mitigation and final landscaping plan shall be submitted and inspected by JPB.

And with findings:

**1. Has the applicant demonstrated a practical difficulty?**

Yes. This high density neighborhood has been developed within the shoreland overlay, it is a reasonable request for the applicant to want to expand and redevelop on an existing property. The shoreland overlay does not account for existing platted lots at urban densities with municipal infrastructure.

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

Yes. Land was platted and zoned for high density residential use, without variances very few properties in this neighborhood would meet current standards.

**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. This proposed development is anticipated to have a positive impact on the neighborhood providing safe housing for students or families and removing a non-conforming commercial use. A duplex in this area is an allowed use and 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 area is predominantly residential with several being rental properties. Many of the rentals properties having multiple units and it has been common for existing buildings to be altered to accommodate new housing opportunities with additional units.

Motion carried unanimously.

**Public Hearing:**

**Boushee presented the third case:**

**PLANNING CASE - CUP-18-80.06731.00 - John Peterson**

John Peterson is requesting approval of a Planned Unit Development (PUD) through a Conditional Use Permit (CUP) for the conversion of an existing resort located at 4910 Birchmont Drive NE in the (R-3) Suburban Residential – Sewered zoning district and shoreland overlay within the City of Bemidji. The existing property has nine (9) structures consisting of single dwelling units. The proposal is to convert from a resort to a residential development with five (5) structures still maintaining nine (9) dwelling units. The new units would be proposed to be long-term rental properties. The current use of the property primarily consists of long-term rental housing rather than transient lodging as a resort would function.

**BACKGROUND**

A concept was presented to the JPC on March 29, 2018, and to the JPB on April 11, 2018, to provide the applicant feedback for moving forward with the proposal. The JPC/JPB minutes are included in the packet as supporting documentation. The main concerns that needed to be addressed by the applicant were the density, impervious surface, and conflict with the MnDNR.

## **I. CONCEPT REVIEW ANALYSIS OF CONCERNS**

### **Density and MnDNR Conflict**

The applicant has chosen to submit this proposal without any reduction in density as it is his position that the ordinance allows for the density to be maintained on-site. The section of the ordinance the applicant relies on for that position is Section 1107 (D), which states:

*Existing dwelling unit or dwelling site densities that exceed standards prescribed in Section 914 of this Ordinance may be allowed to continue but shall not be increased, either at the time of conversion or in the future. Efforts must be made during any such conversion to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new sewage treatment systems, or other means.*

The applicant has provided an analysis of this from their own interpretation. One important item to consider is the use of the word “may” in the first sentence above implies the JPB is not required to allow the continuation of the densities as a matter of right. However, the MnDNR is maintaining its interpretation of Minn. R., part 6120.3800, subp. 5.D, which is that this proposal is not allowed as a conversion, and must instead be processed as new construction. A letter from the MnDNR is also attached to this report.

JPB staff will need assistance to make a determination through JPC/JPB discussion and direction. Staff is not aware of any land use conversions that have ever been requested or reviewed by the JPB, so no precedent exists on an interpretation. JPB staff asked the JPB attorney to review the differing positions and his memo on the issue is attached.

If processed as a new construction request, this proposal would be allowed a maximum density of five (5) dwelling units. It does not define the amount of bedrooms that could be in each unit, so it may be possible to maintain the same population density with less units. The applicant has explained the larger units are not desired by the clientele. The proposed population density is nineteen (19) people and the density would only be allowed to increase if the units were rented by families.

### **Impervious Surface**

The revised proposal does increase impervious surface by seventy (70) square feet, however it does meet Section 914 of the JPB Ordinance. Although the overall impervious surface is not reduced, the use of a stormwater management plan improves the site. JPB staff are still concerned that the proposed Unit 5 does not show any sidewalks or patios that would normally be built with a home. Staff is also concerned that in order to meet this requirement the proposed buildings will now be twenty-five (25) feet in height. This could be viewed as an indicator the proposed density and size of structures do not fit on the property. Section 914 does state that this increase in impervious surface “may” be allowed, so the JPC/JPB could direct the planning administrator to not allow the increase in impervious. However, staff does not know of anytime where an applicant has been denied the use of this allowance in the past.

### **Setbacks**

The applicant proposes a lot line realignment to eliminate any conflict with the setbacks.



### **Pro's for Conversion**

The applicant did provide a list of items they feel are positive regarding this development proposal, as well as testimonials from current tenants. The applicant has also providing information regarding being taxed as a commercial property, feeling that the underlying zoning requiring a single family home is not appropriate or feasible.

### **PLANNING CONSIDERATIONS**

Redeveloping this site has the potential to make improvements to the existing condition of the property, not only for environmental standards, but also for public safety standards as the structures will be improved. However, redevelopment at this density may not be consistent with the goals and intent of the current land use plan or zoning ordinance. Non-conforming uses are allowed to continue with the goal being that they will eventually be brought into compliance with the zoning ordinance. The conversion process could be viewed as a tool to allow a property owner with nonconforming uses to make improvements, while not fully meeting the intended land use, the property owner is correcting deficiencies that exist.

### **Waiver of Nonconforming Rights**

If the JPC/JPB were to approve this request for a new residential PUD, it is important to include a condition that the applicant waive all nonconforming rights of the existing property. This is to ensure that if the applicant does not follow through with the conditions placed on the approval, and the CUP is revoked, the applicant does not still have the right to maintain the existing nonconforming use. Language for this has been provided in the recommendation section of this report.

### **Compliance with Rental Ordinance and Prohibition of Short Term Rental**

The applicant will need to maintain compliance with the City of Bemidji rental and property maintenance codes at all times for all occupied dwelling units. The City of Bemidji rental ordinance applies to dwelling units in the city that are rented for thirty (30) days or more at a time. A dwelling unit is allowed to have one (1) tenant per bedroom for unrelated people, or one (1) family. As short term rentals are not allowed by JPB ordinance and this is a conversion to a residential PUD no rentals of less than thirty (30) days will be allowed for any dwelling units.

### **Boat Slips and Storage**

JPB staff recommend that the number of boats slips allowed reflect the number of dwelling units that would be allowed by a residential PUD, which would be five (5). With the garage space removed from the proposal to meet impervious surface standards, and parking limited to the minimum requirements boat storage will likely occur adjacent to the buildings. JPB staff would recommend that no boat or recreational vehicle storage of any kind occur within view of the public right of way, or within fifty (50) feet of the public water.

This proposal also does not leave room for a storage shed that could house other water orientated outdoor recreation equipment that tenants may want to bring on-site. The applicant has explained that he currently keeps a clean site, and intends to maintain a site free of clutter or excess storage in the future. Not having any impervious surface area to provide any typical amenities to tenants, may be another indicator that the density is too high.

### **Shoreland Restoration and Landscaping**

The applicant has provided a landscaping plan that includes trees to protect the view from the public water. The Beltrami County Environmental Services Department and JPB staff recommend a more significant native restoration occur on the property for the land within the fifty (50) foot setback. As Lake Bemidji is on the tipping point of becoming an impaired water due to phosphorous, the elimination of mowed lawn would be an improvement. Restoration should include more than trees, it should also include shrubs, perennial grasses, and wildflowers. The JPB staff recommends the applicant be required to work with a professional landscaper or

landscape architect to design a restoration to be approved by the Joint Planning Board prior to the approval of Phase Two building applications, to be implemented as part of Phase Three.

### **Phasing Plan**

This proposal is being presented with a phasing plan for three years beginning this fall of 2018. JPB staff will need to approve a final phasing plan that further addresses the questions of when other on-site improvements will happen. A utility plan will also need to be approved by the City of Bemidji engineering department prior to the start of any on-site construction. Staff has already made a recommendation for landscaping, but would also offer some further recommendations.

1. The trash enclosure should be constructed as part of Phase One.
2. The shed located in the OHWL setback should be removed and the area revegetated as part of Phase One.
3. The driveway paving and parking spot paving should happen as part of Phase Two.
4. No occupancy will be allowed for more than the approved dwelling unit density at any point during construction, and no more than the approved amount of dwelling units will exist for more than 30 days after a certificate of occupancy has been granted for newly constructed buildings.
5. A utility plan will also need to be reviewed and approved by the City of Bemidji engineering department prior to the start of any on-site construction, representing how utility installation works in the phasing.
6. A significant change to the phasing plan will need to be reviewed by JPB if staff deems appropriate.

### **RECOMMENDATIONS**

At this time JPB staff is seeking further direction from the JPC/JPB based on the information provided by staff, the applicant and public. Staff recommends the option to extend the sixty (60) day rule be used in this case to allow sufficient time to receive additional input and to give JPB staff direction. Staff can then develop a resolution for approval or denial based on the direction of the JPC/JPB.

If the JPC wishes to recommend the JPB approve the request as proposed, staff can prepare a resolution for the JPB for approval using the findings provided by the applicant or with similar language.

### **Proposed Conditions for Approval Recommendation**

1. Final grading, drainage and utility plan to be approved by City of Bemidji engineering department, plan to include phased construction plan.
2. An erosion control plan will need to be submitted and approved, plan to include phasing plan.
3. Final site plan needs to be approved by City of Bemidji fire department.
4. The proposed lot line realignment will need to be approved before any building permits for new construction may be issued.
5. A development agreement will be entered into between the JPB and applicant.
6. Applicant will work with a professional landscaper or landscape architect to design a shoreline restoration plan to be approved by the Joint Planning Board prior to the approval of Phase Two building applications, shoreline restoration to be implemented as part of

Phase Three. Plan should include Minnesota native species and designs recommended by the MnDNR and SWCD.

7. Final tree planting plan to be updated to include phasing and approved by JPB staff.
8. Development must maintain compliance with Section 1002 Exterior storage of the JPB ordinance, including the construction of a trash enclosure in Phase One.
9. Storage of boats, recreational vehicles, water orientated outdoor recreation equipment, or other similar items on-site should be screened from the public right of way and public water. Water recreation items stored in a designated neatly kept area, or on a racking system may be allowed within the fifty (50) foot setback.
10. Shall maintain compliance with the City of Bemidji rental and property maintenance codes at all times for all occupied dwelling units, and maintain leases for thirty (30) or more days.
11. No occupancy will be allowed for more than the approved dwelling unit density at any point during construction, and no more than the approved amount of dwelling units will exist for more than 30 days after a certificate of occupancy has been granted for newly constructed buildings.
12. The shed located in the OHWL setback shall be removed and the area revegetated as part of Phase One.
13. The driveway paving and parking spot paving shall occur during Phase Two.
14. Any proposed change to the phasing plan JPB staff determines is significant must be reviewed for approval by JPB.
15. The applicant would not be allowed to construct this project through the exercise of the applicant's existing nonconforming rights as it involves an expansion of the structures. Such expansions are prohibited both by the Ordinance and state law. Instead, the applicant has opted to pursue a conversion to a residential PUD. Because the continued assertion of nonconforming rights is inconsistent with the expansion allowed to occur under this CUP, applicant agrees to waive its nonconforming rights with respect to this property. The applicant knowingly agrees to this waiver and is with the understanding that the applicant is bound by the conditions placed on the CUP. Further, if any of the conditions are violated, the JPB may provide notice, hold a hearing, and upon a finding of one or more violations it may revoke the CUP. The applicant agrees that if the JPB does revoke this CUP, the applicant will be required to cease its operations and to remove its residential PUD from the Property. The conversion of the property to a residential PUD and construction of any of the structures allowed by this CUP shall be deemed an agreement by the applicant, and it successors and assigns, to each of the following: (a) the conditions contained in this CUP; (b) the waiver of the nonconforming rights that currently exist with respect to the property; and (c) to cease the residential PUD and remove it from the Property upon a repeal of this CUP by the JPB due to a violation of one or more of its conditions.
16. Signage shall comply with JPB Zoning and Subdivision Ordinances.
17. Maximum of three (3) boat slips permitted.

Boushee noted the JPB's attorney, Troy Gilchrist, recommends extension of the 60-day rule in order to assure all concerns are adequately addressed by legal counsel.

#### **Public Hearing opened at 6:55 p.m.**

John Peterson noted his attorney recently submitted a letter to JPB staff, which indicates the decisions regarding the project should be that of the JPB, not the DNR. He added the project is

a conversion, not new construction, and he has agreed to move the new buildings back from the lake to conform with setback standards. Peterson then responded to questions from commissioners regarding current tenants, anticipated rental rates, location of mailboxes, parking, storage, sidewalks and patios within the development.

Mark Variano, adjacent property owner to the north, indicated this project is not necessary and is only good for the developer for financial gain, with no consideration for the neighbors. If allowed to proceed, the new structures will be within 15 feet of his home. While he is also concerned about the impact to the lake, the commission needs to take the impact to neighbors into consideration.

Brent Mason, Area Hydrologist for the Minnesota Department of Natural Resources, reiterated contents of his letter submitted to JPB staff on August 15<sup>th</sup>, which recommends denial of the CUP as outlined in the application, and stated the planned development doesn't meet the current residential PUD standards. He noted the long-term goal is to bring non-conforming properties into conformance over time, but this proposal doesn't assist with reaching that goal. Mason responded to questions from commissioners regarding litigation and similar issues in other communities, density and zoning standards.

Trudy Peterson indicated they have lived next door to this property for 15 years and watched the progressive change, and the proposed development will ultimately reduce overall density and provide for a safer, nicer neighborhood.

Tracy Pogue, who has lived north of the project for 21 years, stated he has noticed change on the property over time. He likes the direction it's going and supports the development plan.

Mary Forney, who recently purchased the home two parcels north of the proposed project area, is concerned with the maximum occupancy and the environmental impact.

#### **Public Hearing closed at 7:26 p.m.**

Commission members discussed several issues regarding the proposed project including precedents, density, public benefit, sidewalks, patios, storage, proposed building height, conformity, interpretation of law/statutes, the fact both the Commission and Board previously requested a plan with less density and the desire to wait for a response and further guidance from Troy Gilchrist, the JPB attorney.

Motion by Faver, second by Heinonen, recommending the Joint Planning Board invoke an extension of the 60-day rule to allow ample time to obtain legal opinion from counsel.

Roll call vote:

Ayes: Berg, Faver, Steffen, David, Heinonen, Lahn, Lemmer, Miller, Smith

Nays: None

Motion carried unanimously.

#### **OTHER BUSINESS:**

Ordinance No. 2018-06 - Zoning and Subdivision Ordinance Update

**Public Hearing opened at 8:07 p.m.**

No one addressed the commission.

**Public Hearing closed at 8:07 p.m.**

Commission members clarified a few details with staff.

Motion by Miller, second by Steffen, recommending Joint Planning Board approval of Ordinance No. 2018-06, an ordinance adopting the 2018 comprehensive amendments to the Greater Bemidji Area Zoning and Subdivision Ordinance.

Motion carried unanimously.

**DIRECTOR REPORT:**

Mai provided an update of current planning cases and development projects. He also reported that Josh Stearns has resigned to take a position with MnDOT. Mai and Boushee will take over inspection and enforcement duties until a decision is made on filling the position.

Smith reported his term is up 12/31/2018 and, after speaking to the Northern Township Clerk, he has agreed to another 3-year term.

Faver reported his term is also up 12/31/2018 and he is willing to accept another 3-year term.

**UPCOMING MEETING DATES:**

Sept. 12, 2018	6:00 pm	JPB Regular Meeting
Sept. 20, 2018	6:00 pm	JPC Regular Meeting
October 10, 2018	6:00 pm	JPB Regular Meeting
October 25, 2018	6:00 pm	JPC Regular Meeting

**ADJOURNMENT:**

There being no further business, motion by Heinonen, second by Steffen, to adjourn the Regular Planning Commission meeting at 8:15 p.m.

Motion carried unanimously.

Respectfully submitted,

Teresa Hanson  
Deputy City Clerk

Approved and attested by:   
Joint Planning Commission Representative