

**CITY OF NISSWA
PLANNING COMMISSION/BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES
WEDNESDAY, AUGUST 18 2021, 5:00 PM**

Members Present: Don Jacobson, Josh Young, Kristin Hansen, Gary Harris

Members Absent:

Others Present: Tom Pearson, Gammello & Pearson

Others Absent: Dave Reese, WSN

Staff Present: Brittney Cotner, Maggi Wentler

1. **Call Meeting to Order:** Young calls the meeting to order at 5:00pm.
2. **Meeting Roll Call:**
3. **Onsite Visits: None**
4. **Additions & Deletions from the Agenda:**

Motion: Hansen motioned to approve the August 18, 2021 agenda as presented. Young seconded. All members voting “Aye”, motion carries.

5. **Approval of Minutes: None**
6. **Open Forum: None**
7. **Public Hearings: None**
8. **New Business:**
 - a. **Consideration as to the status of the Conditional Use Permit (CUP) for Pine Trail Homes PUD**

Audience Comments:

Mark Severson attorney representing the Clark Lake Association stated that the history of this CUP has been problematic with the labeling of Outlot C and Outlot H from the preliminary plat to the final plat. Severson mentioned that the City’s attorney stated that the original CUP became void when not acted upon in the right amount of time frame based on ordinance regulations. The approval of the extension in 2019 doesn’t matter as the 2006 CUP was already voided. Fast forward to today and the ultimate issue is a dock was placed. Severson is asking that the dock not be allowed based on the spirit of the original CUP. He would like the commission to enforce the original CUP conditions if the owner of Pine Trail Homes applies for a new CUP. He would also request that an Environmental Assessment Worksheet be completed if the dock would be allowed to get actual data on how the dock would impact the environment. Severson provided a list of

conditions to the commission that he would like to be considered if the dock would be allowed.

Jane Ahrens resident on Clark Lake, Clark Lake Association President spoke with the DNR and she was informed that the city has control over the dock, slips, and extensions of docking. The city is the one that regulates and enforces. She questioned what was wrong with the conditions set forth in the original CUP in 2006. What justifies someone getting more than they deserve? The owner broke the rules and now comes in and asks for more. What is fair when someone breaks the rules? This area is home to many. We have worked hard as an association to protect our homes and lake and ask the commission to do the same.

Chuck Mueller stated we need to advocate for the wildlife. There are many loons, cranes, eagles, bears and many other animals that need protection from their home being destroyed. This development has a proposed 45 homes, which means 45 boats on the water. This is not safe for the environment or wildlife. He believes that if a dock is approved for this development what is stopping the townhomes on Norway Lane to come in and ask for the same. He pays so many dollars per foot of lake shore he owns to keep the water clean and cut weeds to preserve the lake for future generations.

Rick Rudolph a Pine Trails resident. When he considered purchasing a home in the development it was never represented that we would have motorized access to Clark Lake. It would be for walk-in views only. He noted that the dock goes through a sensitive wetland area and believes having this dock is the most environmental responsible way to access the lake, instead of walking and breaking down the habitat. He said walking on it will do more damage. He enjoys sitting at the end of the dock and watching the loons. He would like to see the dock allowed as it is today, do not allow future extensions and add further restrictions if necessary.

Josh Miles, property owner on Clark Lake. He stated this shouldn't be a conversation the dock was never to be allowed. The dock was put in for controlled interest. The owner violated the condition put on the property what is to stop him from violations in the future? Where does it stop? This meeting should be about how the property is not being governed properly.

Jamie Den Hartog lives on Clark Lake. Where does this end? What will be the impact 20-30 years from now? Let's plan and prevent for the future of Clark Lake.

Frances O'Neill resident on Clark Lake stated this is our environment we are talking about. We need to do things that are reasonable to protect it. Don't let our kids and grandkids pay for this mistake. Clark Lake does have a public access that can be used by all.

Carol Hendershot resident of Clark Lake stated that this access is 50 feet for 48 homes. How many people can I allow to access the lake from my property?

Charles Ramsbacher resident of Clark Lake stated he was the past president of the Clark Lake Association. They have worked for years to have a safe and clean lake for future generations. He would like to see that the dock not be allowed on Clark Lake.

Karna DeMay resident of Clark Lake questioned why this is not being enforced if they are in violation. Cotner stated it was a technicality of the labeling change from the Preliminary Plat to the Final Plat in regards to Outlot C and Outlot H. DeMay stated we need to be reasonable and protect Clark Lake. We as the association have worked hard to protect the lake and wildlife. The lake is home to all of us residents and wildlife. Help us protect the lake we have and do not allow the dock.

Close public comment 5:27pm

Hansen question if the original condition included the dock and the walkway over the wetland? Cotner stated she considers it to be one structure; dock. Pearson stated that the DNR has issued a permit for this activity. Hansen stated the structure used as a walkway up to the water will protect the wetland.

Harris stated the developer had ignored the original CUP by adding a dock without permission. In the final plat staff and the commission didn't catch the labeling of Outlot C & Outlot H. There have been numerous hours spent and costs spent over the past several months from all parties involved. He would like to bring it to a close and hopes we can find a compromise on this dock. He stated if the dock remains it will be a people dock and not a boater dock. Some conditions to consider are not allowing any extensions to the dock. He stated that many of the conditions that the attorney for the Clark Lake Association is reasonable with the exception of the last one. If we get everything in writing and are clear on our conditions we the city will be able to enforce.

Pearson noted that if a violation occurs that it is enforced by the city of Nisswa. There is also an ordinance provision that if a CUP is not complete within 2 years the CUP is voided, except PUD's are exempt from this rule so the CUP from 2006 continues. In 2006 non-motorized use was not allowed. The developer and the lake association both think they are right based. He would like to see that a compromise be made that would make all parties happy and keep this issue out of court.

Young questioned if the property has riparian rights through the wetland? What are the riparian rights on the title work? Pearson stated he was unsure at this time. Young stated the DNR gave a permit to make a channel. He stated that in his experience the channels are supposed to go straight out and this one goes at an

angle. He questioned if the channel legally should have went straight out. Pearson stated wasn't sure that anyone has public rights to the waterway. They could have chosen the path of least resistance. Young questioned if we need exact measurements of the existing dock structure on Outlet H. Water levels go up and down throughout the years. He believes we need to be specific. Pearson noted that one of the conditions the developer requested was that the dock would not be extended or moved. Young believes that a floating dock is less damaging to the lake.

Harris stated that having the walking dock to the lake does more protection than not having it at all. He also agrees that a floating dock will be less destructive to the wetland.

Pearson stated he believes that we are all on the same page as far as conditions go when comparing that the 5 bullet points in Cotner's memo and the lake associations conditions. He noted that #6 & #7 should not be part of the conditions due to the nature of enforcements.

Mark Severson lake association attorney wanted to make a few comments on things that have been brought up. He believes that the DNR permit was for just the channel and not the dock. He stated that riparian starts at the end of the property line. He would like to see strict timelines and regulations put on the conditions if the dock is allowed.

Young questioned if the potential future development across the County Road 18 would have access to this Outlet? Cotner stated there is not an active application at this time, but it will not extend access to the potential development.

Motion: Harris motioned to approve that the Conditional Use Permit from 2006 does exist and approve the modification to allow the dock with these added conditions to the original CUP from 2006,

1. There shall be no storage on Outlot H.
2. The existing dock structure on Outlot H shall be limited to HOA pedestrian use and Human-powered watercraft use (e.g., paddle boards, kayaks, canoes, etc.)
3. The existing dock structure on Outlot H shall not be used for dockage of motorized watercraft. Signage will be posted on the dock confirming the same.
4. The existing dock structure on Outlot H will not be expanded in width or extended in length from the present dimensions.
5. The dock is for the specific purpose of walk-in access for non-motorized watercraft.
6. No permanent structures are allowed.
7. No motorized access whatsoever is allowed
8. Motorized watercraft of any kind is strictly prohibited from launching from, mooring at, or otherwise using the dock.

9. Removal and replacement of the dock must strictly comply with all applicable rules and regulations for removal of vegetation and shoreline management.
10. HOA covenants would be updated to reflect the above limits and restrictions concerning Outlot H.
11. If the Pine Trail Homes Homeowners Association desires to change anything about the placement of the dock or the dock itself, the Pine Trail Homes Homeowners Association must complete the reapproval process to amend the CUP with the City of Nisswa.

FURTHER DISCUSSION:

Young would like to see that the dimensions and measurements of the dock and location are documented in the conditions. Cotner will get those measurements.

Seconded by Hansen. All members voting “Aye”, motion carries.

9. Old Business: None

10. Planning & Zoning Administrator’s Report: None

11. Commissioners’ Questions/Comments: None

12. Adjourn

Motion: Harris motioned to adjourn the August 18, 2021 meeting at 6:05 pm, seconded by Hansen. All members voting “Aye”, motion carries.

Respectfully submitted,

Maggi Wentler, Finance Specialist