

MEMO

To: Itasca County Planning Commission
From: Tom Nelson
RE: Living Word Bible Camp
Date: December 11, 2013

Dear Members,

Although there are many problematic issues regarding the Commercial Development on Deer Lake proposed by the LWBC, I will address only the zoning situation and its ramifications.

1) HISTORY From the beginning, this has been a classic case of Spot Zoning that was mishandled at the time of the application without following the law as prescribed in the Itasca County Zoning Ordinance then in force.

A) SPOT ZONING is defined and forbidden in *Section 7.41.2* of the 1998 Ordinance:

“The proposed zoning shall not be spot zoning, which is zoning to discriminate in favor of one lot or parcel out of harmony with surrounding lots or parcels and the comprehensive or land use plan, and without benefit to the community.”

There was very little benefit to Itasca County for yet another religious-based youth camp since there are already two within a few miles (Hiawatha on Deer Lake and Bluewater Covenant Bible Camp on the Wabana Chain, both within Commercial districts). The rezone process was very controversial and led to court action to settle eventually on the Seasonal Residential District. Somehow the county administration and the courts waived, or ignored, the prescribed process for a rezone.

B) PETITION REQUIRED The 1998 Ordinance provided a very important protection to home-owners in the Residential District. *Section 7.32, “Zoning Ordinance Map”* states that:

“In the case of an amendment initiated by one or more property owners of record, a verified petition shall be filed with the Zoning Officer containing the signatures of not less than fifty (50) percent of the owners of property lying within 300 feet of the boundaries of the property affected by the proposed amendment.”

This requirement for a neighborhood petition had been included in all the earlier Ordinances. The protection provided by residential zoning is

essential to anyone who owns a home, most often the major investment for most families.

Apparently, it was routine practice to ignore this clearly delineated requirement and send the rezone request directly to the County Board via RBA, leaving the citizens of Itasca out altogether. To declare that it was not the property owner who initiated the zoning district amendment, but rather the County Board who has that right without the petition, is absurd on its face and a blatant example of malfeasance. How could the County Board conclude that a rezone is necessary unless requested by the new owners seeking an alternative use beyond Residential? Equal Protection and Due Process are not respected by skipping the first step and beginning in the middle of the process.

Ironically, the purpose statement for the Seasonal Residential District emphasizes the protection of residential values. The appeal period for the rezoning has lapsed long ago.

When revisions to the 1998 Ordinance were done in 2003, the disliked neighborhood petition was slipped out at the last minute without any public discussion of this primary safeguard for residential values.

The history of this development has been tainted from the beginning. It would appear that the fiduciary duty to the public was sacrificed for the sole benefit of a favored client promising a first-class development.

Had the neighborhood petition been honored, LWBC would by now have found an appropriate parcel and be up and running. Both the Deer Lake citizens and Itasca County taxpayers would have saved thousands and thousands of dollars in litigation. The County would still be collecting substantial property taxes. And had the neighborhood petition been honored, a great deal of distrust on all sides could have been avoided.

2) PROPER ZONING The Seasonal Residential District is still not the appropriate zoning for what the LWBC is actually proposing, even though “youth camps” are listed. The proposal includes much more than a youth camp, including uses that are not allowed in the SR District. The developer should seek an appropriately zoned parcel that fits his intentions, or at least be required to file for a rezone.

A) PURPOSE It is not enough simply to find a use listed for a zoning district without considering the intent and purpose of that zone. The purpose of the Seasonal Residential district is found in Section 2.60 of the 1998 Ordinance:

“The purpose of this district is to protect areas having suitable characteristics for seasonal residential development from uses which would prove detrimental to residential values. Such isolated settlement with its cost to government and hardship to the individual is regulated by prohibiting year-long residential public services.”

The emphasis here is on protecting residential values from detrimental uses. The allowed uses are to be located as “isolated settlements” without need for public services.

B) ISOLATED SETTLEMENT The LWBC property is by no means an “isolated settlement,” but rather located along a paved county road on a popular fishing lake that is nearly fully built-out with homes and cabins in residential zoning. There is no commercial zoning in the vicinity. Nor can this facility avoid the cost to government or the need for extensive public services such as county road maintenance, emergency services, and various inspections of its infrastructure, conditions, and health requirements. There is absolutely no “hardship to the individual” being located on Deer Lake, as opposed to a truly isolated camp at the end of a long forest road (of which there are many in Itasca County—but not Deer Lake).

C) DISTRICT MAP An examination of the county’s zoning maps from the 1998 era show that parcels in the Seasonal Residential zoning are indeed “isolated settlements.” Most are strips of land along lakes or rivers with mostly private dirt roads for seasonal access. Virtually none were accessible in the winter. Many were former DNR lease-lots of very small dimension. Small, Natural Environment (NE) lakes predominate. There were none on the larger developed lakes such as Deer Lake. The SR zoned parcels were converted to the Rural Residential zone in the current Ordinance.

D) CONTEXT It is important to weigh what is being proposed against what the Ordinance intends for SR zoning, given that the inappropriate and illegal rezone is established. A first-class, winterized commercial facility for adults and children simply does not fit the zoning restrictions of “*prohibited* year long government services”, “hardship to the owner” (no winter access), or protection from “uses which would prove detrimental to residential values” (commercial use for non-resident transient guests).

3) YOUTH AND ADULT The 1998 Zoning Ordinance is very clear about limiting the uses available to its Residential Districts. The Seasonal Residential is only slightly more permissive because the parcels zoned SR are supposed to be relatively isolated. Youth camps are allowed because they are strictly limited by Ordinance definition to serving youth under the age of 21. To allow any adult-oriented use would be a violation of Ordinance. *State law does not allow variances of Use.*¹

¹ MN Statute 394.27.subd.7 states as law: “No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.”

A) FIRST CLASS FACILITY The proposal submitted by LWBC describes much more than a simple screen-porch “youth camp” for a few weeks in the summer. Rather, this is a multi-million dollar development that will be winterized for potential round-year use.² This proposal looks identical to a modern resort or conference center with condominium apartments. The lodge originally had an estimated capacity for at least 200 people, but the present lodge plan has been increased by 5644 SF from what had a 200 capacity.³ There is even a gift shop and media production room planned for the lodge.⁴ The so-called “dorms” are lavish two-story structures with additional loft, including fireplaces, kitchens and a full bathroom for each “bunk room.”⁵ The lower level will have what Mr. Hunt once described as “apartments” specifically for adults.⁶ All this to accommodate a youth bible camp for 7-8 weeks in the summer?

B) CAMP OR RESORT? The LWBC application states:

“The purpose of the camp is to provide a Christian learning environment to children, young people **and adults** in an outdoor camp environment located in a beautiful, undisturbed natural setting. The primary use of the project is for a youth bible camp for children in grades 3-8 for seven to eight weeks during the summer.” (emphasis added)

They footnote this to say:

“The purpose and use of the facility and the mission of LWBC conform to the definition of “Youth Camp” in the ordinance (Sec. 1.126).”

What they do **not** say is that the 7-8 week youth camp is the **only** use that conforms to the definition of youth camp. This leaves 44-45 weeks for predominately adult use (with or without children). By adding a number of “occasional” adult uses, which include “marriage and parenting seminars” and “off-season camps,” the development becomes much more than the

² Mr. Hunt testified that “Our cabins are going to cost not just \$20,000 or whatever you may submit; its got a retail value of probably \$150,000 to \$200,000.” April 11, 2001 rezone hearing.

³ Mr. Hunt testified that the “main lodge, which would be 9,332 SF, lower level of 4852, a mezzanine level of 672 and could accommodate 200 occupancy maximum.” April 11, 2001 rezone hearing. The sketch floor plan in Exhibit F has no dimensions.

⁴ A gift shop is shown on sketch plan for the lodge in Exhibit F. Mr. Hunt mentioned video production at the April 11, 2001 rezone hearing.

⁵ See Exhibit F in the LWBC application. Only one floor plan is shown. The square footage of the loft is not included in the application.

⁶ April 11, 2001 rezone hearing. The floor plan for the lower level “apartments” are not included in the application.

Seasonal Residential District allows.

The wild-card here is the “off-season camps” which could easily exceed an educational mission, and include typical resort activities such as hunting, fishing, snowmobiling, etc. The notion that the “primary use” is a youth bible camp for children is simply a smoke screen for much more, mostly adult use. In reality, this is primarily a Resort that hosts a youth camp for a limited time.

C) “OCCASIONAL” Placing enforceable conditions on the development to limit the time of the intended adult uses would be nearly impossible to delineate or verify. (Again, this would require extensive government services). Even if closed for a portion of the winter (as promised—but the facility cannot be left un-heated), the use as youth camp represents a small portion of the *potential* use of this multi-million dollar facility. While the Ordinance restricts *all* adult use, the EAW was approved on the basis of many promises that the adult use would be limited and only occasional. Thus it is imperative that “*occasional*” and “closed for a *portion*,” etc., be strictly defined and enforced, or the terms of the EAW will be violated.⁷

4) SEPTIC DESIGN The zoning classification for a proposal such as this receives close attention from the Minnesota Pollution Control Agency and other agencies commenting on this application or the prior EAW. Error due to underestimating the potential adult use, very little indication that this is a commercial facility, and lack of information on building design (only the roughest of sketches provided) can lead to septic calculations that do not reflect the actual use.

A) MULTIPLIER MPCA Rules 7081.0130.subp1 provides a method for estimating the sewage flow for a variety of uses as the key to septic design. A chart is provided that includes both “camp, day and night with meals” and Resort lodge with cabins. Although this facility has the potential to equal that of a resort, the lower multiplier for a camp was used to design the septic system. This helped gain approval for the EAW.

B) CONCEPT ONLY The only information on the septic design comes in a brief two page letter that claims to be only a “concept design.” This is accompanied by very little soil analysis from a different firm that appears incomplete. While the designer is well respected and suggests using many advanced design elements, the concept makes use of the daily-use multiplier for a camp, and not the resort-like facility being proposed. However, there is no commitment to actually use the “advanced treatment” or the well-respected designer from Septic Check, Inc.

⁷ The EAW states that the facility will be “closed for a portion of the winter months.” (p.4) Mr. Hunt has already proposed closing the camp for November, December and January. (Itasca County Planning Commission minutes, 5/10/06, p.6)

5) SUMMARY The Planning Commission is tasked with wading through a very complex and controversial proposal. It is essential that the Commission make defensible findings and conclusions to avoid further litigation costs to the county. A strict reading of the Ordinance, the EAW, and recognition of the full potential of what would be approved best do this.

A) ORDINANCE If the 1998 Itasca County Zoning Ordinance is applied to the LWBC proposal as it stands, the decision should be easy and fully defensible. The permissible uses within this district allow only a Youth Camp as commercial PUD/CUP. A Youth Camp is restricted by definition to youth under 21. The application, however, includes multiple adult uses in contradiction to the Ordinance. The project as described and proposed should be denied for this very valid reason.

B) ENVIRONMENTAL IMPACT WORKSHEET If the Planning Commission decides to ignore the lawful restrictions in the Ordinance, and ponder approval with conditions allowing some adult use, they must review the EAW carefully. The EAW cannot be ignored or contradicted by the conditions set for this development. It serves as the basis for approving the proposal this far. Many promises were made to get this approval, some rather vague.

The Planning Commission must include each and every one of these promises as conditions. Some promises might seem trivial (non-phosphorus soap), while others are difficult to define (specific limits on adult use) and others very significant (commitment to advanced septic design by Septic Check, Inc.). The promise that there will be no further expansion of the facility or its capacity is also essential to the EAW. These conditions also require enforcement. If conditions cannot be worked out that address these issues and promises, then the project should be denied.

C) FULL POTENTIAL The Planning Commission should consider the full potential of this development, both as a zoning issue and environmental impact. This multi-million dollar winterized facility should not be approved on the basis of hosting a bible camp or 7-8 weeks. There will be a great deal of incentive in the future to make greater use of the investment, either by loopholes (off-season camps) or simply by going ahead, knowing that enforcement is lacking and penalties insignificant.

I recommend that the best course for Itasca County be for the Planning Commission to deny the application on the basis of the Ordinance restriction on adult use. As Assistant Attorney has often said: Follow the Ordinance!

Sincerely,

Tom Nelson
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