

SAUK COUNTY BOARD OF ADJUSTMENT
September 26, 2013 Session of the Board

PRESENT: Linda White, Chair
Dan Kettner
David Allen
Henry Netzing
Nick Ladas

ABSENT: None.

STAFF PRESENT: Dave Lorenz
Gina Templin
Steve Sorenson

OTHERS PRESENT: See Registration slips

Chair White called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:10 A.M. She introduced the members of the Board, explained the procedures and the order of business for the day. The staff certified that the legally required notices had been provided for the scheduled public hearing. The certification of notice was accepted on a motion by Allen, seconded by Kettner. **Motion carried, 5-0.**

The Board adopted the agenda for the September session of the Board on a motion by Netzing, seconded by Kettner. **Motion carried, 5-0.**

Motion by Allen, seconded by Netzing to approve the minutes from the August 2013 hearing. **Motion carried 4-0, with White abstaining.**

COMMUNICATIONS:

White spoke of a phone call received regarding the Lodging house issue with a message left stating she was not in favor of the request and no conversation took place.

Allen stated he also received a phone call regarding the lodging house case, which was left on his answering machine and no conversation took place.

APPEALS:

- A. Dale & Carlyn Hensen (SP-16-13) requesting a special exception permit to authorize filling and grading within 300 feet of the Wisconsin River during the construction and landscaping of a new residence.

Dave Lorenz, Environmental Zoning Technician, appeared and gave a brief history and background of the property, reviewing the staff report, as well as describing photos and a video of the site. He then recommended conditions to be placed on the appeal if the request were approved.

White asked about a recommendation from the Township. Lorenz stated he has not heard from the Township.

Kettner asked about the side yard setbacks. Lorenz explained the setback distances and requirements and how the LCE setbacks apply in this case.

Dale Hensen, Applicant, appearing in favor of the request, stated that they received Town approval at the September 4th meeting via email and can provide that upon request. He spoke of the engineered drawings to verify all setbacks are met.

Kettner asked about the proposed site plan, Exhibit II,5 – page 3, and the number of mature trees on the lot and the removal of these trees and if there is a plan in place as to how many will be removed on the lake side of the house. Hensen stated the plan is to keep as many trees as they can, however the ones nearest to the house will be removed, however, as you approach the water, they will keep the 16” maple and oak and will not adjust the grades in that area so they will not be removing trees there.

Kettner asked if there is a plan in place showing how many larger trees will be removed or altered. Hensen stated most of the sizeable trees that are represented on this plan, they will be kept.

White spoke of the cutting restriction within a certain setback of the lake.

Netzinger asked about the natural swale and how will the water runoff be addressed without impacting the neighboring property. Hensen stated it is a swale that is 95% within his property and it doesn't drain property to either side, merely a low spot, and will tie the grades into the adjacent lots, which will be built on in the future as well. He concluded by stating Lakewood Estates personnel has reviewed and approved of the plans as well.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 9:20 a.m.

White stated the plans are well done and review everything they need to see.

Kettner spoke of as many trees being kept in place as possible.

Motion by Ladas, seconded by Netzinger, to approve the special exception permit request to authorize the filling and grading of within 300 feet of the Wisconsin River for the purpose of construction and landscaping of a new residence, with the conditions recommended by Conservation, Planning and Zoning. **Motion carried 3-0.**

The Board took a recess for 2 minutes.

- B. Mark Malave (SP-17-13) requesting a special exception permit to authorize the short term rental of a residence as a lodging house.

Dave Lorenz, Environmental Zoning Technician, appeared and explained that the applicant had requested the Department postpone his hearing as his attorney could not be present, which he advised the applicant that the Board would need to make that decision. He then provided a brief history and background of the property, reviewing the staff report, as well as describing photos and a video of the site, as well as information from the Town of LaValle (Exhibit IV,25-37). He then recommended conditions to be placed on the appeal if the request were approved.

White asked about the annual inspection fee. Lorenz explained the fee.

White asked about the number of inspections made. Lorenz stated 1 is required, but will inspect as many times as needed.

White verified the separate offense condition located within the staff report.

Kettner asked about the distance from the applicant's structure to the adjacent residences. Lorenz stated approximately 50 feet.

Ladas asked about condition D in the staff report and a septic verification being done. Lorenz stated he is not sure how up to date with those reports.

Ladas asked if the septic needs to handle the number of people. Lorenz explained that the tanks are sized for the number of bedrooms.

Ladas asked about parking space, verified by staff, and asked if there is enough area for parking and the amount of trees. Lorenz stated he felt there is room for 4 vehicles to be parked on the driveway.

White asked for Corp Counsel to appear to explain procedure on postponing a portion or whole hearing.

Alene Bolin, appearing, explains the actions the Board could take, which is at their discretion.

White feels if they decide to go through most of the hearing today, they would take testimony from all present, but then also have the option to postpone to a later date where they would take additional testimony at that time.

Kettner asked about the testimony today, if they would have the opportunity to return to the board and address them with new testimony.

Bolin spoke of rules of the public hearing and provided.

Mark Malave, Applicant, appearing in favor of the request, stated he requests that his side of the hearing be postponed, but is ok with the rest of those present be allowed to speak.

White asked Mr. Malave to review his plans so the Board could understand what it is he is asking for. He stated they intend to rent the home at least half a year and have friends stay at the residence throughout the summer as well. He stated they cut down the number of people renting the place, and is under 10 people and is only a 3 bedroom home, as the basement bedroom is not considered a legal bedroom due to being below grade with no window.

White asked if he is operating right now without a permit. Malave stated he personally hasn't had anyone there.

Kettner asked if people sleep in the bedroom that is below grade. Malave stated they do.

Kettner verified that the applicant has people sleep there, but technically it's not a bedroom. Malave confirmed that per the assessor, it is not a bedroom, but they do allow people to sleep there.

White spoke of the bedroom criteria per code and is not sure how it's applied to lodging house.

Ladas stated the advertisement for the lodging house is for a 4 bedroom home (Exhibit IV,21). Malave stated he doesn't feel that is a picture of his house and can't confirm that.

White asked about the rental specs in the advertisement. Malave stated he cannot comment at this time.

White confirmed the applicant is aware that he is out of compliance. Malave stated he is aware which is why he is in front of the Board for their approval.

White asked if the applicant has ever had a special exception permit or a State permit to operate a lodging house. Malave stated he has operated, but it is being litigated.

Kettner asked about the rental last year. Malave stated he will not comment, as that is a question for his attorney.

Bev Vaillancourt, Chair of the Town of LaValle, appearing in opposition, spoke of the history of the Town coming before this Board, she provided a history of the Town opposing all short term rentals on the lake in the Town of LaValle, with certification by resolution in April 2010. She spoke of the many issues regarding the property, the request was reviewed by the Plan Commission and Town Board, which neither Mr. Malave or his attorney appeared. She stated the testimony at the town level pertained to the issues of a lodging house and not to Mr. Malave. She spoke of the Town making it verify clear that they are opposed to short term rentals in the Township, the application that was filled out inaccurately not being shoreland, a large amount of effort put forth by the Town for local law enforcement, local boat control, and asked if the County approves this request and the Town incurs increased costs, who is going to pay for those charges. She also feels that this will negatively impact the Town, the lake and property values.

Ken Keegstra, appearing in opposition, stated he is the immediate adjacent landowner and he and his family strongly oppose this request. He spoke of the part time cabin being upgraded to a full time residence, of which they have owned since 2002. He emphasized the Town being opposed to this request and the resolution that was passed by the Town in 2010 reaffirming this. He spoke of the guests not having a vested interest in the local area or in the property itself – one occasion where the guest had a big bon fire less than 20 feet from his residence while there was a burning ban county wide.

Paul Burke, appearing in opposition, stated he is the immediate adjacent owner to the west, and have owned their property for 14 years and is a permanent resident and purchased that property with the intent of the Town keeping it a residential community. He questions having a business property within a residential subdivision and have dealt with the rental issue for some time and the guest do not have a vested interest in the property and treat it and the neighborhood as such. They have experienced noise problems, trash problems, trespassing problems, up to 6 vehicles in their parking area at one time that causes an issue with traffic. He concluded by asking the Board not to approve this request.

ML Jacobson, appearing in opposition, stated that short term rentals on a lake like Lake Redstone can have a serious detrimental effect on the lake and the neighbors, sometimes requiring police to get involved, parking issues, garbage issues, trespassing issues, possible overflow of the septic system, and the safety and security of the neighbors. He is concerned with renters taking part in drinking and party activities that get out of hand. He mentioned the time and money from neighbors, police and local law enforcement, county staff that have had to address concerns or issues and the change in character of the entire lake.

Larry Frank, appearing in opposition, feels that if one rental is allowed, more rental requests will be made and will have issues with the residents fighting with renters due to the impact and issues they've had with the renters. He stated he purchased the property on Lake Redstone because they were told there were no rentals.

White asked about a boat being provided at the rental. Frank stated he does not live right next door, but in the neighborhood, so he is unsure, but outside of this property they have a great community where everyone respects each other's property.

Richard Fish, Town of LaValle Plan Commission member, appearing in opposition, stated he is strongly against the short term rental and also feels the Board should not delay or extend this hearing, as the applicant is present. He stated this will have a financial impact on the Town and will change the character of the lake. He feels the Board should honor the decision of the Town of LaValle and the applicant has had ample opportunity to present his case to the Town and this Board and feels the application is misleading, as there is an area that can be constructed for parking, but was not done. He also addressed the septic system and a septic verification be done for the use of a lodging house, which has not been done. He reiterated that the Board consider the financial impact on the Town and how this will negatively impact the Lake and community.

Gary Melberg, appearing in opposition, stated he lives 2 residences away from the proposed rental. He stated that the Lake Redstone Property Owners Association and the Town of LaValle stating no short term rentals. He spoke of the property being in violation of Sauk County ordinance and the ecological

issues the rental could have on the lake. He spoke of the rental having 6-7 cars in the driveway, trash is overflowing and the renters are not caring about the property itself or the neighboring properties. He requested that the Board deny the request.

White asked if there is a boat there. Melberg stated there are 2 boats at the property, one a pontoon boat and the other a smaller jetski type boat.

White asked if when renters are there if the boats have been in the water. Melberg stated he has noticed, but has not paid attention specifically, and within the last year, that house has been rented out at least 8 or 10 times.

White asked if it was for a couple days or longer. Melberg stated it is typically for a weekend.

Kettner asked if the renters bring their own boats. Melberg stated he is unsure.

Karin Melberg, appearing in opposition, stated she has owned her property since 2000, and stated they have fought this issue for years at every level and spoke of the attempt to postpone. She stated over the years things have been done maliciously and spoke of the blatant disregard for the rules and neighbors, as well as no evidence that compliance will occur going forward if this was approved.

White asked where Melberg's property is to the property in question. Melberg stated she lives 2 properties down.

White asked about other boating. Melberg stated she is only there part time, where her father lives there full time. She spoke of every attempt the neighbors have made dealing with this property, from the Township, local law enforcement, county, etc.

Dr. Paul Imhof, appearing in opposition, stated that the property in question is constantly in violation, the owner has yet to comply with any requirements and is unsure how the property can consistently stay in violation and never be corrected. He stated they are stewards of the community and the lake and someone needs to be responsible to that and feels the Board needs to deny the application.

Donald McCune, appearing in opposition, stated that he is a lake owner and has witnessed the property in question since the first day and feels the approval of the request only affects one person positively and that is the landowner, everyone else is affected negatively. He stated about 2 months ago a boat arrived on the property with renters in that boat. Prior to that no boats were there unless it was other people's boats, other than a pontoon that is parked in the applicant's driveway which is not put into the water. He spoke of a Board member questioning the applicant if he has stopped renting, which he felt the applicant didn't respond to.

Kettner asked if there have been any problems from that residence from noise coming all the way across the lake. McCune stated he has not heard noise from his residence, as it is on the other side of the lake, however, he has been at the neighbors when there are noise complaints, police called, drugs found at the residence and other issues.

Kettner asked if there is any noise issues at other residences on Lake Redstone. McCune stated he has not heard of any.

Chuck Ecklund, appearing in opposition, stated he has seen boats come to the residence with new renters even recently. He feels the ongoing non-appearance at meetings by the applicant allows for continued rental and the applicant not complying.

Seeing as no one else wished to speak Chair White asked the Board to decide if they want to allow more testimony or postpone the rest of the hearing. She asked for counsel at this time.

Alene Bolin, reappearing, stated the Board could proceed, however the applicant did request to postpone and allow the applicant to speak.

White asked if the applicant was given an opportunity to speak but he chooses not to, is it the Board's requirement to postpone based on one person not present. Bolin explained the Board has the choice on whether or not to postpone. She stated the meeting was properly noticed and the Board can move forward as they chose.

White stated she feels unless there was an emergency on the part of the applicant, the Board should move forward, as the meeting was legally noticed.

Kettner feels that perhaps there is an effort to stall, however, the applicant should be given another opportunity to be heard, but feels the Board should proceed and decide the issue today.

Allen feels that the applicant should have the opportunity to speak again if the Board decides not to postpone.

Netzinger stated he feels if an attorney is representing someone, someone from the law firm should have appeared. Due to the issue going on since 2006, the Board needs to move forward.

Ladas stated that due to the applicant not showing at previous meetings they should move forward as he is present today, however, the applicant should be allowed to readdress the Board.

White asked Bolin if a motion is required to make a determination. Bolin suggested the Board put their decision into a motion, no matter what they decide to do.

Motion by White, seconded by Kettner, to move forward with the meeting and make a decision today due to the applicant being present, the meeting legally noticed and others present. Motion carried 5-0.

Mark Malave, reappearing in favor.

White spoke of the conditions being recommended by the Department and asked how he intends to make sure that no violations to the permit will occur if they approve the permit. Malave stated there were no boats rented.

White stated she didn't ask if any were rented, only if they were present. Malave stated he had an uncle that brought a boat with, but that was it, other than their own boats being present.

White asked about compliance with the permit. Malave stated they plan to install cameras on the property, also monitor decibel levels, both which will be controlled and accessed via the internet, a holding tank would be on a system that would provide an email once it reaches a certain level. He stated Dan Drews picks up the garbage and removes it.

White asked where the garbage goes. Malave stated he picks it up as necessary, usually Sundays and believes he takes it to the dump.

Kettner asked for as long as he has owned the property, how many times have the police been called to the property. Malave stated over a dozen times, however, for other issues, not necessarily just noise.

White asked if he has ever been fined for operating a lodging house without a license. Malave stated he has received a fine and he paid it.

White asked about the \$8,000 fine. Malave stated the \$8,000 has not been assessed or paid. He also spoke of the holding tank reporting.

White asked if a permit from the state was obtained to operate. Malave stated he does not have a permit and was told by Sorenson he didn't need one.

Kettner asked if in June of this year a fine was given by the County for \$6,000 for injuries suffered by the County. Malave stated that is the case that is currently in litigation.

White asked about item IV,15, circuit court documentation, regarding contempt of court. She also spoke of operational conditions placed on a permit. She then asked for the number of weeks or days rented. Malave stated that he asked for 180 days. White asked if that is what is taking place now. Malave stated yes, up until 2008.

White asked if the request is for weekly rentals or just weekend. Malave stated both.

White asked how renters are check out before renting. Malave state he does a criminal background and rental check on all renters, stated he is a real estate broker in good standing in the State of Illinois and is the owner of several rental properties.

White asked why he was not present at the Town meetings. Malave stated that previous Town meetings were offensive to him because some in attendance expressed comments about blacks and decided not to put himself through that again.

White confirmed that the Board has not asked who the applicant is renting to and asked Malave if he understood that. Malave confirmed he did and stated that was at the Town level.

White confirmed that the Board is not interested in the race, sex, religion, age, etc., of anyone who rents the property from Mr. Malave.

White asked about the cameras being recording cameras and internet accessible. Malave stated that is correct.

White asked about the applicant's name and an LLC name and asked if there is an operational LLC. Malave stated the LLC has been dissolved previously and stated it is on a court document, but not an active LLC at this time.

White asked about notification to the people who would be renting, how would they be notified on the rules. Malave stated he would have them initial and sign a rules and regulations that will be set up and they will have to check with the Chair if it is ok to burn.

Kettner asked about the cover letter to the Board of Adjustment in point #2, it states there are only 2 homes located near the rental, but they are located "some distance" from the home and asked how the applicant defines "some distance". Malave stated the house to the east is at least 50 feet between homes and the one on the west is within 50 feet and he is used to properties within the city where buildings are much closer together.

White asked how many properties he manages and if multiple properties are on the same lakes. Malave stated he manages about 32 but they are not on lakes, but some of the rentals are located near each other. Malave also stated he did not receive a request for all special exception permits issued in the Town of LaValle nor has he received his open records request from the Sheriff's Dept.

White stated she can confirm that the Board has not granted a lodging house on Lake Redstone in many years.

White asked if that information was required for the postponement, and if so, how did it affect the hearing. Malave stated he feels everyone here that has testified in opposition has received special exception permits, although not for lodging houses, they shouldn't testify in opposition if they have received one.

White spoke of the special exception permits that they hear regularly, although none for a lodging house, which she feels is what is relevant in this issue.

Ladas asked about the septic system and if he intends to address that at all. Malave stated is not sure that the property has been pumped by Dorow septic.

Ladas asked about Exhibit IV,21, and the applicant previously stating the advertisement not looking like his house. Malave stated that the picture doesn't look like his house.

Ladas stated that in Exhibit IV,19, it states Sorenson called the number in the advertisement and it was the applicant's phone number and voice that answered the number.

Malave then asked if the Board would allow him to withdraw his application at the end of testimony.

White stated the Board would take that into consideration.

Bev Vaillencourt, reappearing in opposition, stated that she received a call from Mr. Brown (Malave Attorney), who did not identify his client at that time regarding the procedures at the Town levels for a special exception permit. She reviewed how she explained the details of the procedures, names of the county staff, and the website for materials. She also spoke of the request for the applicant to go on the Plan Commission agenda and Town Board agenda and stated at that time she would need to know his clients name. She spoke of her Town Attorney being present who spoke and directed all persons to only speak of short term rentals and not to who was making the request. She stated Mr. Malave and his Attorney decided not to come to either meeting and she is sorry that he didn't have the opportunity to see the process put into place, as it was a very civil meeting. She spoke of the garbage drop off sites not allowed to those that are not town residents and commercial/business establishments are not allowed to use the garbage drop off and his renters would not be allowed to use the Town drop off site. She spoke of the decision by the Board affecting the entire Town and completely changing the character of Lake Redstone. She spoke of other properties being allowed short term rentals and the concern it causes her as the Town Chair, with all extra services paid for by the residents of the Town of LaValle.

White asked what the penalty is for dropping off garbage when not allowed. Vaillencourt stated they have a card which is verified at each drop off and only residents have those cards. If there is no card then they are not allowed to drop off. She also reiterated the application provided was not correct, as well as recognizing the applicant testifying he has to put camera up and understanding it's been a nuisance, he is recognizing there is a potential problem using properties as a short term rental. She spoke strongly about the Town wishes being considered.

Kettner asked about the properties on Lake Redstone being single family residential. Vaillencourt stated that was correct. She spoke of an effort in the 1990's where there was an a request for commercial property to be on the Lake, which was strongly opposed at that time as well. She also spoke of Dutch Hollow Lake being partially located in the Town which also is strongly against any commercial uses on lake property.

White asked about the Lake Association part, if people who purchase property have to sign any documents. Vaillencourt stated Dutch Hollow has documents that cover it, however Lake Redstone's have expired and only control by resolutions, ordinances and rules and advised that all Realtors know what is allowed and not allowed on the Lake.

Ken Keegstra, reappearing in opposition, stated that the applicant stated trash was taken care of regularly, and provided an example where trash was accumulating for nearly 3 weeks from occupants of the home, which was not the applicant. He spoke of the burn issue and stated that he knows the applicant and his wife, and the situation that he spoke of was when renters were there and not the applicant or his wife. He also spoke of septic concerns when the holding tank alarm was turned off and raw sewage was flowing out of the septic tank and flowing down onto his property during the summer of 2012, and has photographic evidence to prove such. He also stated the he can provide evidence that the advertisement on the website of the applicant, showing the inside of the bedroom with a window view and you can see the barn on his property.

White asked when the barn was taken down. Keegstra stated the barn was removed last summer.

White asked about the deck and hot tub on the property. Keegstra stated the deck was built in the last couple of years, possibly the summer of 2011.

White asked the photos to be provided to the Conservation Planning and Zoning office with a copy.

Karin Melberg, reappearing in opposition, stated she is a licensed real estate professional, spoke of the requirements DHS 195 which is the administrative rule where the property would need to be licensed by the State. She spoke of the understanding to operate a property and using the fact that you are from the city, you don't know rural rules as an inadequate excuse for mismanaging the property.

Jim Mercier, appearing in opposition, stated he is a lake resident and a Town supervisor, and asked if the applicant pulls the request would he be allowed to rent. White stated the applicant is out of compliance at this instance he is not supposed to be operating at this time or in the future. She directed him to talk to Corporation Counsel with any other question relating to that.

Paul Burke, reappearing in opposition, spoke of the boat docked at the applicant's property and used by renters who stay on the property, as well as other boats parking at his property and using his boat as well. He spoke of the noise issues and the police being called due to the disturbances. He feels the renters do not care about the neighborhood or other residents and are merely there for a good time.

White asked for Counsel to reappear and asked whether or not they could legally proceed if the applicant requests to withdraw.

Bolin reappearing stated there is no specific rule if the applicant can withdraw at this time. She referred to Roberts Rules of Order and the Board can vote to allow him to withdraw if they so choose. She also suggested that whatever they decide, they do so by motion.

Motion by White, seconded by Allen, to deny Mr. Malave to withdraw his application at this time. Motion carried 5-0.

Seeing as no one else wished to speak in any of the three categories, Chair White closed the public portion of the meeting at 10:50 a.m.

White spoke of the community and the respect for the rules, as well as the testimony from the Town. She feels that the testimony from the applicant and the information provided in the packet show a certain amount of disrespect for the rules and feels the applicant clearly understands his request. She also feels that the Board has made it very clear that they have addressed the issue of a short term rental only, not who his renters are, their race, sex, or anything else relating specifically to a renter. She spoke of keeping to a community atmosphere which is single family residential.

Kettner stated that since its inception it has been a single family residence and previous requests for a lodging house on the lake have been turned down due to the Township not allowing them. This property shows a history of an ongoing problem and a disregard for zoning and regulation rules, all the time

while operating without approval or permits. He spoke of the testimony and the wishes of the Town and feels he is against this request.

Allen spoke of the history of the property, with the community being against the use, the Town and Plan Commission with their rules, and agrees it should be denied.

Netzinger gave the applicant credit for appearing and requesting a permit to come into compliance, but due to the testimony of the Township and the local government having resolutions and ordinances in place, the Board needs to respect them.

Ladas stated based on the testimony and history of noncompliance he is against the request.

White spoke of the history of the property and constant noncompliance and the Board's requirement is to also protect public interest and make sure the communities will not be damaged by the permits and requests they approve.

Motion by Ladas, seconded by Kettner, to deny the special exception permit. **Motion carried 5-0.**

Motion by Allen, seconded by Netzinger to adjourn. **Motion carried 5-0.**

Meeting adjourned at 11:15 a.m.

Respectfully submitted,

Henry Netzinger, Secretary