

**City of East Gull Lake  
Planning and Zoning  
Regular Meeting**

Tuesday, August 25, 2020 – 6:30 PM

**I. Call to order**

Chairman Bruce Buxton called to order the regular meeting of the City of East Gull Lake Planning and Zoning Commission at 6:30 PM on Tuesday, August 25, 2020 at Cragun’s Legacy Clubhouse.

**II. Pledge of Allegiance**

**III. Roll Call**

Present: Bruce Buxton (Chair), Commission: Marty Halvorson, Paul Tollefson, Nate Tuomi, Eunice Wiebolt, Rocky Waldin

Council Present: Mayor Kavanaugh, Councilors: Demgen, Bergin, Hoffmann, Ruttger

Staff Present: City Administrator Mason, Administrative Assistant Schack

Audience: Tom Pearson, Lisa Gudajtes, Paul Anderson, Mary Ann Anderson, Abraham Tuomi, Matthew Loven, Uldis Birznieks, Bernie McDonough, Emily Bauernfeind, Randy Bauernfeind, Tom Ward, Joanie Ward, Pat Birznieks, Don Gylling, Nealna Gylling, Christina Hart, Jennie Ward Jim Ward, Barb Gmitro-Best, Steven Best, Doug Schieffer, Mary Grimstad-BenAri, Eylon BenAri, Theresa Bourke, Mitch Brock, Tom Malat, Tammy Malat, Herm Schley, Kevin Smith, Vicki Smith, Paul Maki, John Funk, Jim English, Nancy Freeman, Jim Freeman, Todd Wayne

**IV. Adoption of Agenda/Additions or Deletions to the Agenda**

**Motion by Commissioner Halvorson and seconded by Commissioner Tuomi to approve the agenda as presented. All present voted in favor thereof. Motion carried.**

**V. Approval of Minutes**

**Motion by Commissioner Waldin, second by Commissioner Wiebolt to approve the minutes of the Tuesday, July 28, 2020 meeting. All present voted in favor thereof. Motion carried.**

**VI. Public Hearings**

None

**VII. Open Forum**

None

**VIII. Planning and Zoning Administrator’s Report**

No Report

**IX. Old Business**

**A. Helipad Discussion**

Chair Buxton opened discussion regarding the recommendation for helipads within the City limits. Commissioner Halvorson made a motion to recommend adoption of an amendment to the Zoning Ordinance that would include private helipad usage as allowed use within the City of East Gull Lake. The proposed Amendment allows the City Council to grant a Conditional Use permit for the construction of a private helipad within the city limits, subject to required conditions. Absent such an amendment, construction of a private helipad is not allowed in East Gull Lake. This means that the issue is whether it should ever be appropriate to allow a private helipad in East Gull Lake. This City cannot bar helicopter use in its airspace, which is outside its jurisdiction.

Under the proposed amendment, the following minimum conditions must be met before the Conditional Use Permit for a helipad would be granted:

- Property must contain a minimum of five acres.

- Property owner must acquire a MnDOT Aeronautics Permit due to the proximity of the East Gull Airport being within six miles of any applicant residence in the city.
- Property owner is limited to commuting and storage of the helicopter on site. Two take offs and landings per day maximum allowed.
- All recreational flights will be done from the East Gull Lake Airport or other licensed airport.
- Flight times will be limited to 7:00 am or dawn to dusk.
- Adequate proof of insurance to be filed with the City.
- No take off in any instance in winds exceeding 20 knots.
- VFR (Visual Flight Rules) conditions are as follows: Visibility: for visual flight below 2,000 AMSL (Above Mean Sea Level), visibility must be at least five miles. When visibility is less than the required minimum, aircraft may not take off under VFR. Once airborne, a VFR Guided aircraft must change altitude, divert or land if visibility falls below the specified minimum.

Chair Buxton noted several questions regarding the conditions noting there should be more. Commissioner Tuomi questioned the City's ability to enforce the requirements. Commissioner Wiebolt noted that use of a helicopter is not an unreasonable use. Discussion regarding distance width. Commissioner Halvorson noted each CUP would be decided individually.

**Motion by Commissioner Halvorson and seconded by Commissioner Wiebolt to recommend adoption of an amendment to the Zoning Ordinance subject to the findings and conditions stated. Vote by roll call: Commissioner Halvorson: Aye, Commissioner Waldin: Nay, Commissioner Wiebolt: Aye, Commissioner Tuomi: Nay, Chair Buxton: Nay, Motion denied.**

New motion made by Commissioner Tuomi and seconded by Commissioner Waldin, to reject current proposed ordinance and amend the current ordinance to not allow helipads in R1, R2, or R3 based upon the following findings of fact:

1. On July 28, 2020, the East Gull Lake Planning and Zoning Commission held a public hearing to consider a proposed amendment to its Zoning Ordinance that would include private helipad usage as an allowed use within the City. Proper notice of this hearing was provided, pursuant to Section 8.12 – 4 of the East Gull Lake City Code, and Minn. Stat. § 415.19.
2. Section 8.12 – 4 of the East Gull Lake City Code governs amendments to the Zoning Ordinance:
 

The City Council may adopt amendments by 4/5 vote to either the Zoning Ordinance, Zoning Map or Overlay Maps in relation to the Land Uses within a District or the boundaries of the District(s). Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals of the community or changes in the conditions of the City.
3. Section 8.2 – 1 of the East Gull Lake City Code notes that the Zoning Ordinance was adopted for the purpose of furthering the following goals (among others):
  - Protecting the public health, safety, comfort, convenience and general welfare.
  - Inaugurating and effectuating the goals of the Comprehensive Plan; and,
  - Conserving the natural and scenic beauty and attractiveness of the City, for the health and welfare of the public.

Any amendment to the Zoning Ordinance should be consistent with these goals and will be interpreted in light of them.
4. At the public hearing, testimony and arguments were given in support of the amendment, and in opposition to the amendment.
5. Based upon all of the record, including the testimony and arguments at the public hearing, the City Planning Commission has found the following facts to be true in support of its decision to deny the proposed amendment to the Zoning Ordinance.

6. The proposed amendment allows the City Council to grant a Conditional Use Permit for the construction of a private helipad within the city limits, subject to the required conditions. Absent such an amendment, construction of a private helipad is not allowed in East Gull Lake. This means that the issue is whether it should ever be appropriate to allow a private helipad in East Gull Lake. The issue is not whether helicopters can operate within East Gull Lake airspace – this City cannot bar helicopter use in its airspace, which is outside its jurisdiction.
7. Under the proposed amendment, the following minimum conditions must be met before the Conditional Use Permit for a helipad would be granted:
  - Property must contain a minimum of five acres.
  - Property owner must acquire a MnDOT Aeronautics Permit due to the proximity of the East Gull Airport being within six miles of any applicant residence in the City.
  - Property owner is limited to commuting and storage of the helicopter on site. Two takes offs and landings per day maximum allowed.
  - All recreational flights will be done from the East Gull Lake Airport.
  - Flight times will be limited to 7:00 a.m. or dawn to dusk.
  - Adequate proof of insurance to be filed with the City.
  - No take off in any instance in winds exceeding 20 knots.
  - VFR Conditions are as follows: Visibility: For visual flight below 2,000 AMSL, visibility must be at least five miles. When visibility is less than the required minimum, aircraft may not take off under VFR. Once airborne, a VFR guided aircraft must change altitude, divert or land if visibility falls below the specified minimum.
8. In making its decision, the City Planning Commission has evaluated the following considerations:
  - Regulatory Control – A private helipad must be licensed pursuant to Minnesota Administrative Rules, Chapter 8800, Section 2100, and comply with its requirements. Furthermore, a private helipad is allowed within Cass County, Minnesota, pursuant to Land Use Ordinance #2018-02: “A private airport or heliport requires a conditional use permit and shall be subject to the following criteria: A) Conforms to all applicable state and federal regulations; and B) Use of the airport is limited to the property owners or, where there is an association, limited to the association owners.” However, these state and local rules, in combination with the minimum conditions set forth in the proposed amendment, do not provide sufficient regulatory control over the construction and operation of a helipad.
  - Enforcement – An allowed helipad, under the proposed amendment, would be subject to revocation by the City Council, for any non-compliance with its Conditional Use Permit. Continued use in violation of a revoked Conditional Use Permit would be prosecuted by the City either civilly or criminally as a misdemeanor. The State of Minnesota would be responsible for enforcing state regulations relating to the license granted to operate the helipad. Furthermore, the Fire Marshall would be responsible for enforcing all State of Minnesota fire code relating to helipads. However, the City of East Gull Lake lacks the ability to provide oversight over the use of helipads and cannot ensure compliance with its conditions. Like many zoning issues, the regulation of helipads would simply rest upon residents reporting upon other residents. This can lead to a lengthy process of revocation, and prosecution, that would not provide immediate redress of unsafe practices. There are no helipad “inspectors” in East Gull Lake to ensure safe operating procedures and compliance.
  - Safety – Some experts claim that the risk of helicopter accidents near helipads are considered to be “extremely rare.” See: R.J. Adams, E.D. McConkey, L.D. Dzamba, R.D. Smith, DOT/FAA/RD-90/9, “Analysis of Helicopter Accident Risk Exposure Near Heliports, Airports and Unimproved Sites”, Feb 1992. But there are still risks associated with helicopters landing and taking off in residential areas – especially considering the amount

of fuel they carry. No licensing or compliance with regulations, can guarantee the safe operation of a helicopter – there is always the risk of human error or mechanical malfunction. Pillager Fire Department appears to have adequate equipment, but there is no assurance of that departments ability to respond to a catastrophe of unknown quality.

- Noise – Operation of a helipad for landing and takeoff for commuting purposes only, with a maximum of two per day per helipad site, results in noise pollution. Each landing or takeoff, despite lasting less than 90 seconds to 2 minutes, significantly intrudes upon neighbors’ quiet use of their property. Despite its decibel levels being comparable to other uses, such as seaplanes, motorboats, etc., it is still a reminder that a helicopter is landing or taking off, and has a distinct sound.
- Fuel and Oil – Storing a helicopter at a helipad, along with a temporary fueling station, poses a possible risk of a fuel spill, although a small risk.
- Wildlife – Helipad usage within the City of East Gull Lake means that helicopters will be landing and taking off near existing bald eagle and loon habitat. Not only could this directly cause loon and bald eagles to be struck in-flight, but also, it may cause them to be driven off due to the noise and/or air pollution.
- Existing Uses – East Gull Lake is currently home to a public airport which averages 83 flights per month, and two sea plane bases on Gull Lake – one of which is private-use only. These aeronautical resources should be sufficient for residents to use, without adding more complicated air traffic through new landing sites with different kinds of aircraft.
- Community Support – Over two hundred residents of East Gull Lake have voiced significant opposition to allowing helipad usage in the City. This outcry is representative of the vision and goals of the community as a whole.
- Comprehensive Plan – Amendments to the Zoning Ordinance should be a “means to reflect changes in the goals of the community or changes in the conditions of the City.” See: Section 8.12 – 4 of the East Gull Lake City. These “goals” are summarized and articulated in the Comprehensive Plan, as revised in 2017. The Comprehensive Plan notes that a significant component of the City is made-up of “high-density seasonal cabins and year-round homes” along Gull Lake, and at same time is focused on ensuring that the City “naturally perpetuate the character that makes our community a special place to live, work, and recreate.” (pp. 4-5). For this reason, the plan emphasizes the need to protect its unique environment and maintain the “solitude of a peaceful life.” (pp. 5-6). Helipad usage is not consistent with these community goals and should not be allowed.

9. Conclusion – When seen as a whole, the facts support denying the proposed amendment to the East Gull Lake City Code to include “Helipad” as an allowed use in the City.

**Motion by Commissioner Tuomi and seconded by Commissioner Waldin to recommend denial of the proposed ordinance amendment based upon the findings of fact and amend the current ordinance to not allow helipads in R1, R2, or R3. Vote by roll call: Commissioner Halvorson: Nay, Commissioner Waldin: Aye, Commissioner Wiebolt: Nay, Commissioner Tuomi: Aye, Chair Buxton: Aye.**  
**Motion carried.**

**B. Deck Violation**

Administrator Mason noted the Council suggested sending the issue of the deck built on the side of the hill without a permit back to the Planning Commission for review. It was noted that there are 10 letters of support of the deck. Mr. McDonough addressed the commission regarding the situation. He noted that he made a mistake building it without a permit. He is here to ask forgiveness for making that mistake. Commissioner Tollefson asked why he built without a permit. Mr. McDonough explained the conditions under which he built, not having a specific answer for the

question. Commissioner Halvorson noted there are two issues: no permit and the safety issue: someone possibly backing into or hitting the deck and knocking it down. Chair Buxton asked why he wanted something across the road from his house. Mr. McDonough stated he wanted use of the property. Chair Buxton also asked if there isn't a possibility of someone backing up or turning around and hitting the deck causing an accident. Commissioner Wiebolt asked what would happen if two cars met on the road going too fast and swerved and hit the deck. Mr. McDonough noted that drivers on that road drive slowly at about 5 miles per hour. Commissioner Tuomi noted the glass barrier could be an issue if it does not meet code. Commissioner Tollefson noted he is a UPS driver and sees how it could be a safety issue. It was noted that is why a plan is required when a permit is being requested so all the issues are brought to the attention of the issuer prior to construction. Commissioner Tuomi asked if the City would be held liable if the deck is allowed to stay there. It was noted that it is a possibility. It was noted that letters from the neighbors approved the deck. Commissioner Tollefson noted it is just not safe. Mr. McDonough asked if he could put concrete posts and a guard rail up to alleviate the safety concerns. Commissioner Tuomi noted the decision is either make it safer and allow to stay or make him tear it down. Commissioner Tuomi asked if he came in for a permit, would it have been allowed. Administrator Mason noted had he come in for a permit before construction, he would not have issued a permit with the plan showing the current constructed deck. He noted he would have discussed other more practical ideas. Dimensions were discussed. It was noted that the posts could be moved back if the deck was shortened. Discussion ensued regarding acting on the motion.

Chair Buxton asked if there are any conditions where the deck would be allowed to be kept. It came to the motion for recommendation of removal by October 1, 2020. Mayor Kavanaugh addressed the Commission regarding the fact that if the deck was allowed in that location. He noted it was a severe action to make him tear it down. Chair Buxton noted that there are things that can be done to make it safer. He noted there are structural issues that should be addressed. Motion for removal was passed.

**Motion by Commissioner Tollefson and seconded by Commissioner Halvorson to recommend to ask for deny after the fact permit and require removal of the deck by October 1, 2020 due to a lack of a permit and safety issues. All present voted in favor thereof. Motion carried.**

**X. New Business**

None

**IX. Adjournment**

**Motion by Commissioner Halvorson and seconded by Commissioner Wiebolt to adjourn. All present voted in favor thereof. Motion carried.**

Transcribed by East Gull Lake Administrative Assistant  
Kathy Schack

These minutes are paraphrased and are not written word for word.