



1201 East Hwy 2
Grand Rapids, MN 55744

November 18, 2021

Heidi Kroening, Chairperson
Windemere Township Town Hall
91546 Military Road / County Road 50
Sturgeon Lake, MN 55783

Re: Appeal of decision to approve zoning permit for a 49-unit Sand Lake Resort

Dear Windemere Board of Adjustment and Town Board,

The purpose of this letter is to appeal the Township's decision to approve Zoning Permit ZP21-043 for the construction of a 49-unit resort issued to DSLR, LLC (Sand Lake Resort) as an administrative permit. The DNR is appealing the decision under Article VIII Section 4 of the Township's Zoning Ordinance. The DNR received notice of the Township's approved permit on November 4, 2021. We are appealing this permit within 45 days of receiving notice.

We understand that the Township's Zoning Administrator approved the permit for this project as a surface water-oriented commercial use on June 14, 2021. However, the proposed resort also meets the definition of a commercial shoreland planned unit development (PUD) as defined in the Pine County Shoreland Management Ordinance. Under the County's ordinance, commercial shoreland PUDs require a conditional use permit and compliance with density standards and other design requirements to minimize impacts to lakes and shoreland resources. Furthermore, Article XI of the Township's ordinance states "More restrictive Federal, State or County regulations or standards shall take precedence over the provisions of this Ordinance." This means that Pine County's commercial shoreland PUD standards apply to the resort project.

Townships have the authority under state law to adopt and enforce their own zoning ordinance, including shoreland regulations. However, state law requires township zoning to be consistent with and at least as restrictive as the county zoning regulations and contain the same range of provisions as the county ordinance (Minnesota Statute 394.33 and Minnesota Rules 6120.3900 Subp. 4a.). Article XI of your ordinance reinforces the primacy of county and state laws and is consistent with state law governing township zoning. The Township's zoning ordinance does not contain the shoreland PUD provisions contained in Section 8 of the Pine County ordinance and is therefore inconsistent with and less restrictive than the county ordinance and in violation of state law. The Township, therefore, does not have authority to

approve shoreland PUDs, as defined and regulated in the Pine County ordinance, until the Township amends its ordinance to be consistent with and at least as restrictive as and contain the same range of provisions as Pine County's ordinance. In a letter dated March 10, 2021 (attached), the DNR notified the Township that its ordinance was not consistent with the Pine County Shoreland Management Ordinance or the state shoreland rules (6120.2500 – 6120.3900) and that the proposed Sand Lake Resort was not consistent with either. In that same letter, the DNR notified the Township that it must update its ordinance to be consistent with Pine County's ordinance.

Resorts, campgrounds, and hotels are defined as "commercial PUDs" in the Pine County ordinance and in the state shoreland rules. These types of intense shoreland developments have significant impacts on shoreland and aquatic habitat, water quality, and community character, including lake crowding and traffic. In order to minimize these impacts, the shoreland commercial PUD standards were developed to specifically address these types of shoreland development as a conditional use. The Township's 1992 shoreland ordinance, approved by the DNR, contained these critical provisions. At some point, the Township removed these provisions from its ordinance without notifying the DNR, thus opening the Township's public water resources and residents to significant impacts and undermining the level playing field with which all jurisdictions with shoreland zoning authority abide.

Under the Township's ordinance, resorts are listed as an example in the definition of a "surface water-oriented commercial use," to illustrate how "access to and use of surface waters" is an integral element to differentiate between commercial uses that need to have access to waters and those that do not. This definition is used to apply different setback standards to those commercial uses without a need for water access and those that don't. The Township's ordinance lists surface water-oriented commercial uses as a permitted use. The Pine County ordinance and the state shoreland rules use the same approach. However, the Pine County ordinance and the state shoreland rules also call out resorts, campgrounds and resorts as a subset of commercial uses, subject to special conditions to mitigate their significant impacts on shoreland resources and approved through a conditional use permit process. This is similar to apartments being a subset of a residential use subject to special conditions to mitigate the greater impacts (traffic, noise, etc.) and approved through a conditional use permit approval process.

We strongly urge the Town Board of Adjustment and Town Board to review state law and the Town's position under state law. After careful consideration, we hope you will overturn the administrative decision to approve the permit and move quickly to update your shoreland zoning ordinance to be at least as restrictive as the Pine County Shoreland Management Ordinance.

Please contact Heidi Lindgren at Heidi.Lindgren@state.mn.us or 218-203-4368 with the next steps in the appeal process, including any dates and procedures for meetings and/or hearings.

Sincerely,
Darrell
Schindler

Digitally signed by Darrell
Schindler
Date: 2021.11.18
13:57:10 -06'00'

Darrell Schindler
DNR Ecological and Water Resources NE Regional Manager

Enclosure

CC: Dennis Genereau, Windemere Township Zoning Administrator
Caleb Anderson, Pine County Land & Resource Manager
Cliff Bentley, DNR Division of Ecological Water and Resources Assistant Regional Manger
Heidi Lindgren, DNR Area Hydrologist
Dan Petrik, DNR Land Use Specialist
Mark Lambert, Sand Lake Resort

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