

HUBBARD COUNTY

April 2015 Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, April 27, 2015

Chairman Tim Johnson opened the meeting with the following members present: Ken Grob, Tom Krueger, Ted Van Kempen, Charlene Christenson and Commissioner Matt Dotta. Also present was Environmental Services Officer Eric Buitenwerf.

Tim Johnson started the meeting by reading the procedure by which the meeting of the Planning Commission/Board of Adjustment will be conducted to the audience.

Board of Adjustment:

Approval of Minutes: February 23, 2015 meeting.

Tim Johnson made a motion to approve the February 23, 2015 minutes as presented. Ken Grob seconded the motion. The motion carried unanimously 5-0.

Old Business: None

New Business:

Variance Application 6-V-15 by David and Karen Hagert: Lots 16 and 17, Block 1, Wildwood Pointe, Section 4, Township 140, Range 33, Nevis Township on Deer (Recreational Development) and Shallow (Natural Environment) Lakes. Parcels 21.73.01600 and 21.73.01700. Part 1: Applicants are requesting an after-the-fact variance from Section 502.1 of the Shoreland Management Ordinance (SMO) for two structures that do not comply with the required 150' ordinary high water mark (OHW) setback. Part 2: Applicants are requesting a variance from Section 501.1 of the SMO and Section 4, Subd. A(1)(a)(1)(b) of the Subdivision Ordinance to adjust a lot line such that the donor lot will be made more nonconforming in terms of its residential lot suitable area (RLSA).

Dennis Pederson, Land Surveyor with Bogart, Pederson & Associates, Becker, MN, represented David and Karen Hagert. He did a survey and located structures and boundaries on the site. Pederson presented an existing condition survey. He went out and located the boundary corners of the lots, basically surveying Lot 17. He reviewed all the structures on this parcel and pointed out the channel between Shallow Lake and Deer Lake. He produced a drawing, located the septic system and brought that information back to office to review the plat that was filed in 2002. He pointed out that looking at this plat and the description, the government lots to the north are in the plat and all that part of Government Lot 12 lying north of the channel between Shallow and Deer lakes. When you look back to the graphic area of the plat, you do not see a channel. The other side of the shoreline is not shown or depicted on the plat which does not give a true picture of what is out there. So the old plat is the pink line and it traces the high water mark that is now located out there. Pederson pointed out the channel location. He wanted to clarify the difference between the plat and our survey. Since the Lot 16 to the east was vacant, that perhaps there was a way to do some sort of property redesignation of the common line between the two lots if this lot could be acquired keeping in mind the RLSA computations to make sure we had an accurate boundary. We ended up with a lot line coming down between the two lots and having the new structure attached to Lot 16. The ownership would be common and it essentially solves the problem in a manner of speaking. We looked at replatting the two lots, because this area is in a homeowners association, the difficulties of working with the covenants and changing the plat

name was problematic so could do an administrative subdivision and we simply would make a description of that part of Lot 17 that could be an attached to Lot 16. That is where we sit today, we have a common lot line between Lot 16 and 17 coming down to a point where it will box around the existing building leaving adequate setbacks and then diagonal back to the shoreline. In doing so, the Hagerts are willing to move their playground set up over to some area on the other lot and they are willing to put in a visual barrier of some sort of conifers to keep it not so visible from the lake. So we are asking for the variances in the application.

Grob asked about the road access on Tract B will still be over Tract A.

Pederson responded it would at the present time yes.

Grob asked about the wells on the property. The one for the main house is depicted, but thought there was another one.

Pederson pointed out the second well.

Grob stated that Tract B as it is laid out, even with common ownership now, the road and well will remain on Tract A.

Pederson responded that at this time it would.

Christenson commented that the drawings and background were very helpful.

Opened discussion for public comment .

No public comment given.

Scott Anderson, representing the County as legal counsel, commented that they have been working on this matter for four years and in working closely with Mr. Pederson, they had come up with the drawings and plans. In terms of the language of the application, the variances necessary in terms of solving the problem, the findings that are being prepared and the conditions which are in the staff report indicates that they are seeking approval with the conditions that are set forth in the variance itself. It is a reasonable method of handling what is a tough situation and one where there are some unique characteristics to this land because of this channel and disputes over how far you should actually consider how far up the channel comes the low lying area. We are in favor of this and as you know if it is approved, it will end up resolving a pending litigation. I would like to review the proposed conditions that are being added to this:

The two areas where trees will be planted in the condition, the way it is drafted, it is very specific so there cannot be any disagreement. There are two areas highlighted in an exhibit. One having five (5) trees, one having seven (7) trees, all coniferous, either spruce or tamarack that are going to be planted at a height of 8 to 10 feet to be planted by June 15th, 2015 of this year. They are supposed to be evenly spaced and we have a condition in there of 92% survivorship, so that if they don't survive they have to replant.

An existing holding tank that we know is under that garage that was improperly placed there will be filled in with sand and concrete by October 1, 2015. There is a part of the tank that may be used as a connection to the new septic system and will all be approved by Environmental Services staff.

The new septic system for Tract B, one of the conditions is that it be approved and completed by October 1st, 2015.

The area that is the bulge as you saw it and is highlighted in yellow, that area will remain undisturbed and will not be mowed, disturbed or changed from its natural state in perpetuity. The area is to be marked with permanent monuments within six (6) months of the variance if it is approved.

Within 30 days of the completion of the septic system, that is when the playground has to be moved off of Tract A onto Tract B.

There is an administrative fee involved here, \$7800, that right now it is said to be by a date specified by the Hubbard County Board of Adjustment in the event it approves the variance. My suggestion to the Board on that would be, they are to apply, if the variance is approved, for the administrative subdivision application by June 19, 2015. They are to have it all filed with the County Recorder and I would propose for that condition which is listed as condition 7, that the date be the same, June 19, 2015.

Pederson asked if the application for the administrative subdivision is filed now, would it have to come to your Board again in a month.

Anderson replied that it is approved by the Environmental Services Officer, Eric Buitenwerf, and does not have to come to the Board; it just needs to be filed with the Recorder by June 19, 2015.

The purchase agreement which I think you have seen a copy of as part of the materials, they are scheduled to close on this on May 29, 2015. If they do not close, the variance does not work.

Those are the conditions and I have read them, the way the motion is set up to approve with the conditions as set forth in the application but for condition 7, it has an open date and I am proposing that date be the same and the filing date, June 19, 2015.

Grob commented that there is nowhere in the documentation that it describes what happens if in fact they fail to either initially or somewhere long term not meet the conditions, does it void the whole variance or get back into lawyer to lawyer. What are your thoughts as to how we protect the County for any noncompliance?

Anderson explained that the law is such that if you attach conditions to a variance or a conditional use permit and they are not met, then with the proper due process, in other words, with notice and opportunity to be heard, the variance itself or conditional use permit could be voided if it is a significant violation of the permit. I think everything here is significant, the only thing I can see that might for some purpose be able to be a problem past October of 2015 would be the 92% survivorship. There is no number of years recommended in there, they have to keep those trees and the other would be if they disturb that low lying area. If either of those happened, the

County would have recourse to the administrative process it uses for any other violation.

Grob repeated that so as legal counsel for the County, you are okay with not having any condition with this application.

Anderson explained that this is the way the law works with regard to this process. We have some applicants here that have had a significant amount of fighting with the County and they seem motivated to live up to their obligations.

Johnson asked for any other comments.

Christenson moved to approve the variance with the following conditions:

1. That the garage/guest house structure as it now stands will be allowed to remain where it is and to become part of Tract B as its main residence.
2. The Hagerts propose two areas on Tract A where trees will be planted for screening. These two areas will be located generally as shown as dots and highlighted in yellow on Exhibit B, one having 5 trees and one having 7 trees, all will be planted with coniferous trees (spruce or tamarack) at a height of 8 to 10 feet by June 15, 2015. The trees will be evenly spaced 12 feet apart as shown on Exhibit B. Ninety two percent survivorship of said trees shall be maintained as long as the residence on Tract A and the garage/guest house structure on Tract B exist. Any tree(s) that die shall be replaced within one year of the date the tree died with a new tree of the same species that is at least 8 to 10 feet in height such that 92 percent survivorship is maintained in each row.
3. The existing septic holding tank buried under the slab of the garage/guest house will be filled in with sand/concrete by October 1, 2015. A part of the tank may be used as a connection, to the new septic system, lift stations and drainfield as shown on Exhibit A and supplied drawings by the septic designer.
4. The new septic system to service the garage/guest house will be placed on Tract B as shown on said plans and determined by the septic installer. The new septic system will be approved and completed by .October 1, 2015.
5. That the area of Tract A, below the 1428.3 OHWL, generally outlined in yellow on Exhibit B, will not be mowed, disturbed, or changed from its natural state in perpetuity, with that area to be marked with permanent monuments within 6 months of the approval of this variance request.

6. Within 30 days of completion and county approval of the new septic system on Tract B, the playground structure on Tract A, highlighted in orange on Exhibit B, will be moved to a site on Tract B meeting all applicable setbacks.

7. The Hagerts will pay Hubbard County an administrative fee of \$7,800.00, an amount in addition to all application fees, by June 19, 2015.

8. The Hagerts will submit all required information to apply for an administrative subdivision, and thereafter submit all deed(s) necessary for filing with the Hubbard County Recorder, by June 19, 2015.

9. The Hagerts agree to close on the purchase of Lot 16, Block 1, Wildwood Pointe, on or before May 29, 2015.

Van Kempen seconded the motion.

Grob wanted to compliment both parties for an excellent solution that protects the lake and ends up with a minimum amount of nonconformance. This upholds the County's position with regards to people who want to violate our standards and then expect an after-the-fact variance. This meets all those requirements.

Anderson commented that Mr. Buitenwerf played a significant role in this and so did Mr. Peterson and the attorney that the Hagerts brought in, David Meyer. They worked hard to come up with a solution that would satisfy the County's concerns.

Pederson commented that Mr. Buitenwerf was a pleasure to work with and also thinks this is a good deal.

Findings of Fact:

Part 1

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes (X) No ()

Why or why not? Only a slight portion of the northwest corner of the primary residence and its lakeside deck does not meet the required OHW setback. The garage/guest cottage is in the shore impact zone of the channel between Deer and Shallow Lakes, but there is a unique situation on the channel where the OHW comes in quite a way toward the structure, but the actual main channel does not. The structure meets the setback from the main channel. The garage/guest cottage structure's OHW setback will be aesthetically mitigated

by two rows of 8-10' tall coniferous trees that must be planted between the structure and channel as shown on the application sketch and by another condition being placed on the variance that requires the vegetation in the channel below the OHW to be left alone and allowed to grow undisturbed for an additional visual and stormwater buffer.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? The primary residence was built by a previous owner and only the NW corner of the structure does not comply with the required OHW setback. The garage/guest cottage will become a primary residence on new Tract B and it meets the OHW setback from Deer Lake, just not the channel – where there is a unique situation of the OHW coming toward the structure quite a way due to topography while the main channel is beyond the required setback from the structure. Having a primary residence on each of these two lots is a reasonable use of each property as single family residential uses are permitted uses per Table 1 in Section 401 of the shoreland ordinance.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? As mentioned in the answers to the previous two questions, the main residence was constructed by a previous owner and only the NW corner of the house and attached deck do not meet the OHW setback. The unique topography of the OHW and how it comes in toward the garage/guest cottage away from the main channel is the practical difficulty for this second structure as the structure meets the 150' setback from the main channel.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? As mentioned in previous answers, the main residence was constructed by a previous owner. The difficulty for the garage/guest cottage is the unique topography of the OHW along the channel.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The locality consists of low density single family seasonal and year-round residences – which both of these two structures are or will become. Thus, these two residential structures will not harm the locality's essential residential character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? The application does not cite economics as a practical difficulty. The difficulties are that the main residence was constructed by a previous owner and the unique topography associated with the channel and how it affects the OHW location relative to the garage/guest cottage.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The applicants did not own the property when the main residence was constructed. It was built by a previous owner. In regard to the garage/guest cottage, during the February 2014 Board of Adjustment meeting at which Variance 2-V-14 was acted upon, the applicants said that they were unaware that the shallow depression/expanded portion of the channel was below the OHW. The building contractor who constructed the structure said in that variance application that he set the structure's location so it would comply with all setback requirements. However, in the meeting minutes for the 2011 variance application on this matter, the contractor stated that he did not know what the channel setback was.

Regarding the main residence, the applicants did not construct it – as previously stated. Regarding the garage/guest cottage, the applicants and contractor constructed a guest cottage above the garage when the building permit for the structure explicitly stated that no living quarters were allowed in the structure. The contractor's changing his story on whether he knew the channel OHW setback requirement from the 2011 to 2014 variance applications on this matter also indicate a lack of good faith.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? On the main residence, the applicant did not own the property at the time the structure was constructed. The previous owner did obtain a permit on which he represented that the structure would comply with all setbacks.

On the garage/guest cottage, the applicant obtained a building permit on which it was stated that the structure would comply with all setbacks. However, the applicants violated the condition placed on the permit that no living quarters be constructed in the structure.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

No, not that we are aware of based on information provided to us or that we have been able to obtain.

10. Did the applicant make a substantial investment in the property? Provide details below.

Yes. The main residence is substantial in size and has an assessed value of just under \$400,000. The garage/guest cottage is also substantial in size and has an assessed value of almost \$78,000. Variance application 2-V-14 stated that \$280,000 was spent in constructing the garage/guest cottage. The applicants are purchasing Tract B in order to remedy the violation as to the garage/guest cottage at a cost of \$102,500.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Regarding the main residence, it was constructed by a previous owner and finished prior to the applicants acquiring the property.

Regarding the garage/guest cottage, yes. The exterior of the structure was finished out at the time of the initial site inspection by department staff. The County does not know the state of completion of the structure's interior work at the time the applicant was informed of the impropriety as the applicant denied County staff access to the structure's interior at that time.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. While there are not many homes in this development as at least half of the lots are not yet developed, the other existing structures are single family residences such as the main residence on Tract A and what the garage/guest cottage will become on Tract B with this approval of this variance application.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

Yes. As mentioned above, the assessed value of the two structures combined is just under a half million dollars. The main residence is less than 11' from meeting the OHW setback and the garage/guest cottage meets the 100' OHW setback from Deer Lake, meets the 150' setback from the main channel, and only does not meet the setback from the OHW of the unique bump out in the channel. The mitigative conditions placed on the variance such as the trees to be planted to screen the structures from the channel and the purchase of Lot 16 on which to place the garage/guest cottage as a primary residence sufficiently offset the two structures' OHW encroachments.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No. As mentioned in previous answers to other findings questions, sufficient conditions are being placed on this variance to mitigate the ordinance setback encroachments. The two structures together have an assessed value of just under \$500,000. Both are large enough that moving them would be costly and the main residence only has its northwest corner that does not meet setback and then by only 11'. The garage/guest cottage meets setback from Deer Lake and the main portion of the channel. It is only the unique bump-out of the channel from which it does not meet setback. Sufficient mitigate conditions are being placed on the application to offset these two OHW setback encroachments that just is being served with this application's approval, its conditions, and the accompanying settlement agreement that will together resolve the pending appeal of Variance 2-V-14.

Part 2

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes (X) No ()

Why or why not? Tract A, which is the lot that will be reduced in residential lot suitable area (RLSA) by this lot line adjustment, will still comply with the 80,000 sq. ft. minimum lot area requirement. The potential available septic system drainfield area will also not be diminished by the proposed lot line adjustment – which is a primary reason for the RLSA requirement – to provide sufficient room for two drainfield sites. A residence already exists on this lot along with a well so it has been developed. The RLSA standard is used to ensure that a lot can be developed with a residence, well, and two drainfield sites. Thus, the purpose of the standard has been met. Additionally, the area being given to Tract B is the area occupied by the garage/guest cottage and some land in front of it falls within the OHW setback so it would not be available for use as a potential drainfield site anyway.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? Tract A is already developed with a house, well, and septic system so the purpose of the RLSA requirement has been met. Tract B is undeveloped, but the garage/guest cottage currently on Tract A will become part of Tract B per this proposed lot line adjustment. Thus, the RLSA on Tract B will not need to be impacted by the placement of a structure within it. Adjusting the lot line so the garage/guest cottage on Tract A becomes the primary residence on Tract B to resolve an ordinance violation is a reasonable use of the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? The two platted lots involved in this request were created in 2002 before the ordinance RLSA requirement was enacted. Both tracts are pie-shaped with the points of the pie pieces being at the rear (non-lakeward) of the lots. Lot 17 did not comply with the 40,000 sq. ft. RLSA requirement before this application as it has 34, 934 sq. ft. of RLSA. After the lot line adjustment, it will have 28,194 sq. ft. of RLSA.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? These two lots were created in 2002 as part of a plat. At that time, the ordinance did not contain an RLSA requirement – just lot area and minimum lot width. The applicants did not plat the property and were not involved in the lots' creation.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? Moving the lot line from the east side of the garage/guest cottage to jog around its west side will not change the locality's essential single family home residential character in any way. No one will be able to tell that the property line was jogged around the garage/guest cottage.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? Economics are not cited in the application as a consideration. The difficulty is the fact that the lots were created in 2002 by a party other than the applicants before the RLSA requirement took effect and Lot 17 did not meet the RLSA requirement as it was platted.

The motion carried unanimously 5-0.

Variance Application 4-V-15 by Donald E Johnson: Lot Twelve (12) Block 1 of Sandy Shores, Section 21, Township 141, Range 32, Akeley Township on 11th Crow Wing Lake a Recreational Development lake. Parcel 29.40.01200. Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) to develop an unimproved lot into a an improved lot with a proposed residence that does not comply with the 100 foot ordinary high water mark (OHW) and 50 foot road right of way (ROW) structure setbacks. The lot does not comply with the required 100 foot minimum lot width for developing a nonconforming lot.

Donald Johnson reviewed the reason for the proposal of the variance for the setback on the lake is the existing trees that are 20 foot evergreens and needed to site the house where it would fit with the trees.

Van Kempen explained this is more favorable since this lot has city water and sewer.

Grob suggested a no mow buffer at the lake be included as a condition.

Christenson asked if Grob would recommend a width.

Grob explained that a setback of about 15' would be good as long as you have that slope covered and a little bit beyond it.

Tim Johnson commented that he is only nine (9) feet shy of the required 100' setback, this seems to be a little excessive.

Grob explained that what he is looking for is good shoreline management practices.

Christenson asked what was being done with the current shed since the new plans include an attached garage.

Donald Johnson explained that the shed was being relocated to a spot over by the trailer behind the evergreen trees.

Van Kempen commented that Mr. Johnson's proposal is set back a little farther than the neighboring properties. Also the neighboring homes did not have a no mow zone, it looked like they were mowed right down to the lake. I do think it is good practice to have a no mow strip in there, but I don't know if I want to attach it to this project since it is awful close to meeting setback.

Opened discussion for public comment.

No public comment was given.

Christenson commented that even though he is only shy 9 feet, the lot is fairly level and it is the County's wishes that we try to take care of the lake as much as possible. Would like the Board to consider a no mow zone.

Krueger agrees with Van Kempen that it is only nine feet off and level ground. No mow areas are important when you have slopes, but this is level.

Grob explained that on an undeveloped lot according to our ordinance, you cannot mow 50' from the lake. This because of research and runoff, flat lots make it a little more conducive to preventing it but should strive to implement this when there is a variance.

Krueger made a motion to approve the variance as presented.

Van Kempen seconded the motion.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?
Yes (X) No ()

Why or why not? The lot exceeds the minimum lot area required to develop an unimproved lot and is less than 10' shy of the required 99' lot width at the OHW. The lot is serviced by city sewer and water so room for a well and SSTS is not needed. The proposed house will

be 9' shy of the required 100' OHW setback. The ROW setback will be roughly 6' shy of the required 50' setback. The landowner has done a good job in submitting a proposal that shows thought having been put into developing the proposal with the ordinance's intent in mind.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? The lot does not need a well or SSTS because it is connected to city sewer and water. The lot meets the minimum lot area requirement and is a half dozen or so feet shy of the required 99' width at the OHW and will only require a 9' variance from the OHW setback and a ~6' variance from the ROW setback. These things said, the proposed residence on the unimproved lot is a reasonable request.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? The lot is trapezoidal in shape and fronts a county road that requires a 50' ROW setback, but functions more as a local road that could safely function with the 20' ROW setback requirement for township roads. The lot meets the minimum area requirement and is less than 8' shy of the required 99' lot width at the OHW. The lot is only 153' deep on the north side which makes it impossible to place a structure in compliance with the 100' OHW and 50' ROW setbacks.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? As mentioned in the answers to the above three questions, the difficulty is caused by the lot's unique shape and its fronting a county road with a 50' ROW setback that functions more as a local road deserving of a 20' setback. The landowner has made an obvious concerted effort to create a development plan for the lot that seeks to follow the ordinance's intent as much as possible.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The locality's character consists of single family seasonal and year-round homes that are situated at similar setbacks from the OHW and ROW as what is proposed on this lot. The proposed house is also similar in size to the sizes of the other residences in the neighborhood. Thus, the proposed residential structure will not harm the locality's essential residential character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? The difficulty is caused by the unique lot shape and the lot's fronting a county road that has an excessive 50' ROW setback. Economics were not cited as a difficulty in the application.

Motion carried 3 – 2, with Christenson and Grob voting nay.

Variance Application 5-V-15 by Philip Nelson: Lots Three (3) and Four (4) of Block "C" of South Addition to Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake a Recreational Development lake. Parcel 14.38.61700. Applicant is requesting an after-the-fact variance from Sections 502.2, and 702 of the Shoreland Management Ordinance (SMO) to rebuild a nonconforming boathouse at a zero (0) foot ordinary high water mark (OHW) setback and higher than the original structure.

Shannon Lance, Lance Construction, representing Philip Nelson described the process that was to take down a structure and rebuild and to shorten the footprint away from the lake. The creation of the structure was with LVL which are the supporting beams of the structure upper level. Those supporting beams gave us additional height of 10 1/2", the structure above those beams is the identical height, pitch, and outside wall of the old structure. The other thing that we did was to make a door on this structure the appropriate height and follow good construction practices.

Krueger asked about the deck that is extended over the water.

Lance explained that it comes out from the water 9'. For this variance, our goal is to get the construction of the building and I believe that the deck will be changed.

Van Kempen commented that there is a letter of the Minnesota DNR that sounds like they do not want the deck at all.

Lance has spoken to Darrin Hoverson at the Minnesota DNR and will be working with them with regard to the deck. They would have to issue permits that would allow me to create a deck off that building that would give access for someone to come out of the patio door in case of emergency rather than go to the north side of the structure and come down a flight of stairs.

Van Kempen asked if they had come to Environmental Services before construction, would they have been able to get a permit?

Buitenwerf explained the ordinance would have allowed the structure to be rebuilt, but it would not allow the structure height to have been increased, which is what occurred.

Van Kempen stated that there are pictures of the structure in the process of being torn down and you can notice and there is a cupola sitting beside the building and if that was not added on, the building would not be considered as tall as it was.

Buitenwerf commented that the ordinance goes by the air space that the structure occupies.

Christenson asked if the variance is denied, would the boat house have to be torn down.

Buitenwerf replied yes.

Christenson asked if the building was torn down, would they then have to take care of the land to keep it from eroding.

Buitenwerf replied yes.

Van Kempen stated that in looking at the old concrete along the edge; you could tell he put the footprint exactly back where it was. Height wise there is a steep hill behind it and it showed that there would be no difference in view from existing neighbors.

Krueger asked based on these comments if Mr. Buitenwerf had any further recommendations.

Buitenwerf replied that the LVL change being the only maximum height being roughly a foot difference, if the lake side deck is required to be scaled back by the DNR, that is a fair compromise for the height.

Christenson asked if Mr. Buitenwerf had an opinion on the cupola.

Buitenwerf replied that is not a real concern and Mr. Lance had indicated during the site visit that he was recommending that the cupola not be installed due to its weight.

Lance commented that the weight and the deterioration of the new shingles.

Johnson opened discussion for public comment.

No public comment given.

Grob expressed that he does not have a problem with 10 1/2" and if in understanding the ordinance correctly, as long as it meets the foot print, is it appropriate for us to approve this variance with the condition that the deck will be constructed based on DNR requirements and leave it at that or is the process more appropriate to wait for the DNR.

Buitenwerf commented that the Board could make a motion to approve it subject to the deck being scaled down as necessary to receive DNR approval.

Christenson asked why construction began with no permit.

Lance replied that he had contacted Environmental Services to repair the foundation of the structure and during the phone conversation on January 26th, it was understood to me that I could take a building down to fix a block. So I had addressed the fact that a new structure would be put up. Once I was approached by a neighbor, I went right down to Environmental Services and began to address the process that I needed to follow.

Krueger asked if the cupola was included in the height.

Lance replied that the height would be decided by this Board. This is an improvement over what was there with the deck almost hanging in the water. The structure's appearance is an improvement to anyone going by.

Krueger asked what is the purpose of the structure.

Lance explained that the owner intends to use it to store the boat.

Christenson made a motion to approve the after-the-fact variance with the condition that the deck requires DNR approval and that the cupola not be placed back on the boathouse.

Van Kempen seconded the motion.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes (X) No ()

Why or why not? They were trying to fix something that was falling into the lake.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? This is not unreasonable since it was pre-existing and they are trying to correct a poorly built building from falling down and it will be used for boat storage.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? The structure is on this property and it is falling down.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? This structure was built by the previous owner and before the ordinance was in effect.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? There are other boathouses in the vicinity.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? The application does not cite economics as a practical difficulty. That said, the application does not state what the alleged practical difficulty might be.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Yes (X) No ()

Why or Why not? Confusion in interpretation of instructions, and when he found out he did go into Environmental Services for direction.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Yes (X) No ()

Why or Why not? The contractor tried to acquire the proper permits immediately after it was made aware of the violation.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

Yes () No (X)

The applicant's agent said "no" when asked this question.

10. Did the applicant make a substantial investment in the property? Provide details below.

Yes () No (X)

No. The structure is framed, roof sheathing is on, doors/windows are in, and one of the exterior walls is partially sided. This is a 10' x 20' structure that is less than 20' high. This said, we do not view there to be a substantial investment in this structure – probably somewhere in the \$5-10,000 range.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes () No (X)

No. The new structure was framed, roof deck and underlayment, windows, and doors were installed, and half of one side of the exterior was sided when the violation was identified and the stop work order was placed on the structure.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes (X) No ()

Yes, there are several boathouses on this lake.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure?

Yes (X) No ()

Why or why not? Yes, the shoreline would not look the same with it gone.

14. In light of all of the above factors, would denying a variance serve the interests of justice?

Yes () No (X)

Why or why not? No, they were trying to replace what was there and by denying the variance it would create an erosion problem that would have to be dealt with.

Motion carried unanimously 5 – 0.

Variance Application 8-V-15 by Jonathan P. and Tara L. Rogness: Lot 2, Block 1, Piney Grove, Section 28, Township 143, Range 32, Lakeport Township on Kabekona Lake a Recreational Development Lake. Parcels 19.49.00200 and 19.49.01010. Part 1: Applicants are requesting a variance from Section 902.1 of the Shoreland Management Ordinance (SMO) to move more than the permitted amount of material in the shore impact zone (SIZ) and on a steep slope. Part 2: Applicants are requesting a variance from Section 901.2.H of the Shoreland Management Ordinance (SMO) to create a shoreline recreation use area that will exceed the allowable dimensions. Part 3: Applicants are requesting a variance from Section 507.3 of the Shoreland Management Ordinance (SMO) to create a boardwalk greater than 4 feet.

Julie Morris was representing Jesse Morris, the owner of AccuBuilt doing the work on this property if the variance is approved. Mr. Morris was sent out on a fire call and was not able to attend. They are proposing to cut a six foot wide path 45 feet diagonally down the bluff so the excavator can safely reach an ice ridge. That will result in moving 23 cubic yards of soil, more than allowed by the Shoreland Ordinance 902.1. The ordinance allows vegetation be cleared along the shore 20 feet wide by 15 feet deep, we are proposing to clear only 20 feet wide, but in addition to vegetation we would be creating 60 cubic yards of ice ridge soil requiring the variance from Section 902.1. We estimate this clearing will affect soil and vegetation from a depth of 18 feet requiring a variance of 901.2.H. We are proposing building a board walk across the wetland from the bluff edge to the shore and to create safe turn-a-round spots for a wheelchair. They are only proposing four 6' 4" sections at 70 foot intervals with a width of five feet, the islands would be less than the 32 foot square area, which exceeds the 4 foot width required in the variance of Section 507.3.1. The wider spots are only going to be a total of 8% of the whole boardwalk. The owner of the property has lots of family that live in the area that want to be able to use the property for camping and other things like that. Since the surrounding family has some houses on the lake already, the campers would use relative's bathroom facilities. We have been working with SWCD, Julie Kingsley and have been unable to get SWCD approval. We would like to get the variance approved with the contingency that SWCD approval.

Krueger expressed concern with cutting a 6 foot wide path on a bluff, the way it looks is that an excavator could get down to the lake the way it is right now with no need to cut anything.

Morris explained that another option would be to build a boardwalk parallel to the bluff to go down as well.

Grob asked what the potential damage would be to the wetland to get excavation equipment out to the ice ridge.

Morris planned to lay down mats or timbers so as to not damage the wetland.

Christenson asked if there was approval for the boardwalk, would there be a specific height from the ground that the staff would be comfortable with to allow the vegetation to grow.

Buitenwerf commented that there was not a specific height because the height that you would need would be dependent on the type of material you might use for the surface. If you used an

open steel type construction that would allow light to come through, the boardwalk could be much closer to the ground where if you use solid construction, the boardwalk would need to be much higher off the ground to allow light for the vegetation.

Grob questioned what the recreation area looks like on the other side of the ridge.

Christenson explained that it was high and then some cattails and then water.

Van Kempen commented if part of the ice ridge would have to be pulled back that there is water right on the other side.

Grob mentioned that they are asking for a recreation area that is larger than what is allowed in the ordinance. The ice ridge is there since it has built up over time, nature is going to want to put it back.

Opened discussion for public comment.

No public comment given.

Van Kempen asked if they were to do this without the turnarounds in the boardwalk, could this be done by permit.

Buitenwerf explained that if you do not modify the ice ridge and install a 4 foot wide boardwalk, that can be done without a permit.

Van Kempen commented that ramps could be created back and forth the other way to get over an 8 foot ice ridge to get to the lake.

Buitenwerf explained that you could make a 4 foot ramp over the ice ridge.

Christenson commented that if they were to put a 4 foot ramp up to the ice ridge, when they were out there on the site visit the water side of the ridge did not slope down to the lake, it drops off 8 to 10 feet.

Krueger suggested that some kind of cut would be needed, but maybe not as much as being requested.

Morris replied that again they would be willing to put a walkway switch back to get to the lake.

Van Kempen suggested that part of the lakeside reasoning is to cut the top of the ice ridge down 30 feet so that you would not have collapsing in a sense. If you go straight up and down there would be a tendency to collapse.

Buitenwerf commented that 20 feet is what is proposed in the application.

Christenson mentioned that it was 20 x 18 feet versus 20 x 15 feet.

Grob noted that if they cut through the ice ridge, you cannot cut all the way down or the lake will flood into the wetland. It needs to be held to some level.

Johnson commented that it looks like a much older ice ridge that is lower than the new one. If you cut down the newer ice ridge to the older one, they would have pretty decent access to the lake.

Grob expressed that this seems to be all focused on wheelchair access, who is the person that requires a wheelchair.

Morris explained that it is the owner's uncle that would be the one in the wheelchair.

Grob asked if that was consistent with the ordinance to accommodate wheelchairs.

Buitenwerf explained that the part of the ordinance that speaks to handicap situations is Section 601 concerning accessory structures and it allows an accessory structure to be placed at less than the required OHW setback in instances where someone has a valid medical disability which would generate their ability to obtain a handicapped parking license or placard to hang from their mirror. That would apply to immediate family members.

Grob asked who approves and what are the limitations of cutting through an ice ridge.

Buitenwerf answered that the Board does, for a permanent ice ridge it can only be modified by variance.

Van Kempen suggested that the plan for a boardwalk down the ice ridge was a good alternative to cutting through the ice ridge.

Grob suggested that a boardwalk be built out to the ice ridge and a series of steps be built to go over the ice ridge thus preserving the ice ridge. Nature will wash and erode that if it is cut. He is not in favor of cutting a path down the bluff or cutting the ice ridge, no problem with the boardwalk.

Christenson asked how you would accommodate a wheelchair using steps since this is part of the reason for asking for a variance.

Grob explained that he would not have to solve that problem, thinking about the lake and other implications. Could you start back a little farther and slant the boardwalk up to the crest.

Johnson suggested that it be allowed to cut down the new ice ridge to the old and that would bring it down enough to accommodate what is needed here.

Krueger moved to deny Part 1, approve Part 2 on the condition that the cut in the ice ridge can only be 20' wide parallel to the shoreline and 15' in horizontal depth perpendicular to the shoreline and the bottom elevation of the cut cannot go deeper in elevation than the top of the oldest portion of the ice ridge (the ridge is comprised of two distinct sections – an old ice ridge at the base and a newer portion that sits atop the old ice ridge with a clear hump denoting the old portion from the new portion), and approve Part 3 on the condition that the boardwalk surface is placed at a high enough elevation to let light reach the vegetation beneath it and thus comply with Section 507.3 of the Shoreland Management Ordinance.

Johnson seconded the motion.

Findings of Fact:

Part 1, Steep Slope:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes () No (X)

Why or why not? Cutting a 45 degree path diagonal across the steep slope on this property would create a conduit for erosion. The existing slope appears traversable by an excavator "as is".

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes () No (X)

Why or why not? As mentioned in the answer to question 1 above, there are permissible options available here to accomplish the desired shoreline access without having to make a cut in the steep slope. An excavator can traverse the steep slope "as is" without need for an access path to be cut diagonally through it.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes () No (X)

Why or why not? Steep slopes are not unique to this property. There are roughly two dozen lots on both sides of this lot that share the same steep slope and wetland condition. This is a common feature to a lot of lakeshore in the county.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes () No (X)

Why or why not? There appears to be a way of accessing the shoreline on this property that does not require a variance...as mentioned in the answers to above questions. The alleged difficulty is due to the way in which the landowner is requesting access to the shoreline.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The locality's character consists of single family seasonal and year-round homes. Access paths, including boardwalks, are a common accessory feature of such principal residential uses and thus will not harm the locality's essential residential character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes(X) No ()

Why or why not? Economics are not cited in the application as being a difficulty, let alone the "sole" difficulty. The alleged difficulties are the steep slope not being conducive to an excavator safely traversing it.

Part 2, Removal of the Ice Ridge:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes (X) No ()

Why or why not? We are not exceeding the 20' x 15' and are not removing the entire ice ridge, just the this year ice ridge push.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? Impractical to build something over the top of the ice ridge to be used for as high as it is.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? It is a long flat distance to the lake from the main land so could see an erosion problem with it.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? The landowner has nothing to do with the ice movement.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The locality's character consists of single family seasonal and year-round homes. Access paths, including boardwalks, are a common accessory feature of such principal residential uses and thus will not harm the locality's essential residential character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? Economics are not cited in the application as being a difficulty, let alone the "sole" difficulty. The alleged difficulties are the height and size of the ice ridge along the shore.

Part 3, Boardwalk:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes (X) No ()

Why or why not? The requested deviation from the 4' maximum boardwalk width is minor and only for four spots that are each only 6' 4" in length. The vegetation in the wetland involves tall grass and shrubs so the wider sections of boardwalk will not have any aesthetic impact on persons recreating on the lake or other lakeshore owners.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? Being able to allow an individual in a wheelchair to safely traverse a boardwalk in order to get to the shoreline/lake is a reasonable use.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? The wetland is roughly 325' long. There is a need for turn-arounds along a boardwalk of this distance so a wheelchair can change directions reasonably without having to back up long distances.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? The difficulty is caused by the 325' length of the boardwalk and the need to be able to turn around and reverse direction at points along the boardwalk's length when traversing it in a wheelchair. The boardwalk length is needed because of the great expanse of wetland that needs to be crossed and can only legally be crossed via a boardwalk.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The locality's character consists of single family seasonal and year-round homes. The neighboring lots on either side of this lot share the same steep slope, wetland, and ice ridge lot characteristics. Thus, boardwalks are a typical accessory feature on these lots and will not harm the locality's essential residential character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? The difficulty is caused by the 325' wide wetland and the need to cross it via a boardwalk and accommodate a person in a wheelchair. Economics were not cited in the application as a difficulty.

Motion carried unanimously 5 – 0.

Variance Application 9-V-15 by Norman and Martha Leistikow: Part of Government Lot 1, Section 32, Township 142, Range 34, Clay Township on Skunk Lake a Natural Environment Lake. Parcel 04.32.00300. Applicants are requesting a variance from Section 702.A.1 of the Shoreland Management Ordinance (SMO) to expand a nonconforming structure located in the Shore Impact Zone (SIZ).

Norman Leistikow reviewed the request to change the roof line to go more than 2 feet taller on a structure. The company that manufactures the roofing says we have to have a 4/12 pitch, which means we have to go a little over 6 foot tall. So the variance request that we have is for the structure that is called cabin #2 to be reroofed with a pitched roof as opposed to a flat roof. We have attempted to fix the flat roof many times, this was built in 1955 and the roof leaks and has water standing on it.

Christenson asked if anything would be done with the chimney.

Leistikow explained that the chimney is built outside the cabin.

Christenson asked if putting the roof higher would interfere with the use of the chimney.

Leistikow responded that it would not change the use of the chimney.

Krueger asked what the plan was for stormwater runoff.

Leistikow noted that they did not build the cabin and the water now runs off toward the lake and so the new roof would not change the runoff.

Krueger asked if gutters could be used.

Leistikow explained that gutters do not work up in this country and he will not be using gutters for runoff.

Van Kempen mentioned that the design now was built to run off like a funnel.

Leistikow commented that this was built in 1955.

Christenson explained that on the site visit she recalled that the cabin next to this one, the roof line was not running to the lake, it was running off to the sides and you propose on this cabin the roof line would cause the runoff to go directly toward the lake.

Krueger would like to see a recommendation for stormwater runoff if they were to approve this variance.

Van Kempen explained that with the pitch of the new roof and not being flat anymore, you will be directing a large amount of water to the lake and there may be a lot more sediment going to the lake than there was before.

Leistikow commented that there would be no more sediment that before since the old roof has tar paper and the new roof will be steel. There will not be any sediment from a steel roof.

Krueger would like the water not running into the lake, but percolated into the ground.

Leistikow responded that that would not work on this site, the water will run down the hill to the lake.

Opened discussion for public comment.

No public comment was given.

Grob commented that the need for a new roof is a reasonable request, not expanding the cabin. The location of the structure is such that the water is going to run into the lake. There is no room for a buffer in front of this cabin and the practical difficulties of where it is and how it is done makes this is a reasonable request.

Van Kempen noted that part of the roof line will be going toward the lake and the other part will be going right toward the cabin. In a heavy rain, there will be an enormous amount of water coming down that roof. That water has got to go somewhere. There could be an erosion problem for this building.

Grob explained the amount of water is going to be the same to run off whether it is a pitched roof or slant roof. There is only so much area and do not see a change in the amount of water running off.

Grob made a motion to approve the variance as presented.

Van Kempen seconded the motion.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes (X) No ()

Why or why not? The structure's size is not changing. The only modification is putting a 4/12 pitch roof on a flat roof cabin. This is a reasonable roof style intended to properly shed rain/snow. The surface area of the roof will be slightly larger than the existing, but the additional square footage is less the 10 cubic feet and will be over a wooden entry landing that is already impervious surface.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? The current flat roof is in disrepair and leaking. Having a sound waterproof roof over the structure to protect its integrity is a reasonable use.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? The structure predates the ordinance and is located in the shore impact zone largely because this is a unique property that lies on part of a peninsula that juts out into the lake and lacks enough depth to site a structure on it that meets all setbacks.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? The structure was constructed by a party other than the current owner many decades ago before the shoreland ordinance was enacted.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The locality is sparsely populated and remote. Most of the properties are residential in nature. The resort on this property has been around for many decades. The roof changing from a flat roof to a 4/12 pitch roof will not alter the locality's character in any way as a 4/12 pitch roof is typical for residential and resort cabin construction.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? Economics are not cited in the application as a difficulty. The difficulty is due to the cabin being nonconforming in terms of its setback and there being no room to move the cabin back to a conforming setback.

Motion carried 4– 1, with Krueger voting nay.

Variance Application 10-V-15 by Virginia Hancock and Jane Rodney: Part of Lot 16 and 17, Block B, Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake a Recreational Development Lake. Parcel 14.38.02500 and 14.38.02600. Applicants are requesting a variance from Section 502.2 and 702.A.3 of the Shoreland Management Ordinance (SMO) for a proposed expansion of a nonconforming structure in the Shore Impact Zone (SIZ) that will encroach on the required 10 foot side lot line setback.

Virginia Hancock reviewed the request for the variance on a small cabin on Long Lake. This cabin was built in early 20s by my great grandpa and my family has been going up there since. This cabin is small and we are asking for an addition that would allow us to put in a bath and a shower. The addition is about 300 square feet which is about half the size of the cabin itself. We have several issues that we have come across since looking at this addition and would like to present those to you.

Terry Hancock reviewed the drawing of the lot and one of the lots is pie shaped thus to move this cabin back is problematic. There is a bath house that was built in the 1970s behind the cabin and behind that is the drainfield. There is also an open area on the lot where the driveway comes into

the lot and beside that there is a large stand of pine trees. To deal with trying to move the cabin out of the 50 foot impact zone is a hardship. Not having a bathroom inside the cabin is a hardship since we are aging. Jim Gorentz is here as the contractor and can answer any technical questions.

Christenson asked if the bath house is used by both cabins or is there a bathroom in the other cabin.

Terry Hancock responded that there is no bathroom in the other cabin, so the bath house is currently used by both cabins.

Christenson asked if this variance is granted, the other cabin would continue to use the bath house.

Terry Hancock answered that is correct.

Krueger commented that there is no problem with the addition of a bathroom to the cabin, but at the same time, wonders if this is a good opportunity to make something better. Perhaps a larger home with bedrooms and a couple of bathrooms in one unit.

Terry Hancock responded that this would cost much more and due to the pie shape of the lot, the farther you go back, the closer you are to the lot lines so to move the cabin back, other structures would be in the way. To rebuild both cabins would have to come down and as we move back we would be unable to duplicate the square footage of both cabins due to the limited space.

Krueger mentioned that this again is an opportunity to move these cabins back and in trade off maybe not have to move a new structure to the legal setback in return.

Terry Hancock commented that the cost would be significant and there is a historical family interest in preserving those structures, even though they are close to the lake. We have done things like not putting fertilizer down, having a buffer zone and the family has been there for 90 years. We would like to keep the family cabins as they are as much as we can.

Grob asked to explain why not use the area to the left of the driveway for a cabin.

Terry Hancock responded that there is a large stand of pine trees and we feel it is important to the lot and they would all have to be taken down. This would damage the look of the lot.

Christenson commented that if they were going to move the cabin, it would require several trees to come down. Would you define an existing buffer zone on this property?

Terry Hancock referred to the photos where you can see there is a drop off to the lake that is about four or five feet tall, so in that area down to the lake we are letting that foliage grow and it had been mowed in the past and we take ownership to allow that to continue to grow.

Grob asked if there was any no mow buffer area once you come to the crest of that lake slope.

Terry Hancock replied they do not have a no mow zone right now, we do mow that flat area close to the cabin.

Johnson commented that slopes uphill from the cabin to the lake. The parking fills up the back side of lot. One other consideration would be to leave a site for a septic that can be used as an alternate site if needed.

Terry Hancock mentioned that the parking is used and do need to have it. To build a whole new structure back further, the parking would be a considerable problem.

Johnson opened discussion for public comment.

No public comment was given.

Grob commented that looking at a 50% expansion in the shore impact zone, the two things we really do not like and the fact that there is buildable area on the property, it is hard to think there is a practical difficulty.

Johnson reviewed that there were two letters from property owners recommending approval.

Christenson made a motion to approve the variance as presented with the condition that the part of the shoreline that is currently dedicated to a "no mow" area continue and adopt the staff findings of fact.

Van Kempen seconded the motion.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes (X) No ()

Why or why not? The addition is minimal in size and will not be visible from the lake. The neighboring property owners do not object to the addition's not meeting the 10' side lot line setback. The lot is full of mature pine trees that preclude possibly moving the structure to a conforming setback. Having an indoor bathroom in a cabin is a reasonable request.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? Having an indoor bathroom on a residential cabin versus having to go outside to use a toilet in a bath house is a reasonable use of a property.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? The structure predates the ordinance and is located in the shore impact zone. The lot is full of large, mature pine trees that make it impossible to consider moving the structure to a conforming setback.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? The difficulty is caused by the structure being located in the shore impact zone and its having been constructed before the shoreland ordinance existed. The

ordinance requires that any expansion of a structure in the shore impact zone be first authorized by a variance. These items were not created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The locality's character consists of single family seasonal and year-round homes – several of which are situated close to the shoreline as well. Adding a bathroom onto the rear of one of the two cabins will not change the locality's essential residential character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? The difficulty is due to the structure having been constructed prior to enactment of the ordinance at a 26' OHW setback. Economics are not cited in the application as a difficulty.

The motion carried unanimously 5-0.

Variance Application 11-V-15 by Jerry and Patricia Forsland: Lot 7, Block 1, Birchwood Ridge, Section 26, Township 142, Range 34, Clay Township on Bad Axe Lake a Recreational Development Lake. Parcel 04.38.00700. Applicants are requesting a variance from Section 502.2, 503, and 801.2 of the Shoreland Management Ordinance (SMO) and Article IV, Section 1.03 of Subsurface Sewage Treatment System Ordinance (SSTSO) to construct a residence that will be located in the Bluff Impact Zone (BIZ) and not comply with the 10 foot rear lot line setback, install an Subsurface Sewage Treatment System (SSTS) that will be located in the Bluff Impact Zone (BIZ), and create a improved lot that will have only one (1) of the required two Subsurface Sewage Treatment System (SSTS) drainfield sites.

Jerry Forsland reviewed that the request for the variance is to ask for a little wiggle room to squeeze a cabin onto this lot. We had a variance from the people we bought the lot from who had a 20 foot setback from the bluff. We are looking for a 15 foot setback, basically to allow for the roof overhang to the south section of the cabin. The same with the septic system, the outer edge is right at the 15 foot line, and it looks like even a little bit of the septic tank would intrude into that 5 foot section. On the zero foot setback on the back lot line, in the southwest corner of the building it will be within about 4 feet of that line plus will need to allow for a 2 foot eave overhang. We need the room on both sides to get the cabin in, we are not putting in a huge cabin.

Christenson asked for an explanation of what would be done with the shed and if the cabin will be used year round.

Forsland explained that they would be moving the shed to the south property line and we are not planning to live in this cabin year round.

Grob commented that this cabin is not an unreasonable size, but would like to know where vehicles will be parked.

Forsland noted that there was no plan for a garage and the septic system was designed to allow space for parking.

Johnson commented that it seemed this area looked to be like permeable soil and asked about run off in the spring and you responded that it never has.

Grob asked about the traffic level on Jigsaw Drive and how many cabins on this road.

Forsland explained that it is a dead end road with little traffic and a total of 4 cabins.

Johnson opened discussion for public comment.

Jim Pickus commented that he is next door to the Forslands and wholeheartedly supports their efforts to develop this property. The plan is real nice and fits right in with the neighborhood.

Mark Smith explained that they live on the end of Jigsaw Drive and live here permanently. Where they are putting this cabin is further away from the road than you would think. The road happens to run 30 to 40 feet from the easement. There is a dead space between the actual road and where the house would be. We have no problem with this and think it would be a fine addition to the area.

Johnson closed public comment.

Johnson reviewed a letter received in favor of this project.

Grob expressed that they are trying to squeeze a lot into a small area, but seeing you have more room than what the actual number for right of way and 250 feet as a buffer to the lake and therefore squeezing it in is your choice. Clearly you have a whole vegetative area to control run off makes me favorable for this project.

Grob made a motion to approve the variance as presented and adopt the staff report findings of fact.

Krueger seconded the motion.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes (X) No ()

Why or why not? The intent is to maximize setbacks whenever and where possible and when permissible options do not exist, grant a variance for reasonable uses. The applicants have sited a house and drainfield on the lot – maximizing setbacks as much as possible. This is in keeping with the ordinance's intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? A variance is required to develop the lot because there is not any room to site a house and two drainfields in compliance with all setbacks. Being able to place a house on a lot intended for such and platted in 1988 when modern shoreland rules existed is a reasonable use of the lot.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? The difficulty is caused by the presence of a bluff taking up the entire lot and there thus not being any room to place a house and two drainfield sites on the lot that meet all setback requirements.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? The difficulty is the bluff on the property occupying the entire lot and the shape of the lot when it was created by plat in 1988.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The locality's character consists of single family seasonal and year-round homes that are situated at similar setbacks from the OHW and ROW as what is proposed on this lot. Thus, the proposed residential structure will not harm the locality's essential residential character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? The difficulty is the property's being almost entirely bluff and there thus not being any place on the lot to place a structure and drainfields meeting all setback requirements. Economics were not cited as the sole difficulty in the application.

Motion carried unanimously 5 – 0.

Planning Commission:

Approval of Minutes: February 23, 2015 meeting.

Johnson made a motion to approve the February 23, 2015 minutes as presented.

Krueger seconded the motion.

The motion carried unanimously 5 – 0.

Old Business: None

New Business:

Ordinance No. 10 – proposed Spearhead Lake regulations

George Ann Maxson, Treasurer of the Mississippi Headwaters Audubon Society and also Education Co-chair, reviewed that this proposed ordinance regulation has been in the works for many years. Since 1985 we have run a summer youth nature day camp on Spearhead Lake and as part of the activities with these kids, we take them out on the lake and also have a small swimming area. Many of these kids have little or no experience with canoes and this type of recreation. We are extremely safety conscious and when you take the kids out on the lake they are wearing the appropriate safety devices and accompanied by the naturalist and his assistants. In view of the size of Spearhead Lake, we do keep an eye on wind conditions but what we don't factor in is the danger that comes from speeding boats or jet skis speeding by swamping canoes or scaring the kids. We have had some close calls in the past and this is the reason we are asking for some ordinance to control the speed of other watercraft on the lake. The lake is only a mile and one half long and less than a quarter mile in width, making this a natural lake as you can get. The public use on the lake occurs on an access on the south end of the lake, it crosses our property and we do the management for this access. We have worked out a legal arrangement with Rockwood Township; Steve Aultman is here and was part of the conversations that developed that document. The document states that Rockwood Township will not exercise any form of eminent domain over that access as long as we maintain it in reasonable condition for use by the public. So it is not a public access, but the public can use it to access the lake. It is not signed on the road so for the most part Spearhead is not a well known lake. Word does get out and we do have instances where people from outside the state were zooming up and down the lake on jet skies. Rockwood Township met last summer and voted unanimously to support three recommendations on boating regulation to be enacted on Spearhead Lake. The first one is no wake within 100 yards of canoes and kayaks, the second is no personal watercraft such as jet skis and the third is no towable water skiing where a boat has to be driven at a high rate of speed to tow people around the lake. The Township Board supported the placement of these restrictions as allowed by Section 4 and a amendment section that refers to the legal agreement with Rockwood Township with regard to the lake access and the three town supervisors signed this document last June. These are recommendations worked out between the Town Board and some of our representatives. These are not hard and fast, this is just what we thought would be feasible so we could incorporate into signage at the lake access. We are not sure that other more usual recommendations like speed limits would work here. Our main concern here is that people just adjust their behavior to match the quality of the lake and the proximity of kids in canoes and swimming along the shore.

Grob asked how many acres is the lake.

Maxson answered that the lake is approximately 172 acres.

Grob asked how many parking spots are available at the access.

Aultman explained that it is gravel and basically a turn around with limited parking available.

Grob suggested parking is conducive to launch and park vehicles with trailers large enough to have some of this faster moving watercraft.

Maxson replied that it is amazing the boating and watercraft that have shown up on that lake.

Grob commented that in doing some research, the State does allow you to put some use on the lake, but in reading the state regulations when it come to speed, they allow you three choices. Less than 40 miles per hour, less than 15 miles per hour or no wake interpreted as less than 5 miles per hour. With that, it has to go the appropriate water surface changes, ordinance changes, work sheets and all that. It is difficult to enforce something that is not measurable. As the caretaker so to speak of the lake, why wouldn't you be asking for the classification of no wake, which is electric motor only? Would that be acceptable to the commissioners if you went into that category? That is one that is in our ordinance too, so you are not changing the classification.

Maxson explained that they are attempting to accommodate their neighbors and there is a long history of use by people of Rockwood Township fishing on this lake. That is why we have literally stayed away from a non motorized no wake policy because these people do have fishing boats with motors. We are trying to be good neighbors and coming up with these proposed recommendations.

Johnson opened discussion for public comment.

Aultman explained that they were approached last year after eight rigs on that lake all with North Dakota plates were on the lake. They did a lot of fast movement on the lake and we were approached with these recommendations and the board strongly approved it. The last resort we would want to go to is a speed limit. I grew up there and am disappointed that LaSalle Lake went to 10 MPH speed limit. This lake is basically privately owned, but the center has allowed the access to go across county land into private property. Now if they wanted to, we have a 30 year agreement, it was originally set up that access would stay open to the public. They could cut off the access to the lake since it is on private property. There are railroad ties buried into the dirt and in the spring time a cable is put across the road to keep large trucks from tearing up the road and keep hunters out of there during deer season because it is private property. The Township Board is in strong agreement with the signage we want to see put up.

Grob commented that most boats have trolling motors that can go four or five miles per hour, do you think that really restricts.

Aultman explained that the lake is not used that heavily and have never experienced a problem on the lake.

Grob explained that we have a few of these lakes that are considered gems in Hubbard County and are we doing enough to keep them pristine so 50 years from now we can say this is just the way it looked 50 years ago. Do you think that people would object to just using electric motors?

Van Kempen commented that he would object to it, in using the lake it does not seem to be the fisherman that are the issue.

Aultman commented that it is a way to just monitor the lake for us and the caretaker.

Dan Berks, a neighbor to Spearhead and a former member of the Spearhead Board, commented that in using the lake both for fishing and canoeing a fair amount of time, it has been noted that once in a while there will be a problem out there with people not careful around swimmers and canoes. We are in agreement with the locals that something needs to be done. People do not want a speed limit but were ok with no wake within 100 yards of another watercraft.

Krueger suggested that there will be a problem if we allow a fisherman to go fast, but not a recreational boat to pull skiers.

Berks if we have a no wake within 100 yards of another watercraft, that will eliminate that.

Grob mentioned that the lake is only 400 yards across so if you come up within 100 yards of a canoe or kayak you will have to slow down.

Berks explained that if you have other boats out there you have to slow down.

Grob mentioned that it would be hard to enforce that from a law enforcement standpoint.

Berk commented that it is more enforceable than a speed limit. There is no way to get an actual speed on those boats unless you have hand held radar. It is going to be after the fact that law enforcement will get there, not when they are in the act. If someone is out there pulling someone or making a wake, that can be seen. In my experience, 80% of the people comply with what is recommended signage, 10 % stay within the law and then 10% that break the rules. What we are asking is to be able to put signage down at the access.

Grob explained that the signage would have to come as a result of our ordinance in putting a use constraint we try to be consistent with other lake restrictions. In other words, we would like to stay within what we now have in our ordinance. If all the people involved in this think this would solve the problem, enforceable and easy to change the ordinance.

Commissioner Matt Dotta commented that the reason why the Commissioners are open to this is because someone mentioned it and the County Sheriff really was not on board. He said you can do whatever you want, but since they are short staffed, enforcement may not happen as one might expect. It might send a signal to have a big sign and maybe 80% will say ok and follow the rules. The Board is trying to get away from putting stuff on the books that cannot be enforced.

Johnson closed public comment.

Buitenwerf commented that the County Board expressed an interest to keep it as simple as possible if they would consider anything that is why they want to suggest that the LaSalle Lake language be considered. They were not in favor of what the Township and the Society proposed in terms of the three conditions. Want you to be aware of what the Board may consider.

Grob asked if the motor boat people would be in favor of a 10 mile per hour speed limit.

Aultman replied no.

Krueger asked if they should try a sign method first as this is private property.

Krueger made a motion to take no action at this time and suggested that the Township and the Society use signage since this is private property.

Johnson seconded the motion.

The motion carried unanimously 5 – 0.

Subdivision Ordinance – proposed amendments

Johnson reviewed the ordinance page by page.

Grob asked what is driving going from plats to administrative subdivision and registered land surveys.

Buitenwerf explained that we want to encompass all the types of subdivisions that the ordinance has been administering. He would like to make sure the language covers them all.

Johnson asked who chose the “one foot” on the definition of contiguous.

Buitenwerf responded that he did.

Johnson commented that you made this definition so that we do not end up on a point. With a foot you can at least walk across it.

Buitenwerf answered that is correct.

Johnson asked if the front line riparian lot definition is the line indicating the ordinary high water level abutting the water body.

Buitenwerf responded that definition is the same as what was recently amended in the shoreland ordinance. We are seeking to get the definitions the same in both ordinances.

Johnson asked what would be done with something that does not have an ordinary high water level, does somebody platting have to then pay to have that designated?

Buitenwerf remarked that you would then follow the State’s visual OHW determination protocol.

Johnson asked if you would have to pay to have a surveyor pinpoint that.

Buitenwerf stated that you would, but there isn’t a set elevation to go locate and then trace around with your survey equipment. You would have to locate the visual break and then survey that in.

Christenson asked about the change in definition under RLSA.1, three feet.

Grob noted that we do not let people build if any part of the structure is closer than three feet. If you are trying to locate the buildable area RLSA and we do not want to let anyone build closer than three feet to the OHW mark, why wouldn’t you put 3 feet in there if you are trying to calculate it.

Johnson answered that there might be different humps in the property as to where I could use it for something else. We are talking minimum contiguous area.

Buitenwerf explained the background on this is that the ordinance requires that the lowest level of the structure has to be three feet above the highest known water level over the ordinary high water mark. Where that structure can be placed is the purpose of the RLSA figure. We now have LiDAR data that a surveyor can use for free from our website for their computations of what area meets that separation. It also serves the purpose on a drainfield of ensuring that area that is also to be used for placing two drainfield sites that hopefully is going to at least be able to get a mound on the ground. This is the rationale for this idea.

Krueger asked if the footing is considered the lowest level.

Buitenwerf responded no it is the floor, so that is the thinking behind rather than like on that lot on Long Lake that we looked at the cabins were 6" maybe above the lake, they probably did not meet that separation requirement. This way we are ensuring that we are allowing lots to be created that are likely going to be able to comply with that provision in the ordinance.

Grob commented that if you are creating new lots, we want to make sure in that assessment that the lot is buildable and has a buildable area that can comply with the three foot separation.

Buitenwerf stated that you do not have to agree with that idea, but that is the background behind it.

Johnson said you may have several high ground areas on one lot, but they are not all combined together with one of them big enough to put a house and then pump over to another area for the septic.

Buitenwerf explained that sometimes that works, but what I have also seen is that then leads to the tail wagging the dog and the lot that the County allowed to be created and then having the go through the Wetland Conservation Act and they are saying you are making it difficult for us because now we have to approve impact to a wetland because of your approving this lot. By making it all be contiguous, we are again going against contrary to the Wetland Conservation Act.

Grob commented that this will apply to new lots, things that are in existence are going to have to work around that. If someone is platting out a new lot, you want them to draw the line so that they have an area three feet above the ordinary high water mark.

Buitenwerf said the draft is not saying that you cannot have other areas that are not contiguous that meet those criteria, but we are saying at a minimum you must have a buildable area that meets separation.

Krueger asked if it only applies to the drainfield.

Buitenwerf answered that in shoreland it is both and in non shoreland it is septic.

Johnson stated that if you only have 2 feet of separation and you pull in a mobile home, the floor is three feet above the soil...now you cannot use that.

Buitenwerf stated that what we are trying to manage here is the majority of instances.

Grob explained that we are trying to manage new lots so that they are drawn large enough to eliminate the need for variances and ensure that they are drawn large enough for a new buyer to meet the building and septic criteria.

Buitenwerf explained that we have the technology available to determine this so why not use it and avoid people coming through for variances.

Johnson stated that we want to avoid them being punished, because it will be a hard sell to property owners who have land that has been dry for 30 years and now they do get to use in the calculation for RLSA.

Grob explained that they will always have the option to come to this Board and let us decide. What you don't want is some developer creating some lots that will end up with a variance.

Christenson asked if Hubbard County says how many driveways you can put in.

Buitenwerf replied no.

Christenson asked if that is something we want to add.

Buitenwerf explained that that would be beyond the scope of what the Subdivision Ordinance has jurisdiction over. That would be a separate ordinance as far as access management is concerned to regulate how many driveways a lot could have.

Grob commented that in 3a, subdivided into up to four lots that are 2 ½ acres or less in size with platting.

Buitenwerf commented that is in the State Shoreland Rules so we are just amending our language to match that.

Grob asked if they are over 2 ½ acres it would need to be platted?

Buitenwerf answered no it does not require a plat, reality is that this is an unenforceable regulation that was run past our legal counsel.

Christenson commented on 3c, regarding a piece of land must abut a public roadway?

Buitenwerf answered that this would require that if you create a lot, you would have to have frontage on a public road so what it would do is cause a developer instead of having to put in a private road and selling the lots and the new buyers are waiting for the snow plow in the first snow storm. Also from an emergency standpoint it makes a lot of sense.

Johnson asked a question on number four on page 17, would there be any exceptions to this.

Buitenwerf explained that it would be very difficult to monitor because from an Auditor/Treasurer standpoint, it gets very difficult to figure out what school district gets this amount. They do not slice townships.

Grob asked what is a Torrens.

Buitenwerf explained that Torrens is property that is certified through the court system for ensuring for the landowner that they have full and clear title to property.

Grob asked about deleting number three on page 18.

Buitenwerf commented that as we previously discussed, we are proposing to do away with the easement access requirement of the ordinance.

Grob questioned number 4 on page 18.

Buitenwerf explained that with plats, we have a requirement that they be filed within 30 days of County Board approval and if they are not, they become void so that if the ordinance changes over time you do not have a plat from 1970 that had a bunch of 20,000 square foot lots come rolling in and get recorded. It is a similar idea with the administrative subdivision to specify that if you do not record your deeds from your subdivision before the ordinance changes in a way that negates the approval, you are out of luck. This would just give them added incentive to get that done in a timely manner. It is an administrative aid so then we are not digging back years to find paperwork to approve the subdivision deed.

Christenson asked on page 22, 3d a description of planned short and long term road maintenance responsibility. Think it is a great idea just questioning how that is enforced.

Buitenwerf commented that it is not enforced. You are taking them on their good faith.

Johnson asked on page 24,6g if you have title insurance, do you need an opinion.

Buitenwerf replied yes, the Recorder will tell you that title insurance does not mean a true opinion.

Johnson asked about the cul-de-sacs shall not exceed 1320 feet in length. Are you saying in an 80 acre tract you want someone to develop it, you want a loop road in there, you do not want 3 cul-de-sacs going into it.

Buitenwerf explained that if you have a fire and you are trying to get to the right house and go into dead end roads and have to backtrack out to find the right house.

Grob made a recommendation that we forward the Subdivision Ordinance as discussed and reviewed to the County Board for approval as submitted.

Christenson seconded the motion.

The motion carried unanimously 5 - 0.

Miscellaneous:

A discussion was held regarding use of the laptop for reviewing meeting packets electronically. It was stated that Krueger liked having it. The paper issue was discussed and it was suggested that with postage, a laptop would be nice.

Communications: None

Grob made a motion to adjourn the meeting.

Christenson seconded the motion.

The motion carried unanimously 5 – 0.

Meeting adjourned at 9:47 p.m.

Respectfully submitted,

Barbara Barth
Recording Secretary