

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, July 25, 2016

Chairman Ted VanKempen opened the meeting with the following members present: Ken Grob, Tom Krueger, Tim Johnson and Calvin Johannsen, County Commissioner. Also present was Environmental Services Officer Eric Buitenwerf.

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

Planning Commission:

Approval of Minutes: June 27, 2016 meeting.

Krueger moved to approve the minutes as presented. Johnson seconded the motion that passed unanimously.

Old Business: None

New Business:

Conditional Use Application 2-CU-16 by Joe Scharber, Sleeping Fawn Resort and Campground: Part of Gov. Lot 5 and 6, Section 2, Township 141, Range 34, Lake Emma Township on Stocking Lake, a natural environment lake. Parcel 16.02.00900. Applicant is requesting a conditional use permit per Section 401, Table 1 of the Shoreland Management Ordinance to operate a resort.

Joe Scharber, 20097 County Rd 24, Park Rapids, MN, presented the application to expand the seasonal park with additional sites.

Grob mentioned receiving written correspondence letters with concerns about the increased number of boats this expansion would cause. Of the existing units, what number of people have boats?

Scharber explained currently four boats are 15 horsepower or less. One boat has a larger motor. A couple camp sites utilize other lakes.

Grob asked if eight boats exist out of the 24 current units.

Scharber replied the number of boats would vary from week to week as he cannot determine what each resident will bring to the campground.

Grob mentioned that a concern in one of the correspondence letters was the risk of aquatic invasive species. Could you give us an indication of what you do to screen or inspect your guests, as you are the only boat launch site on the lake?

Scharber responded that he has a boat launch site, but other people launch from multiple places. They use their yard and other locations.

Grob stated that he is the only public boat launch site.

Scharber replied he has a resort boat launch for his resort guests and residents of the lake. He does not allow outside traffic to use the boat launch. We donated over \$2000 to the AIS program last year. We also donated \$600 to the lake association.

VanKempen stated during the on-site lot visit they counted five boats at the dock. Do all of your seasonal campers have boats?

Scharber responded only the five that he mentioned. The other boat owners utilize different lakes.

Johnson asked how many lake residents use your boat launch.

Scharber replied only residents of the lake. We do not allow outside traffic to use the boat launch.

Johnson asked how many residents that would be.

Scharber replied a dozen residents throughout the year.

VanKempen asked what the average length of stay for each guest is.

Scharber responded there is a two night minimum on the six cabins. Therefore it could vary from two nights up to two weeks per guest. The campground has three short stay units. That would vary from daily, to weekly, to monthly. The remainder are seasonal guests and they could be there the entire season.

Krueger presented the staff conditions and asked Scharber if he had a chance to review the condition that only allowed resort guests to use the boat launch.

Scharber replied he would have several upset lake residents if he only allowed resort guests to use the boat launch.

Grob replied the conditions could be modified to include lake residents.

Scharber agreed to the modification.

VanKempen asked for public comment.

Written correspondence was received from Dave and Gloria Pautz, 20855 Mushtown Road, Prior Lake, MN 55372; Duane and Diann Tweeten, 21945 Mayrose Blvd, Brookfield, WI, 53045; Carl and Linda Stroming, 528 Western Street, Anoka, MN 55303; Tim and Chris Stroming, 1505 Horseshoe Lake Road, Grand Rapids, MN, 55744; Ted and Corina Stroming, 315 Pishney Lane, Hutchinson, MN 55350; and James and Kathryn O Croal, 27007 Ingrid Drive, Park Rapids, MN 56470 expressing their concerns about the conditional use permit request.

Oral public comment: Cliff Tweedale, 27034 Iris Drive, Park Rapids, MN. We have lived south of the resort for 20 years. I want to commend Joe for his commitment to protect the lake. I am amazed at how many people do not utilize the lake that have a seasonal RV site. I typically only see one or two boats on the lake at a time. The RV site, from our perspective, is designed perfect. It is behind a swale; therefore, there is virtually no sediment runoff. You cannot hear or see the resort residents. We are comfortable knowing the traffic will be minimally affected by the

expansion. We are on the lake nightly and are typically joined by one or two additional boats. We are comfortable with the proposal and the conditions with the exception of allowing the lake residents to continue to launch their boats from the resort.

VanKempen closed public comment.

Grob requested clarification from Scharber on the 75' buffer area on the resort shoreline.

Scharber explained the beach area is not protected. Everything beyond the beach area has a cattail barrier along the resort property. Much of it is within or beyond the 75' buffer.

Grob questioned the placement of the shuffleboard and the buffer zone. Do you plan on moving the shuffleboard?

Scharber replied the shuffleboard will remain and there is a 50' buffer zone.

Grob questioned the dock proposal and wanted to confirm the number of docks being proposed.

Scharber explained the dock design shows the current dock setup with six docks and the proposed expansion.

Grob asked for clarification on the number of docks proposed. Is this the dock structure you are proposing as part of the conditional use permit?

Scharber replied yes.

Krueger made a motion to recommend to the County Board of Commissioners that the conditional use application be approved with the proposed eight conditions and adopting the staff report findings of fact.

Conditions:

1. This conditional use permit (CUP) is for the operation of the entire premises as one resort use venture. As such, any land, that through subdivision or addition to the property to which the CUP is granted, is added or subtracted, is/are not granted or allowed the right to operate in accordance with the CUP without first applying for and obtaining the necessary CUP from the County.
2. The resort use can consist of no more than the following rental units to be located in the locations shown on the aerial photo with Tier lines overlain that was included in the application: Tier 1 - 6 existing cabins and three 3 existing RV sites, Tier 2 – 15 existing RV sites and 5 new RV sites, Tier 3 – 5 new RV sites, along with 2 RV sites beyond 1000' setback. Any desired additional rental units or size or location modifications to the above-listed rental units will require that a conditional use permit amendment application be submitted to ask to modify this condition and then approved.
3. The SSTS that will service the proposed new RV sites must be permitted, installed, and receive a passing compliance inspection before the operating permit for this resort use will be issued.
4. This use is allowed to operate from May 1 to October 1 of each calendar year.
5. No one but paying resort customers and lake residents can use the resort boat launch to access Stocking Lake. This means the boat launch cannot be made available to the public for use.
6. No personal watercraft can be launched from the resort boat launch or moored on the resort docks.

7. The resort can only have the location, number, and dimensions of docks shown on the application sketch labeled "Dock Info".
8. Access to the property for resort guests shall only be via the existing access road easement through tax-forfeited land that runs north-south through the middle of Section 2 in Lake Emma Township and intersects County Highway 24 at the intersection with Jewel Drive.

Grob seconded the motion.

Findings of Fact:

1. Is the requested use consistent with public health, safety, and welfare?

YES (X) NO ()

Why or why not? A resort is allowed as a conditional use on Stocking Lake. The existing resort use has operated on this property at this rental unit density for decades prior to this time as a legal nonconforming use and no negative effects to public health, safety, and welfare have been observed during this period. Conditions have been placed on the conditional use permit that address the public health, safety, and welfare considerations the County feels are warranted.

2. Is the requested use consistent with the goal of preventing and controlling water pollution, including sedimentation and nutrient loading?

YES (X) NO ()

Why or why not? The proposed new RV sites are in the back half of tier 2, tier 3, and beyond the 1000' shoreland ordinance jurisdictional area. The property is heavily wooded. While there will be vegetative clearing for creation of these new RV sites and access roads to them, there will be sufficient distance and vegetation between them and the lake that there is not concern of sediment or nutrients entering the lake.

3. Will the requested use not adversely affect the site's existing topography, drainage features, and vegetative cover?

YES (X) NO ()

Why or why not? The bulk of the proposed use has been occurring on the property for decades – as mentioned in the answer to question 1 above. No adverse effects to topography, drainage features, or vegetative cover were observed from the existing use during the lot viewal. As mentioned in the answer to question 2 above, the proposed new RV sites will be located at least 600' from the lake and the vegetative clearing and land alteration required for their construction will be minimal nor harmful to the items addressed in this question.

4. Is the requested use's site location reasonable in relation to any floodplain and/or floodway of rivers or tributaries?

YES (X) NO ()

Why or why not? There are no FEMA-designated floodplains in Hubbard County. The area where the new RV sites will be placed is roughly 30' in elevation above the nearest waterbody which is Stocking Lake. The existing RV sites are at least 20' above the lake and the existing cabins are ~8-16' above the lake. Thus, flooding of these structures or RV sites is not a concern.

5. Has the erosion potential of the site based upon the degree and direction of slope, soil type, and existing vegetative cover been adequately addressed for the requested use?

YES (X) NO ()

Why or why not? The applicant has done a good job in siting the proposed new RV sites in the most level portion of the property at least 600' from the lake. The existing RV sites and cabins are also well positioned relative to the property's topography – taking advantage of running along contour lines. The property is heavily wooded and will remain as such after the new RV sites are added. This heavy forested cover guards against erosion by not allowing storm water to gather and gain the velocity or volume needed to cause erosion.

6. Is the site in harmony with existing and proposed access roads?

YES (X) NO ()

Why or why not? The existing access road is ½ mile long and runs over an easement through tax-forfeited land. There is one other ~33 acre property that also utilizes this road. The road is surrounded by tax-forfeited land aside from the first ¼ mile on the west side that is in private ownership. The existing resort has operated as a legal nonconformity for decades and no adverse issues have been observed or commented on regarding resort guest traffic on the road. The proposed RV site guest traffic should not cause any of these things to change. The access road comes out on County Highway 24 across from Jewel Drive. County 24 does start to curve and go down a hill just east of the access road intersection, but sight lines appear to be sufficient for traffic to safely enter and exit.

7. Is the requested use compatible with adjacent land uses?

YES (X) NO ()

Why or why not? This resort has operated on this property for several decades as a legal nonconforming use without any compatibility issues with adjoining land uses. The land to the north of the resort is a forty acre tax-forfeited tract. The land to the east of the resort is a ~33 ac. privately owned tract with a single residence on it. The land to the west of the resort consists of a ~2 ac. seasonal residential use tract, a ~7 ac. seasonal residential use tract, and an 80 ac. seasonal use residential tract. To the south is a ~7 ac. year-round residential use tract. The resort is located on the north end of the lake. Stocking Lake is 1 ¾ miles long and not even ½ mile wide at its widest point. The lake is not heavily developed and the tracts that are developed are all at least 2-3 acres in size. There is over a ½ mile of undeveloped shoreline on the east side of the lake. All this is to say that the historic nonconforming resort use has not had any compatibility issues and the proposed RV site increase that will be within allowed rental unit density should not cause that to change.

8. Does the requested use have a reasonable need to be in a shoreland location?

YES (X) NO ()

Why or why not? A resort has a reasonable need to be in a shoreland location. People come to Minnesota resorts because they are on lakes and provide opportunities to enjoy the view of the lake and recreate on it.

9. Is the amount of liquid waste to be generated reasonable and the proposed sewage disposal system adequate to accommodate such?

YES (X) NO ()

Why or why not? All existing septic systems on the property are compliant and a design has been submitted to the Environmental Services Department and approved for the proposed new RV sites. The property is ~29 acres in size so there is sufficient room for placement of alternate drainfield sites if/when the need for such arises.

10. Will the visibility of structures and other facilities as viewed from public waters comply with Section 901 of the Ordinance?

YES (X) NO ()

Why or why not? The property is ¼ mile deep going north from the lake and most of the structures and RV sites are tucked in the woods and not visible from the water. Much of the shoreline is in a natural state. The portion of the shore impact zone that has been improved has been that way for many decades and is the interface area where the resort accesses the lake. There are a fair amount of mature trees screening the cabins nearest the lake from view from the lake.

11. Is the site adequate for water supply and on-site sewage treatment systems?

YES (X) NO ()

Why or why not? The property has an existing well and compliant septic systems. A new SSTS design is on file and approved for the proposed new RV sites. The property is ~29 acres in size and consists of land that is capable of providing alternate septic drainfield locations if/when needed.

12. Are the affected public waters suited to and able to safely accommodate the types, uses, and numbers of watercraft that the use will generate?

YES (X) NO ()

Why or why not? The number of docks and permanent watercraft slips proposed in the application comply with the ordinance's provisions and are being made a condition of this permit. The application states that the resort's watercraft use of Stocking Lake is not intensive and that personal watercraft are not allowed. A condition is also being placed on the permit that prohibits non resort guests from launching watercraft from the resort's boat launch.

The motion passed 5 – 0.

Miscellaneous: None

Closed Planning Commission meeting at 7:00 p.m.

Board of Adjustment:

Approval of Minutes: June 27, 2016 meeting.

Johnson moved to approve the minutes as presented. VanKempen seconded the motion that carried unanimously.

Old Business: None

New Business:

Variance Application 27-V-16 by Steve and Carrie Olson: Part of Gov. Lot 1, Section 24, Township 144, Range 32, Hart Lake Township on Steamboat Lake, a recreational development lake. Parcel 10.24.00610. Applicants are requesting a variance from Section 703 of the Shoreland Management Ordinance for a lakeside deck to be located at less than the required 30' minimum ordinary high water mark setback on a nonconforming residence that predated the SMO.

Joeseph Bauman, 30696 County Rd. 30, Laporte, MN, presented the variance application as a request to build a wheelchair ramp and landing.

Krueger commented that during the on-site lot view, he did not see any issues that would prevent the construction.

VanKempen agreed and asked Bauman if the existing cabin would be removed.

Bauman replied yes.

VanKempen commented that the request seemed to be minimal.

Bauman replied it is the minimum standard.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

VanKempen made a motion to approve the variance application and adopt the staff report findings of fact.

Johnson 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? There is only one exterior door on the cabin so a means of wheelchair access to this door via a ramp is reasonable. The ramp is just large enough to meet code and the platform functions as a means of ingress/egress, not as a traditional lakeside platform.

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

Yes (X) No ()

Why or why not? As mentioned in the answer to question 1 above, this is the only exterior door to the cabin. Having a way for a person in a wheelchair to be able to safely access the cabin's interior 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 cabin was built prior to the shoreland ordinance at a 20' nonconforming ordinary high water mark (OHW) setback. The sole exterior door on the cabin faces lakeward.

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 due to the structure being built prior to the shoreland ordinance by a different owner at a nonconforming 20' OHW setback.

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

Yes (X) No ()

Why or why not? The platform and accompanying ramp are only 42" wide x 12' 6" long. The area consists of single family seasonal and year-round residences – some of which were also built before the ordinance at nonconforming setbacks and have lakeside decks/platforms. Thus, this small platform and ramp will not harm the locality's character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty is that the applicants need wheelchair accessibility into the cabin, the sole exterior door is on the lakeside wall, and the cabin was built at a nonconforming setback before the ordinance was enacted.

The motion carried unanimously 4 – 0.

Variance Application 28-V-16 by Timothy and Theresa Duncan: Part of Gov. Lot. 4, Section 4, Township 145, Range 32, Fadden Township on Grace Lake, a recreational development lake. Parcel 07.04.03100. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed accessory structure to be located within the 10' side lot line setback.

Timothy Duncan, 51399 Wildview Lane, Bemidji, MN, presented the variance request to construct a 30' x 40' pole shed on the southeast corner of our lot.

Krueger asked if the garage door opening would face west towards the driveway.

Duncan replied yes.

Krueger asked Duncan if there was enough turning room in the proposed area.

Duncan responded that if the shed is back far enough, there should be adequate turning space.

Johnson stated that during the on-site lot viewal I asked how you proposed to elevate the floor.

Duncan replied he is proposing to build a retaining wall using green treated materials and back filling into the level needed.

VanKempen commented on the proposal that there is zero overhang on the east side in order to achieve the two foot setback from the property line. Could we increase that two foot setback? Additionally, with the current mound system in place, will you be able access the garage with your vehicle with the snow plow attached?

Duncan responded that it would be tight on the north end.

Krueger asked if you could decrease the size from the proposed 30'.

Duncan replied 26' would not give him enough space and 28' would be possible. I went with the standard 30' x 40' shed.

Krueger asked if 28' would be acceptable.

Duncan replied yes.

VanKempen asked if entering the proposed garage from the south would be a possibility.

Duncan replied it would be difficult with the tree line.

Johnson asked Buitenwerf what the setback from the property line is for the driveway.

Buitenwerf replied ten feet.

Johnson asked Buitenwerf if the setback from the septic mound was zero.

Buitenwerf replied yes.

VanKempen asked for public comment.

No public comment was given.

No written correspondence was submitted.

VanKempen closed public comment.

Grob stated that you would not have any room to do maintenance on the proposed structure with a two foot setback. You would encroach on your neighbor's property any time you needed to do maintenance.

VanKempen asked which direction the roofline would be installed.

Duncan replied the gables would be on the north and south side.

VanKempen stated in that case the water will be running off on the east and west side onto your neighbor.

Johnson commented on the location of the mound and the last resort for a different placement would be the proposed area of the shed.

Grob asked if decreasing the size of the shed and moving it six feet off of the side lot line would be a possibility.

Duncan explained moving it towards the driveway is a concern of his. An emergency vehicle may not be able to pass through.

Grob asked what is the minimum distance needed to fit your vehicle and snow plow.

Duncan replied 28 feet.

Duncan mentioned he did not know that you couldn't rebuild a mound over the existing location. He asked if it was a new ordinance that he wasn't aware of.

Buitenwerf replied no. It has always been part of the septic rules and regulations.

Johnson asked if it was a contractor that gave him the information.

Duncan responded that it was stated in his variance from two years ago.

Grob asked if moving the structure six feet off of the side lot line would be a possibility. This will allow room for maintenance.

Johnson asked if the neighbor had discussed the proposal with them.

Duncan responded yes.

VanKempen asked Duncan if he would be willing to amend the request to a six foot side lot line setback.

Duncan replied yes.

VanKempen requested Duncan to state his amended proposal.

Duncan stated his new proposal would be to construct a 30' x 40' pole shed up to the six foot side lot line setback.

Krueger made a motion to approve the amended variance application of a 30' x 40' pole shed with a six foot side lot line setback.

VanKempen 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? Getting the structure as far away from the property line as possible and the need for additional storage space.

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

Yes (X) No ()

Why or why not? To have a suitable amount of storage.

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

Yes (X) No ()

Why or why not? The SSTS mound in place and the limited space, it seems to be the only location for a building.

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

Yes (X) No ()

Why or why not? Having had a failing SSTS and moving the mound to its current location resulted in limited room for a building.

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

Yes (X) No ()

Why or why not? The neighbor to the east has a similar metal building.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty.

The motion passed 3 – 1 with Johnson voting nay.

Administrative Decision Appeal by Greg and Lisa Ackerman: Part of Gov. Lot. 6, Section 36, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational development lake. Parcel 16.84.00600. Applicants are appealing an administrative decision on the interpretation of Section 507.4(3) of the Shoreland Management Ordinance concerning the 50% unobstructed view within the ordinary high water mark structure setback language.

Greg and Lisa Ackerman, 17318 210th St, Park Rapids, MN, presented the appeal to restrict the view to the public access on Little Sand Lake. In March of this year, I went into the Environmental Services Office to inquire what the stipulations were to do so. At that time, they printed off a copy of the fence ordinance. I didn't receive further explanation or interpretation of the ordinance.

Grob asked what his interpretation of 50% meant.

Ackerman replied he thought it was to allow air flow.

Grob asked if you put any thought into it meaning above, below, to the right or to the left. Without knowledge, you started construction on the fence with the boards in a vertical direction.

Ackerman replied correct.

Grob stated at a later time it was pointed out to you that it was incorrect.

Ackerman replied yes, but with no verbal or written documentation of what it should be.

Grob commented that you must have been told that it wasn't at 50%. To my understanding, you were told to build it in conformance.

Ackerman explained that to his interpretation it is 50%. At a 90 degree angle, I can see through it. At the time, Jeff Kelly, Environmental Services Office Technician, stated to him that it was nonconforming and he was not sure what to do since I did not come in and check the ordinance first.

Grob replied you did indicate that you would bring it into conformance and you reconstructed it with the boards in a different direction. In doing so, it was nonconforming. Are you saying with the criteria you are still unaware of what 50% means.

Ackerman replied standing at a right angle, he can see through the fence. I have yet to receive documentation on how the fence should actually be constructed.

Grob asked if Kelly indicated how the 50% visibility should be viewed. You had been given direction two times, and you have zero recognition or acknowledgement as to what you were trying to accomplish was compliant with the ordinance.

Ackerman commented he thought he took the necessary steps to construct the fence according to the ordinance.

Grob asked when you stand in front of the fence, do you believe there is 50% visibility through it.

Ackerman replied yes I do.

Grob questioned half of the space from the top of the fence to the ground is open to see through.

Ackerman replied yes.

Grob replied two percent.

VanKempen mentioned that you constructed the fence to block the view of the public access area. I understand the desire to have privacy. Although, during our on-site visit, looking towards the public access, I could not see it. I couldn't tell if it was large enough for one vehicle or twenty vehicles. Fifty percent unobstructed view would allow us to see what is on the other side. We would be able to see the cabin.

Ackerman replied the ordinance was not clear to him.

Krueger explained the intent of the ordinance was for a neighboring property to be able to look across your lot and see through 50% of what is on the other side of the fence. Why didn't you apply for a variance?

Ackerman replied he would have had he known it was an option. I was only going in with the idea of sticking to the ordinance in place and I feel like I did.

Krueger responded he feels that the intent of the ordinance is for the neighboring property to be able to see through 50%.

Ackerman responded I honestly did not have that in mind. I was only thinking of privacy and do not feel that we obstruct the view of any property owners. We only obstruct the view of the public access. I constructed the fence upon my interpretation of the ordinance.

VanKempen asked Buitenwerf to explain the decision of the Environmental Services Office.

Buitenwerf explained since the inception of this Section of the Shoreland Management Ordinance in March of 2009, the department has interpreted and administered Item 3 of Section 507.4 that the 50% unobstructed view is determined at a 90 degree angle to the plane of the fence. This would allow the person looking through the fence to be able to see 50% of what is on the other side. The County Board adopted this ordinance to allow property owners of adjoining property to have somewhat of a view through the fence. This is how the ordinance was originally written and this is how it has been administered ever since.

VanKempen asked if the 50% unobstructed view was up to the 100' ordinary high water mark setback.

Buitenwerf replied yes.

Grob asked Buitenwerf if the Environmental Services Department clearly explained the ordinance, including the 50% unobstructed view at a 90 degree angle when Ackerman agreed to bring the fence into conformance.

Buitenwerf explained to his knowledge he was not part of the conversations. Jeff Kelly, one of our Environmental Specialists, had been involved with the fence. After visiting with Jeff Kelly and asking for his recollection of events, Kelly indicated that he clearly explained to Mr. Ackerman what the 50% view entailed.

VanKempen asked for public comment.

No public comment was received.

Written correspondence was received from Gerry and Ann Kaluzny, 21064 Glacier Drive, Park Rapids, MN, 56470, and Karen M. Netland, 21052 Glacier Drive, Park Rapids, MN, 56470, both in opposition to the administrative decision appeal.

VanKempen closed public comment.

Grob asked Buitenwerf if various options on how to proceed were explained to Mr. Ackerman such as, correcting the problem, after the fact variance, or the administrative decision appeal.

Buitenwerf replied yes, the options were provided in a letter from our department.

Grob made a motion to support the Environmental Services Office administrative decision and deny the administrative decision appeal.

VanKempen seconded the motion.

Findings of Fact:

1. Very clearly this issue has come up in the past. The requirement has been in the ordinance for 7-8 years. It has been pretty clear how it has been interpreted in the past and how we have applied it and I think that precedent makes it pretty clear that the administrative staff has, in fact, made the right decision.
2. We had something almost identical to this last summer. Same thing, we told that applicant that it was not a 50% unobstructed view and required them to remove boards to bring it into compliance.
3. Our Shoreland Management Ordinance protects the property rights of all owners to have an unobstructed view of the lakeshore in the setback zone. Environmental Services staff has set policy that the 50% criteria is to be determined from a right angle view. This single sight line establishes a clear criteria such that all other angles cannot be considered and be confusing.
4. The owner has reasonable use of the property without the 100% obstruction.
5. The Little Sand Lake access is a very low use access compared to most of them.
6. There is no practical difficulty stated as to why compliance and interpretation is invalid.
7. Policy, precedent, and criteria are clear and consistent.
8. The applicant was informed in April, redid the fence, and continued the noncompliance.

The motion carried unanimously 4 – 0.

Variance Application 29-V-16 by Lance and Sharon Larson, and Janice Belshan: Part of NE ¼ of NW 1/4, Section 27, Township 141, Range 35, Arago Township. Parcel 02.27.00400. Applicants are requesting a variance from Section 4, Subdivision A.1.a.2.a of the Subdivision

Ordinance to create four tracts that do not comply with the 150' minimum width public road frontage requirement.

Jack Brann, PO Box 385, Park Rapids, MN 56470, and Janice Belshan, 13109 129th Ave, Menahga, MN 56464, presented the variance request to complete the final lot split of the Many Lakes Plat that was created 10 years ago.

VanKempen commented on the road that was constructed seemed to be in good condition. How long has the road been in place?

Brann replied approximately ten years.

VanKempen asked how many homes in the area currently use the road.

Brann responded currently two. However, the two access through Gunflint Drive, but they border on County Road 40.

VanKempen asked if the two homes on County Road 40 have additional access through Gunflint Road.

Brann replied the northwest lot only has access on Gunflint. The other property has access on County Road 40.

Grob clarified the current road is not a public road. Our requirement is 150' of public road. All of the lots do have 150' access to the current road.

Buitenwerf replied correct.

Grob noted if the road was a public road the lots would meet all of the requirements of our ordinance.

Buitenwerf replied yes, if the road would become a town road, the lots would comply.

Grob asked what is the probability that Arago Township would assume responsibility and make the road a public road?

Brann explained when the subdivision was created by Doug Belshan and Lance Larson, their guidance was based on their meeting with Arago Township, Hubbard County. Instead of creating the lots and putting the road in after they were sold, the road was constructed based on what Arago Township would require when it would be adopted and put under their direction. At that time, the lots exceeded every minimum requirement of a plat. The problem we face currently, due to the ordinance change last year, we have been selling the lots occasionally rather than all at once. Therefore, we do not know when each lot will be sold. We are wanting to finalize the development, as it was created from the onset, in order to dissolve the estate.

Grob asked if Arago Township has been approached and what criteria would be needed to make the road a public road.

Brann explained the road at some point inevitably would be a public road. At this point, it is arbitrary to say when. The only thing I could tell you is, if you went back in the record when this development was created, the road, turn around, radius, bus requirements, slope and shoulders were specific to what Arago Township requirements were. The road was built to specifications at that time.

VanKempen commented that the current landowners know that it is not a public road. Do the future land owners understand that the road is not a public road?

Brann responded absolutely. The landowners are aware of the situation of the lots that I have represented.

VanKempen asked for public comment.

Oral public comment: Mike Wilson, Supervisor at Arago Township, 14023 Hummingbird Drive, Park Rapids, MN 56470. We would have no problem with the variance being approved. In the future, we can look at taking over the road, if it meets the township road requirements. You can find the road maintenance policy on our website, arago.com.

Written correspondence from Raymond Kinnamon, 5660 Nason Ave NE, St. Michael, MN, 55376, is not strongly opposed, but expresses his concerns.

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

VanKempen seconded the motion that passed 4 – 0.

Findings of Fact:

1. Is the variance in harmony with the general purposes and intent of the Subdivision Ordinance and consistent with the Comprehensive Plan?

Yes (X) No ()

Why or why not? The proposed tracts are part of a development that received subdivision approval in 2006. For reasons of one of the owners passing away and the real estate market dropping in 2008, the deeds for these tracts were not recorded to establish these tracts as lots of record. The Subdivision Ordinance changed last year regarding new tract access requirements in a way that no longer allowed these four remaining tracts to be created. The access road to the tracts is a 66' easement that is easily accessible by emergency services vehicles and there are indications that Arago Township will adopt the road if/when a sufficient number of homes are constructed in the development. County 40 is the nearest public road and less than ¼ mile away. A large wetland prevents any road from being constructed to the west and much of the south of the tracts and Potato Lake is a little more than ¼ mile to the east of the tracts such that a road that direction is not possible. The development is half-way done with these tracts sandwiched in the middle of the development such that not granting a variance now from the access provision would not be practical.

2. Does the property owner propose to use the property in a reasonable manner in light of the essential character of the area?

Yes (X) No ()

Why or why not? The area's character is a mixture of undeveloped forest and wetland, light scattered individual rural residential tracts, and a small scale residential development across County 40 to the northwest similar in scale to this development.

3. Is the condition causing the plight of the landowner unique to the property and was it not caused by the actions of the landowner/applicant?

Yes (X) No ()

Why or why not? The uniqueness is that the property was approved to be subdivided in 2006 when the ordinance language was different. The development was halfway sold prior to the ordinance access road provisions changing in July 2015. One of the property owners passed away during this time as well and the real estate market fell flat at the end of 2008 – which contributed to the reasons why these proposed tracts were not sold or their descriptions recorded as individual deeds. The ordinance change in July 2015 was not done by the landowners.

4. Will the granting of the variance not be contrary to the public interest or damaging to the rights of other persons or to the property values in the vicinity?

Yes (X) No ()

Why or why not? The property is surrounded by several large wetlands that provide natural buffers between this property and nearby properties. Much of the nearby upland is undeveloped forestland. The existing homes in this development are of good quality and it thus is likely that any homes constructed on these proposed tracts would be of similar quality and thus a benefit to the property values in the area.

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

Yes (X) No ()

Why or why not? As mentioned in the answers to the previous questions, the development is partially started and built on either end such that these four tracts in the middle are not going to make a noticeable difference in the area's character. The property is also separated from nearby residences by natural wetland buffers and large tracts of undeveloped forestland.

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

Yes (X) No ()

Why or why not? The development began in 2006 and was half-way developed when one of the owners passed away and then the Subdivision Ordinance road frontage requirements changed that caused the practical difficulty.

Miscellaneous:

Communications:

Adjournment:

Krueger made the motion to adjourn the meeting.

Johnson seconded the motion.

The motion passed unanimously 4 – 0.

The meeting adjourned at 7:30 p.m.

Respectfully submitted,

Veronica Andres

Recording Secretary