

**Hubbard County**  
**Planning Commission/Board of Adjustment Meeting**  
January 27, 2014

Johnson opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson, and Arne Christianson. The only member not present was Commission Greg Larson. Also present were Environmental Services Officer Eric Buitenwerf, and recording secretary Maria Shepherd.

**Election of Officers:**

Christenson moved to nominate Tom Krueger as Chairman. Johnson seconded the motion that carried unanimously.

Christianson moved to nominate Tim Johnson as Vice Chairman. Christenson seconded the motion that carried unanimously.

Christianson moved to nominate Charlene Christenson for Secretary. Grob seconded the motion that carried unanimously.

**Approval of the Planning Commission August 12, 2013 meeting:**

Christianson moved to approve the minutes as presented. Krueger seconded the motion that carried unanimously.

**Approval of the Board of Adjustment December 16, 2013 meeting:**

Grob moved to approve the minutes as presented. Christenson seconded the motion that carried unanimously.

**New Business:**

**By-laws**

Buitenwerf gave the Board background on the by-laws. The Board of Adjustment and Planning Commission Board was established in Section 1102 of the Shoreland Management Ordinance. Once the Boards were combined and become one and the same new by-laws are needed. Examples were included in the board packets of different County's by-laws with combined boards. The draft that was presented for the Board's consideration was written based on what the Ordinance language for Section 1102 states should be in the by-laws verses is what is addressed in the Ordinance itself. It is simply a draft so it can be changed, deleted or scratched all together is the Board wishes to.

Kruger commented that any changes that are made to the by-laws need to agree with what the County Board already approved in Section 1102.

Buitenwerf stated that once the by-laws are approved by the PC/BOA Board, it then would need to be brought before the County Board for their approval as well. Any additional or alterations to the by-laws would need to go through the same process.

The Board discussed the By-laws draft in length and proposed the following changes:

## **Article IV – Conflict**

It is not the intent of these By-Laws to repeal, annul or in any way impair or interfere with provisions of State Statute, Law, or Rule or County Ordinances. If a conflict exists between these By-Laws and State Statute, Law, or Rule or County Ordinances, the highest standards will govern.

## **Article V – Officers**

Section 5. The Recorder Designate shall keep the minutes and records of the PC/BOA; and with the assistance of such staff as is available shall prepare the agenda of regular and special meetings, provide notice of all meetings to PC/BOA members, arrange proper and legal notice of hearings, attend to correspondence of the ~~Commission~~ PC/BOA, and such other duties as are normally carried out by a Recorder Designate. Recording of the minutes will be done by Land Records - Environmental Services personnel who will be the Recorder Designate.

## **Article VI – Election of Officers**

Section 1. An annual organizational meeting shall be held ~~on~~ at the first meeting of a calendar year.

Section 2. Nominations shall be made ~~from the floor by the PC/BOA members present~~ at the annual organizational meetings and election of officers shall follow immediately thereafter.

## **Article VII – Meetings**

Section 2. Lot viewals to review applications to be considered at the regular meeting shall be conducted, unless otherwise determined, on the Thursday and/or Friday immediately preceding the scheduled meeting of each month. Additional lot viewal days may be added depending on the number of applications received, type of applications, ~~and~~ locations of properties to be viewed, and/or a special meeting is needed.

Section 3. Special meetings may be called by the Chairperson or Environmental Services Officer. It shall be the duty of the Chairperson or Environmental Services Officer to call a special meeting when requested to do so by a majority of the members of the PC/BOA. The Recorder Designate shall notify all members of the PC/BOA ~~in writing not less than five days~~ in advance of such special meeting.

## **Article VIII – Order of Business**

Section 1. Although the same members make up both the Planning Commission and Board of Adjustment, the meeting of the Planning Commission will be held, as set forth in ~~this Article~~ these By-Laws, and upon completion of all applicable business pertaining to the duties of the Planning Commission as addressed in State Statutes and County ordinances, adjourn. Immediately following the Planning Commission meeting, the Board of Adjustment will hold its meeting, as set forth in ~~this Article~~ these By-Laws, and upon completion of all applicable business pertaining to the duties of the Board of Adjustment, adjourn.

Section 3. A motion ~~from the floor~~ by a PC/BOA member must be made and passed in order to dispense with any item on the agenda.

Buitenwerf stated that he would make the proposed changes and bring a revised draft to a later meeting to make sure that all of the proposed changes were made as well as allowing the Board another opportunity to review it with the changes.

Buitenwerf then asked for comments or suggestions on what should or shouldn't be included in regards to the meeting procedure. He gave everyone a draft that he had created as a starting point. It is a consolidation of the previous Board of Adjustments and Planning Commission meeting procedures that existed. The general flow is the same but there was some language that was specific to each of the separate entities that he attempted to merge together into this draft.

Krueger asked about the proper procedure for the signup sheet for addressing the Board. In the meetings for both the Planning Commission and Board of Adjustment when he was the Chair he never had that sheet to know if people who were giving public comment had actually signed up or if they were speaking without signing in.

Buitenwerf stated that the signup sheet is something that needs to be refined and a better method figured out.

There was discussion on collecting the signup sheet when the meeting starts and the Chair would call the people who signed up and allow them to speak but that runs the risk of someone coming in late and not having the ability to sign up.

Buitenwerf stated that legal counsel will be helping him with creating the meeting procedure so that we know what we can and can't do. The purpose of the meeting procedure is to have a smoothly run and effective meeting as well as telling the Chair what rules and standards he is able to hold the audience to.

The idea for the signup sheet is that people sign up ahead of time for each item on the agenda they wish to speak on; they would mark whether there are in favor or opposition of the request. At the beginning of the meeting the signup sheet would be brought to the Chair so he knows how many people wish to speak on each matter to know how much time will be needed for the public comment portion of each item.

Grob brought up for discussion the deadline for written correspondence and was wondering if there was any flexibility there. Many people want to write comments but wish to do so after they have viewed the lot and since the lot viewals are after the deadline he felt that it limited people from expressing their concerns or thoughts. He proposed the possibility of allowing those who attended the lot viewal and wished to send in written correspondence to have until Friday at the end of the business day as a deadline to get it to the Environmental Services Office. Lot viewals can make a big difference in a person's opinion and since the only time the public can legally view the property is during the designated lot viewal time it seemed appropriate to allow additional time to those people.

Buitenwerf stated that he agreed that it was good to allow the public to comment and address their concerns, which they are able to do at the meeting, in writing or while on site for the lot viewal. If the lot viewal were to be held on Friday then what would the deadline be? The other reason for Wednesday as a cutoff is that ensures that we are able to make copies and get them to the Board members at the lot viewal. If we gave Friday as a deadline it doesn't give the office much time to get

copies made and distributed to the Board as well as not allowing much time for review by the Board. There are times that the written material is quite lengthy and the more time we have to prepare those documents and allow sufficient time for review from the members the better.

Grob stated that the public does have ample opportunities to share their opinions and concerns and could see how a later deadline could cause constraints in getting the material to the members as well as allowing sufficient time to review.

Krueger felt that they were being very accommodating for the public to share their concerns or comments in multiple different ways.

Christenson felt that be allowing a Friday afternoon deadline could become a nightmare for the staff to manage and get the material out in time. The meeting times were moved so that the public had a better opportunity to attend the meetings.

There also was discussion regarding having a spokesperson for a group and allowing them a greater than 3 minutes of speaking time if they were representing a group of people who shared similar ideas and thoughts. Discussion ensued regarding how many people constituted a group and would it cause more disruption to tell a group of people that they have to come up with a spokesperson. The idea of a group spokesperson is good but the execution needs some more thought. They decided to see how it goes and if needed they can suggest or make changes to the by-laws. The point of a spokesperson is to eliminate eight people standing up in a row and state the same concern. It could be problematic to offer more time to a spokesperson since he is speaking on behalf of others than to an individual speaking.

Buitenwerf will create a new draft, run it by legal counsel and bring it to a future meeting for the Board's thoughts and comments.

#### **Miscellaneous:**

Krueger asked about any training opportunities that are coming up in the future.

Buitenwerf stated that he hasn't received notice of any yet but typically AMC puts on a training seminar in March. He hasn't heard that it has been scheduled yet but also hasn't heard that they won't be doing it this year. As soon as he knows he will let everyone else know.

#### **Communications:**

There were no communications to discuss.

#### **Adjournment:**

Christenson moved to adjourn. Christianson seconded the motion that carried unanimously.

The meeting was adjourned at 8:04 p.m.

Respectfully submitted by:

Maria Shepherd  
Recording Secretary

**Hubbard County  
Planning Commission**

February 24, 2014 meeting minutes

Chairperson Krueger opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson, Arne Christianson and County Commissioner Greg Larson. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and read through the meeting procedure.

**Approval of Minutes:** January 24, 2014

Grob moved to approve the minutes as presented. Christianson seconded the motion that carried unanimously.

**Old Business:**

There was no old business to discuss.

**New Business:**

**Conditional Use Permit 1-CU-14 by Tim and Deb Skadberg:** Part of Government Lot 10, Section 35, Township 141, Range 34, Lake Emma Township on Lake Ida. Parcels: 16.35.02800, 16.35.02900, 16.35.03000, 16.35.03300, 16.35.03400, 16.35.03600, and 16.35.03700. Applicants are requesting a conditional use permit per Section 401 of the Shoreland Management Ordinance to operate a resort commercial planned unit development.

Dani Ondracek, authorized agent, was present and presented the application for the applicants. She gave a brief explanation of the request. The Skadbergs purchased the property and want to operate it as a small resort. They didn't realize that the conditional use permit had expired so they are just trying to get it back up and running the way it used to be. They have put a lot of time and money into fixing the place up. They have made some changes after meeting and speaking with Environmental Services such as changing the docks and moving the campground from where it is currently located to northeast of the property where it was suggested. There will be seven cabins and four RV sites with full hook-ups.

Grob had questions regarding the well that currently exists. He wondered if the well will service cabin 7 or will there be a specific well just for the cabin.

Dani stated that she wasn't sure what the plan was for the existing well. A new well is being installed to service the home and she thought that one would also service cabin 7. They aren't planning on using cabin 7 until 2015 and the new well will be installed prior to that.

Grob asked about the current campsites. Currently where they are located, there is electricity.

Dani stated that the campgrounds will be moved to the northeast of the property. They will have full hook-ups at that time. Their intent is to abandon and not use the existing sites. The new camp sites will be in place and usable in 2015.

Grob stated that he would like to see that as a condition if this is approved that the current campsites be abandoned and not used during the 2014 season as well as cabin 7.

Grob asked if there was a launch site on the property.

Dani couldn't remember from when she was out on the property during the summer, but she didn't believe there was a boat launch.

Grob wants a stipulation that if there is a launch site, it be shut down and not be used by guests. The guests have the option of using the Big Sand or Little Sand launch sites which are nearby.

Kruger asked if the intent was for all of the seven cabins to be seasonal and, if so, what would their operating season be.

Dani stated that the cabins are all seasonal and would operate from May to October.

Krueger asked about the septic systems on the property. A new septic system was just installed, but from what he recalls there are still at least two more that need to be permitted and installed.

Buitenwerf stated that the property had three nonconforming septic systems on it. One of the systems was upgraded and installed this past fall. The other two systems have approved designs on file with Environmental Services, but no permits have been issued yet. The proposed campground does not have a design in place, but current Environmental Services staff that handle septic matters is confident that there is suitable soil and space for an appropriate design for the campground when they decide to pursue it. He stated that one of proposed conditions speaks to this matter that before the campground can be operated, a new septic system would need to be installed and inspected.

Commissioner Larson asked if the existing resort has been nonoperational.

Dani stated that her understanding is that when the Skadbergs purchased it, they didn't find out that it wasn't an operating resort until after they purchased it, but she thought that it had been a few years.

Commissioner Larson asked if a conditional use permit was ever issued on this property.

Buitenwerf stated that it had not. The use was grandfathered in until the use lapsed for a period of twelve months or more.

Christenson stated that when they were out on site for the viewal, it appeared that where the new campground would be placed was the best possible spot. It could be seen from County Road 7 from both sides.

The meeting was opened for public comment.

Doug Kingsley, Minnesota Department of Natural Resources-Division of Fisheries, spoke on the dock situation. The Shoreland Management Ordinance states that all shore recreation facilities should be centralized and located in suitable areas. He felt that two of the proposed docks as well as the swimming area are in a suitable area and centralized. The third dock that is being proposed on the northwest corner of the peninsula doesn't meet the definition of centralized. The purpose of the Ordinance requiring that centralization is to minimize the amount of shoreline that is developed or disturbed and to maximize the amount of natural, contiguous shoreline that remains for aquatic use. In addition, the ordinance also states that launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for dwelling units or users of other tiers. To his knowledge, there is no launching ramp where the third dock is being proposed so he doesn't feel that the dock meets the requirements of the ordinance. He recommends that if there is a launching ramp that needs a small dock for loading and unloading, that it is located along with the other two docks and not in a separate location.

With no other public comment, that portion of the meeting was closed.

Johnson stated that the Department of Health will need to inspect the resort when a license is applied for. When the resort lost its nonconforming status, it now has to meet the codes and standards as if it is a brand new resort. He is concerned that the cabins, since they are a little older, might not meet today's standards for bathroom or bedroom sizes. He was apprehensive about granting approval for something that might need a bunch of variances for remodeling the cabins before it can be operational. He felt that a condition should be placed, if it is

recommended for approval, that the operating permit will not be issued until the resort passes the Department of Health inspection.

Grob asked if an inspection was required before a final operating permit was issued.

Buitenwerf stated that the office did not do an inspection prior to issuing an operating permit unless there was a condition that was placed on the permit that would require it.

Grob wanted to comment on the public comment that was made regarding the third dock. He had similar thoughts when he was looking at the third dock. The applicants do have a right to have a day use dock and his view is since there wouldn't be a launch site for guests, they are most likely to launch out of the Big Sand Lake launch site and it would be closer access for them to park at the dock on that side of the peninsula than to have to come all the way around to the other side. It is not consistent with the centralization language. It is the best use in this case.

Grob moved to recommend approval of the application with the following conditions:

1. This conditional use permit (CUP) is for the operation of the entire premises as one resort commercial planned unit development 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. This resort use can only operate within the months of May through October each calendar year – as proposed in the CUP application.
3. The following rental unit density is allowed: existing cabins 1-7 (as labeled in the application) in Tier 1 and four new RV sites in Tier 2 in the location shown on the application site plan sketches. Any changes to the number, size, and type (i.e. stick-built construction vs. RV sites) of these rental units can only be made through an amendment of this CUP condition.
4. Three docks are allowed to be installed/operated as shown on "Exhibit B3" in the application. The dock on the northwest corner of the peninsula on which the resort is located is solely for the use of Tier 2 rental unit guests and shall be used for day-use (launching/retrieval) only. No permanent watercraft mooring on this dock is allowed. The two docks shown on "Exhibit B3" as being on the south side of the peninsula are solely for the use of Tier 1 rental unit guests and two Tier 2 RV sites and may be used for permanent watercraft mooring. Only one watercraft per allowable Tier 1 rental unit can be moored at these two docks. A maximum of three watercraft slips can be placed on the westernmost of the two docks. A maximum of six watercraft slips can be placed on the easternmost of the two docks.
5. Guest vehicle parking shall be located behind (non-lakeside) Cabins 1-7 and within the RV site area. Boat trailers must be parked in the designated area located immediately south of the RV campground area in Tier 2 whenever they are not actively in use for launching or retrieving watercraft.
6. Fifty percent of the property's shore impact zone (~438') in the area labeled "natural area" on the application sketch labeled "Schedule B1" must be preserved in its natural state.
7. The nonconforming subsurface sewage treatment systems (SSTS) on the property must be properly abandoned and replaced/upgraded with new conforming SSTS before the CUP operating permit will be issued.
8. The SSTS for Cabin 7 (located east of Grouse Road) and the four RV sites in Tier 2 must be properly sized for the proposed uses, installed, and receive certificates of compliance before Cabin 7 and the four RV sites can be habitated and rented.
9. The current RV campsites must be abandoned in 2014.
10. No boat launch site is allowed on the property.
11. The CUP operating permit shall not be issued until Minnesota Department of Health licensing approval is obtained.

He also moved to adopt the findings of fact as presented in the February 24, 2014 Planning Commission/Board of Adjustment meeting staff report.

Christenson seconded the motion.

The adopted findings of fact are as follows:

1. Is the requested use consistent with public health, safety, and welfare? YES (X)

Why or why not? A resort commercial planned unit development is allowed on Lake Ida (a natural environment lake classification) as a conditional use permit per Section 401 of the Shoreland Management Ordinance. The conditions being placed on the permit address any public health, safety, and welfare concerns that were identified during the application review and hearing process. The use is also a recommencement of a historic resort use that took place on the property so there is past history on the property that such a use can be congruent with public health, safety, and welfare.

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

Why or why not? No land alterations are proposed to the bulk of the property. The only proposed alteration will be to clear and develop the area in Tier 2 for the four proposed RV sites. This area is relatively flat, ~600' from Lake Ida, and separated from the lake by dense forested land such that any runoff from the campground area will be treated and absorbed into the ground well before it reaches the lake.

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

Why or why not? As mentioned in the answer to question 2, the only alteration to the property from its current conditions will be for the proposed RV campground. The campground's topography will not be altered. Trees will be removed for the campground, but it is a small area of alteration compared to the size of the rest of the property and the fact that much of the surrounding area is in and will remain in forested cover. The property's soil types are sufficiently drained such that the new campground area stormwater runoff should be able to be absorbed by the soil and surrounding forested area. The rest of the property will be used as a resort in a way that is very similar to how the property was used in the past as a resort and there is no discernible evidence of adverse impacts to the property's topography, drainage features, or vegetative cover from the previous resort use.

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

Why or why not? There are no FEMA-designated floodplains in Hubbard County.

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)

Why or why not? The portion of the property where there are steep slopes is covered in forest and will remain in such cover. The campground will be placed on a flat area in Tier 2 that is surrounded by timber and ~ 600' from the lake. The portion of the property that is already developed with cabins from the past resort use has not shown signs of any erosion problems associated with this previous use which is a reasonable gauge to use in saying that the proposed recommencement of such use will likely not have any deleterious erosion potential.

6. Is the site in harmony with existing and proposed access roads? YES (X)

Why or why not? Only one new access road is being proposed for the new RV campground. This access would come off of County Road 7 and will be located on a straight stretch of the highway that has a consistent and fairly level grade such that visibility and sight lines for guests entering/exiting the campground and other traffic on the highway should not pose a safety concern.

7. Is the requested use compatible with adjacent land uses? YES (X)

Why or why not? As previously mentioned, the proposed use is a recommencement of a resort use that historically occurred on this property. No evidence has been presented or discovered that showed this past resort use was incompatible with adjacent land uses. Most of the surrounding area is in residential use, but there is a longstanding commercial restaurant/bar use within ~400' of the southern end of this property that sees a large volume of traffic. Thus, the area has a blend of residential and commercial uses that have co-existed together for several decades.

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

Why or why not? A resort's draw for customers is its proximity and access to a water body – primarily a lake. Without such water proximity/access, a resort would not have much draw for or appeal to customers. Thus, to stay in business, a resort needs to be located in a shoreland area.

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

Why or why not? One of the three identified nonconforming SSTS on the property has already been upgraded. Approved designs for upgrading the other two nonconforming SSTS are on file with the department and ready for permits to be obtained. The RV campground does not yet have a SSTS design on file for it, but departmental SSTS staff consider there to be sufficient space, slope, and soil type in and around the campground area that they are not concerned about any problems arising when it becomes time for this SSTS to be installed. There also is additional room on the property for alternate drainfield sites to be installed if/when that need ever arises.

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

Why or why not? The campground will be located in Tier 2 ~600' from the lake and separated from the lake by dense forested area so it will not be visible from the lake. The existing cabins along Lake Ida do have some trees and miscellaneous vegetation scattered amongst them and they predate the ordinance.

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

Why or why not? As mentioned in the answer to question 9 above, there is sufficient room, slope, and soil type for the necessary SSTS to be provided. There is an existing water supply for the existing cabins that appears to be performing satisfactorily. This water supply is proposed to be used to provide water supply to cabin 7 across Grouse Road and to the RV campground.

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)

Why or why not? The proposed use is legally allowed to have one permanent watercraft slip for each rental unit allowed in Tier 1. Nine rental units are allowed in Tier 1 so nine permanent watercraft slips are allowed for the use of Tier 1 rental unit guests. The use is also allowed a separate dock for day use only (launch/retrieval, no mooring) by Tier 2 rental unit guests. Such a dock is included in the application. Lake Ida is a small ~70 acre natural environment lake with a large amount of shallow littoral area and not much open,

deeper water. However, it is connected by a channel to Big Sand Lake which is a much larger recreational development lake. Big Sand Lake is ~1/2 mile from the resort. (The application mentions the number of proposed watercraft, but not the types or proposed uses. Thus, the department recommends asking the applicant for this information during the meeting process and then finalizing the answer to this question accordingly.)

The motion passed unanimously.

The Planning Commission portion of the Planning Commission/Board of Adjustment meeting was closed at 6: 27 p.m.

DRAFT

**Hubbard County  
Planning Commission**  
March 24, 2014 meeting

Chairman Krueger opened the meeting with the following members present: Charlene Christenson, Tom Krueger, Tim Johnson, Arne Christianson and County Commissioner Greg Larson. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and went through the meeting procedure.

**Approval of Minutes:** February 24, 2014

Christianson moved to approve the minutes as presented. Christenson seconded the motion that carried unanimously.

**Old Business:**

There was no old business to discuss.

**New Business:**

**Ordinance Amendment Application:** Shoreland Management Ordinance amendment application request per Section 401 – proposed event center/assembly hall conditional use on recreational development non-riparian lots.

Brent Nicklason was in attendance and presented the application. The property that the applicant is purchasing and wishes to have an assembly hall/event center on is within 1000 feet of Lake Belletaine. Currently, the use is not mentioned in Section 401 of the Shoreland Management Ordinance and therefore is not allowed within the shoreland zoning district. He would like to amend the Ordinance so that such a use would be allowed with a conditional use permit on recreational development, non-riparian lots. There are a lot of similar types of uses currently allowed such as churches, bars, and restaurants, but nothing that encompasses everything they are looking to do. He considered his use a hybrid of those uses. When the structure is in use, there would be a higher volume, but the use would be intermittent. It would not be a continuous use.

Krueger asked if a license would be applied for under the mass assembly ordinance.

Nicklason wasn't aware, until a few moments ago, that the County had a mass assembly ordinance. From what he had read of it, his understanding was that a mass assembly permit would be needed if there was going to be more than 300 people for greater than 8 hours at a time. He asked who administered the ordinance or of whom he would ask his questions.

Buitenwerf stated that the mass assembly ordinance is administered by the Sheriff's Department. He answered that they would be the ones to speak to regarding the logistics of the permits needed and how to go about obtaining one.

Larson stated that the rules of the mass assembly are pretty broad stating more than 300 people for more than 8 consecutive hours.

Johnson asked, if the business does well, how many people he would like to allow on the property.

Nicklason stated that the current building on the property is only so big. An addition is always a possibility if the business does well, but currently 300 people would be pushing the limits of what the current building could handle. He stated that he had heard comments that a worry was that this would turn into a Moondance Jam in Park Rapids and that isn't his intent at all. His vision is more for weddings, and anniversary or birthday parties that would last less than 8 hours.

Krueger asked if a new structure would need to be built.

Nicklason stated that the building was already built. He would utilize what was currently on the property.

Krueger asked where the property he is purchasing was located.

Nicklason stated that it was just west of Nevis, just past the city limits. He stated that half of the building was within 1000 feet and half of it was not, but because half of it is within the shoreland jurisdiction, this amendment is needed for him to utilize the building as an assembly hall or event center.

The floor was opened up for public comment.

Kevin Lindow gave public comment. He spoke that he was in favor of what they were trying to do for the community. He is from Nevis and thought that it was a really good idea. He asked if it was simply for this property of it if would be allowed for any property that met the restrictions and guidelines that were set.

Nicklason stated that the application was to allow this use for any recreational lake non-riparian lots that were within 1000 feet of the lake.

Lindow asked if there was proposed language or if this was simply the first step.

Buitenwerf stated that this basically getting things rolling. Mr. Nicklason has made a proposal that now the Planning Commission and County Board will consider. Language for the use, if allowed, will have to be created and definitions made.

Lindow followed up stating that he was in favor of the amendment.

The public comment portion was closed.

Johnson asked Buitenwerf if a definition would need to be adopted for this use.

Buitenwerf stated that if the Planning commission was in favor of recommending approval of this change, it would be up to them to come up with the language and definitions for this use. It could be all done tonight or it could be sent to the Board to see if they were in favor of changing the Ordinance. The Board then-if in favor-would pass it back to the Planning Commission to create a draft of the language they would like to see and make a recommendation back to the County Board.

Krueger felt that it was best not to rush into this. He felt that they should first make a recommendation to the County Board to see if they are interested in this change before the Planning Commission goes into all of the work of coming up with language for the use.

Christenson stated that she had some concerns with allowing this change to the Ordinance. She spoke of another situation, not in Hubbard County, where a similar use like this was allowed and it disrupted and disturbed what used to be a quiet residential neighborhood. People in the neighborhood were upset because they had purchased a home in a quiet, peaceful neighborhood and it all changed. She asked-if the ordinance was amended-if a similar situation could happen in Hubbard County.

Buitenwerf stated that with what is proposed, there is that potential. He stated that the Planning Commission should recommend certain performance standards be written to mitigate any public health and safety concerns from this type of use.

Krueger thought that bars and restaurants were already on the list of allowed uses within the shoreland zone.

Buitenwerf stated that currently bars and restaurants are allowed with a conditional use permit on all lake classifications and most river segments.

Christenson stated that she was just looking ahead for future use. The location the applicant is referring to wouldn't be an issue. She was concerned about the next time someone wants to have an event center or assembly hall that is in the middle of a quiet, peaceful residential neighborhood. Allowing this use could cause a disruption.

Nicklason stated that by amending the ordinance, it isn't a free rein for everyone and anyone. It would be subject to applying for and being granted a conditional use permit and would be considered on a case by case situation.

Krueger stated that he felt that was the reason it would be a good idea to take time when drafting the language so that it isn't done too quickly and without much thought.

Johnson recommended approval with the following conditions: 1. the use would only be allowed on recreational development lakes and non-riparian lots and 2. the lot must not exceed the 25% impervious surface calculation.

Christianson seconded the motion.

The motion carried on a 3 to 1 vote with Christenson voting nay.

**Preliminary Plat of West Portage Estates** by Portage Investments, LLC: applicants are requesting to plat 15.26 acres in Todd Township into six residential lots. Parcel: 27.05.02420.

Victoria Moen and Allan McGill, Portage Investments LLC, were also in attendance.

Kevin Lindow, authorized agent for the property, was in attendance and presented the application. The preliminary plat is for six proposed, non-riparian lots located in Todd Township near Portage Lake. There is no interior road for the plat being proposed. The property has township roads on the south and west boundaries for access. The proposal at this time is to have individual driveways and approaches for each of the six lots.

Christenson stated that on the original preliminary plat, it showed shared approaches and driveways. She was wondering if the applicant would explain the reasons behind the change.

Moen answered that when they first sought advice on the process, it was recommended that the township as well as the County would like to see shared driveways. They then later realized that there was enough room on each lot to have individual driveways and meet the township's ordinance requirements. Their original thought and plan had been to have individual driveways. They felt that changing it to individual driveways was the best way to go considering all of the other issues that could come up with shared driveways.

Krueger felt that there were good reasons to have shared driveways instead of individual driveways from a safety standpoint.

Lindow stated that the amount of traffic for six lots will not change regardless if there were three shared driveways or six individual ones.

Krueger stated that there would be the same number of cars, but with a reduced number of entry points, it would be safer on a busy township road.

Moen stated that last year, 210<sup>th</sup> Street decreased the speed limit from 55 miles per hour down to a 30 miles per hour road. That fact in itself did a lot to add to the safety and well-being of everyone on that road now that it is considered a residential area.

Christenson stated that Mr. Olsonawski, Engineer for Hubbard County, advised that shared driveways be utilized.

Johnson asked if the ordinance required shared driveways or if individual ones were allowed.

Buitenwerf stated that the Ordinance doesn't state it one way or the other. It is within the County's right to require shared approaches if felt necessary for public health, safety and welfare.

Lindow stated that the problem that the township had with the shared township driveways is how they enforce, from a legal standpoint, of who pays for what. The first person that buys a lot and wants to build an approach would have to take out a permit through the township and build the approach to the township's standards such as 20 feet wide and, if coming out onto a paved township road, the right-of-way of the approach also has to be paved. Then later on when the adjoining property lot sells, the approach is already there and the township feared that the original landowner is going to come back to the township and want to be reimbursed for half of the cost of the approach if the second landowner decides he isn't going to pay his half of the approach since it is already existing. The township didn't want that liability to fall on them. After it went to the Township, it went back to square one. In his opinion, there is an ordinance in place that governs how the approaches are to be built and the specifications needed so if everyone is responsible for their own driveways, it takes care of the liability to the township.

Krueger asked when the township required that the shared approaches be put in.

Lindow explained that they either needed to be put in now or before the final plat would be signed off on or the money to do so needed to be set aside in an escrow account so that it could be done in the future.

Moen stated that after they were told the approaches needed to either be installed now or the funds put aside to do so at a later date, she spoke with the attorney for Todd Township. She states that the attorney stated that wasn't the right way to approach the issue. The ordinance isn't designed to enforce that.

Krueger felt that shared driveways are still the safest way to go.

Moen stated that they had no idea who is going to purchase the property or how much of available land would be purchased at once. They didn't feel it was right to have to spend the money and put in paved approaches if the lots didn't sell the way they think they will.

McGuill commented that these lots might not sell for many years or someone could come in and purchase the whole parcel as one.

Krueger asked if this plat were approved as individual driveways then the township wouldn't require that they be installed right away or money be set aside, but if shared approaches and driveways are used, then they either need to be installed now or the funds set aside.

Moen said that if it is approved with the individual driveways, then each person would be responsible for their own driveway permit and for building it to township standards.

Krueger stated that in other words the driveway wouldn't need to be installed until the actual lot sold.

Moen answered that was correct.

Lindow stated that was the case if there were individual driveways utilized. If the idea of shared access points is enforced, then the approaches will need to be installed before the final plat is approved or the funds to cover the approaches will need to be put in an escrow account.

Christenson asked Buitenwerf if the County could place special assessments on a lot so that if a person had to pay for an entire driveway and approach when the neighboring lot was sold, the first homeowner would get half of their money back.

Buitenwerf stated that is not something the County would do.

Lindow stated that the township doesn't want to get into that as well.

Moen stated that the attorney doesn't want the township to run into that as well. Her hope is that the preliminary plat can be approved with individual driveways so that the responsibility lies solely with the individual property owner. The township has an ordinance in place to protect them for single driveways.

Lindow stated that each driveway has to maintain 100 feet of spacing in-between. It is a residential neighborhood. The road isn't a well traveled road and it helps that the speed limit was reduced from a 55 mile per hour speed zone down to a 30 mile an hour speed limit. As far as safety is concerned, he has been out on the site flagging the lot lines for the plat and a car might pass by every 25 minutes or so. He didn't see that there would be a safety concern with the driveways as proposed.

Johnson stated that when he was on site there was a good view up and down the road. It is a straight road. He didn't disagree with the plat having individual driveways.

The meeting was opened for public comment.

James Gorentz, who lives right across from the proposed development, made public comment. He stated that in the staff report it stated in one sentence that there were six proposed lots and later down in the document it states seven lots. He assumed it was six and that the seven was a typo. He strongly supports the current ordinance that states a minimum of 5 acres per parcel. There are variance issues with developing this property. The purpose of the law is to protect injury to third party people. There would be serious adverse cost to the current homeowners. Everyone purchased their properties out there under the umbrella of the current law thinking that would afford them the natural environment that was provided for them. He isn't opposed to the economic gain of the developers at all nor is he objecting to having neighbors, but he does object to the environmental injury with that many buildings being placed so close together. Along with the environmental injury, there will also be a loss of privacy. Many of the neighbors were drawn to this area and land because of the privacy; if he had wanted little to no privacy, then he would have purchased a home in town. He felt that this development and loss of privacy will cause a future problem when it comes time to retire and if a home would need to be sold, it will hurt the values with having a development with six homes so close in proximity. He restated in closing that he very strongly supports the 5 acre minimum that is in place for lots due to the losses the neighbors would have if this is developed.

Krueger informed Mr. Gorentz that these lots do meet the lot size requirements under the ordinance. He explained that this isn't a variance application.

Gorentz didn't realize the application wasn't asking for a variance for smaller lot sizes. He stated he was slightly misinformed.

Ken Keller, another neighbor down the road, made public comment. He asked which township road these proposed driveways were coming out on.

Krueger showed him the plat and where the proposed driveway locations would be. There would be four driveways coming out onto 210<sup>th</sup> Street and two driveways coming out onto Finch Drive.

Keller stated that he supports what Mr. Gorentz said. He likes the area natural and felt that it seemed like a small housing development going in there.

Alan Kriz asked if under the ordinance they are allowed the six lots, but the real question was whether the driveways should be individual or shared.

Krueger stated that all of the lots meet the size requirements of the ordinance. The Board is trying to weigh in on if individual driveways or shared driveways are appropriate. The development itself meets all of the requirements of the ordinance.

Kriz stated that he was not against anyone making money, but it would be nice if the land stayed natural. Times do change. We used to plow with horses and plows and we obviously don't do that anymore. He isn't totally against neighbors coming in, but it would have been nice to see the lots at a 5 acre size instead.

Linda Downes made public comment. She is a single woman who has lived in her home for the last eleven years. She built a small log home on her property. She stated that if she had wanted to live in a residential area, she would have purchased a lot in town. She chose the property she bought because of the quietness, safety and privacy. She is sad that it is going to change. There is a reason why she moved 5 acres out of town and into a secluded, wooded area. She didn't realize that the platting of the lots was allowed, but what was in question was simply the location of the driveways. She didn't realize there wasn't anything she could do to change this from happening. She believes this will change the whole area which upsets her because she truly loves where she lives at.

The public comment portion of the meeting was closed.

Lindow stated that the ordinance allows for individual driveways. There isn't anywhere that states it can't be individual or that the driveways have to be shared. He didn't realize the Board has the option of requesting shared accesses since it didn't state that anywhere in the Ordinance. He stated that if the County Planning Commission says they want to have shared accesses for this plat, then that will trigger the township from having to request the same thing. The applicants don't know if these lot are going to sell so to be made to put in the approaches now before the final plat would be approved doesn't make a lot of sense.

Krueger stated that the Board does have the ability and right to address any and all issues pertaining to the public safety, health and welfare.

Christenson asked for more clarification on the driveways. Her understanding is that if they are individual driveways, then the township is willing to allow these driveways to be installed once the property is sold, but if they are shared driveways, then the township would require the approaches to be installed now.

Lindow stated that was correct.

Moen corrected that was what was originally told to them, but after talking to the attorney for the township, she stated that the attorney informed her that the township wouldn't be able to enforce that the driveways be installed prior to the lots selling.

Lindow stated that the approaches will either be required to be built now or have money put away in an escrow account that will cover the costs of installing these approaches to the township ordinance.

Krueger didn't feel that it was right to have their hands tied by what the township wants. He felt that if the Board feels shared accesses are the better way to go, then that is what should be recommended regardless of what the township is okay with.

Johnson asked if the township would need to approve this plat and if that approval had been obtained in writing yet.

Buitenwerf stated that written township approval is required before the County is able to act on the final plat. Typically the county wants to get the township to give written evidence of their granting preliminary approval prior to the County taking action, but that hasn't been received yet but statutorily they are not required to provide approval prior to final plat approval by the County.

Krueger asked Commission Larson what his thoughts were regarding how the County Board will feel regarding shared accesses.

Commissioner Larson stated that he wasn't entirely sure. It is a discretionary thing. He didn't think that if shared accesses were needed they would have to be installed right away or before the lots are able to be sold. He stated that there is a similar situation close to Big Sand Lake and they have shared driveways.

Krueger agreed that it isn't an uncommon thing to see with plats. He had been on the Planning Commission a number of years and quite often shared driveways are required.

Lindow stated that the situation that Mr. Larson was describing is a high traffic county road with curves and a speed limit of 55 miles per hour. This road is very different. It is a township road that is straight and has a speed limit of 30 miles per hour.

Johnson recommended approval to the County Board of the plat as presented with individual driveways.

Christenson agreed that the road is flat and has good visibility. She seconded the motion.

The motion carried unanimously.

The Planning Commission portion of the meeting was closed at 6:50 p.m.

Minutes respectfully submitted by:

Maria Shepherd  
Recording Secretary

**Hubbard County  
Planning Commission**  
April 28, 2014 meeting minutes

Chairperson Krueger opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson, Arne Christianson and County Commissioner Greg Larson. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and read through the meeting procedure.

**Approval of Minutes:** March 24, 2014

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

**Old Business:**

There was no old business to discuss.

**New Business:**

**Section 401, Shoreland Management Ordinance Amendment:** Proposed language for event center / assembly hall conditional use on recreational development non-riparian lots.

Krueger stated that the purpose is for the Board to have an open discussion to draft language and provisions to allow an event center within shoreland zoning. Public comment will be heard but no presentation will be made by a specific person.

Grob felt the most important thing is to protect the privacy of the existing lakeshore owners and not allow situations to occur where someone could build an event center and through another property gain easy access to the lake. When the language was drafted for churches, a similar discussion took place regarding not allowing lake access to the church and he felt the same standard should apply to this particular use. Churches are limited to the third and fourth tiers, on non-riparian parcels that do not have access to a lake, river, or stream or through any controlled access or easement. He felt that the Board should adopt Sections 402.10.A and 402.10.B of the Shoreland Management Ordinance as well as the list of other provisions that were recommended in the staff report. The same standards should apply to an event center use as a church. During the summer, this type of business could be very busy and have events going on almost every weekend and if it is only 500 feet away from a lake, it has the potential of disturbing neighbors. He felt that screening issues and noise prevention would be addressed with each individual conditional use permit that would come before the Board since each location will be different.

Christenson stated that she agreed with what Mr. Grob was saying. Her main concern at the last meeting was infringing upon the residential neighborhoods. She felt that they needed to be respectful of those who have already purchased lake lots and have homes on the lake. She agreed that the two additional conditions that Mr. Grob recommended should be added.

Grob stated that the intent of this use, in his mind, is a building and place for wedding receptions, anniversary parties and events such as that. He wanted to know if the language or definition would restrict a continuous use such as the same people having a garage sale every weekend.

Christenson answered that in some of the examples that were provided by staff, continuous uses were addressed. Conditions could be placed similar to the language in the residential language that would restrict the number of days of operation during a calendar year if the Board so chooses.

Grob commented that he doesn't want this to turn into a commercial sale or garage sale type of building. It should be restricted to the use in which it is intended; limited time events.

Krueger asked Mr. Brent Nicklason (who submitted an ordinance amendment application proposing the addition of an event center use to the Shoreland Management Ordinance) what his thoughts regarding the conditions that were proposed in the staff report were.

Brent Nicklason stated that he would like the event center definition that the staff report recommends. He felt that definition was the best fit with what his intent and use of the building will be.

Christenson asked Mr. Nicklason if there would be occasions where a tent would be placed on the property for outdoor use.

Nicklason stated that it is possible, but he felt that it would make more sense to build a pavilion instead of a tent. To him it would look more attractive and be less of an eyesore.

Grob felt that the activity should be contained inside just so that the noise wouldn't be bothersome. Outside activity has the potential for noise problems and complaints. Outdoor activities usually contain music and depending on the time the use is going on neighbors will be bothered. He was thinking on a bigger scale than just what Mr. Nicklason is proposing. The potential for more people in the future that want to build and create additional event centers is there and the Board needs to do what it can to focus the activities indoors.

Nicklason stated that there could be conditions that state no outdoor activities allowed after a certain time.

Grob stated that the purpose is to come up with language to allow the use along with some reasonable conditions and when a conditional use permit is applied for, then specific conditions could be placed based on the property location, location of neighbors and intent.

Krueger asked Mr. Nicklason how he felt about the condition regarding only allowing this use in the third and fourth tiers.

Nicklason asked how far out third tier was from the lake. He knew there were tiers within lakeshore, but he didn't know where the property he has in mind for this use was located in regards to those tiers.

Buitenwerf explained that on a recreational development lake the first tier extended to 267 feet, the second tier is up to 534 feet and the third tier is up to 801 feet.

Grob thought that the property in question was almost 1000 feet back from Lake Belletaine, but he stated that this isn't being catered, nor should it be written directly for Mr. Nicklason, but he did state that since Mr. Nicklason is the one who proposed this change, it wouldn't be right to box him out either.

Krueger asked for other Board members' input regarding what tiers to allow this use in.

Johnson felt that simply stating that it was for use on a non-riparian lot was okay with him. It didn't need to be exclusive for use in the third and fourth tiers.

Grob commented that simply using the term non-riparian could mean a lot that is only 100 foot deep which would allow a commercial use within 100 feet of a lake.

Johnson countered that a conditional use would still need to be applied for and approved so the location of the property would create different conditions depending on how far away from the lake it is.

Grob was adamant that the tiers one and two have a greater possibility of having neighbors on both sides and private residences. This is all discussion that took place when this same section of the Ordinance was amended to allow churches. He felt that if the Board didn't want to allow churches in the first and second tiers, then it would only make sense to not allow an event center in those tiers as well.

Krueger opened the floor for public comment.

Chuck Diessner made public comment. He stated that he liked the comments that Mr. Grob was suggesting, but he felt that it should be taken one step further and that the Board should consider that the location has to be beyond the third tier. The reason being that when the discussion came up on restrictions on churches, which is a completely different type of use, a much quieter type of use, it was restricted to third and fourth tiers. A church is used one or two days a week. This is a business. As a lake president, he wouldn't want to have a facility like this located 500 feet from the lake. The water is going to carry the noise. The restrictions on the church were great. They protect a lot of people. His suggestion is because of the nature of this use, it should be more restrictive than a church and be further back from the lake.

Commissioner Larson asked Mr. Diessner if the noise and traffic were the main concerns. He asked if there were any concerns that were environmental in the sense of the earth. He didn't feel that the use itself was offensive to the lake.

Diessner stated that those were the main concerns. He stated that more stringent conditions would be and could be placed on a conditional use permit application. He didn't think that it was in the County's best interest that any commercial facility that is planning on outdoor activities be any closer than 801 feet.

Nicklason stated that the County already does allow bars and restaurants to be directly on a lake lot that has riparian access. He didn't feel it was fair to allow those uses and yet restrict this type of use back 801 feet from the lake.

Lindsey Nicklason stated that the property they are proposing to use is on the opposite side of Highway 34, away from the lake. The property owners that are on Lake Belletaine have a busy highway behind them so there is already traffic noise.

Christenson stated that this language needs to be universal and applied for the entire County and not just for the lot that is in question.

Grob stated that there are existing businesses that have been around, in some cases even before the Ordinance, that had they applied for a conditional use permit today, they more than likely wouldn't have been allowed to be located so close to the lake. The Board is trying to look forward. It isn't what has historically been allowed, but rather the Board looking forward to protect existing residences that might be affected by something like this being built and protect the lake.

Gary Nickalson made public comment. He felt that by limiting the activities, such as stating that there could be no outside activity unless they are in the third tier or further back or not allow outdoor activities past a certain time, would protect neighbors. There will be people who want to have a wedding outdoors. That is a daytime activity. Maybe it is just the night activities that need to be restricted.

Grob responded that it is almost impossible to put all of these little conditions into the draft language for the Ordinance. Almost all of the other things that are being discussed could be addressed per each individual conditional use. The Board is trying to create language that would allow this type of use within lakeshore zoning since as of today it isn't an allowed use. If the language reads that it is only allowed in the third and fourth tiers, at least the use is allowed. A person can always apply for a variance if their property isn't located completely in one of those tiers.

Johnson thought that one of the findings of fact for a variance states that the Board can't be the cause of a variance.

Grob countered that they wouldn't be responsible nor the cause for a variance.

Kerry Swenson addressed the Board. He agreed with Mr. Grob, but wanted to address the comment about protecting citizens. He stated that he didn't get to screen who his neighbors are and his neighbors probably have a louder event center going on in their yards every weekend then this will be. He stated

that Mr. and Mrs. Nicklason are a very responsible couple with young kids who will be living on the property next to this event center. They would be responsible with the noise and traffic. This language should address where an event center can be located and all of the other details needed to be addressed with each conditional use permit that would come before the Board. He thought this was an excellent thing for Nevis. It is fantastic that a young couple is staying in the area and creating business and opportunity in the town.

Kruger again stated that this was to create language to allow the use overall and not specifically looking at the Nicklasons' request.

Paul Schroeder made public comment. He stated he has a weakness for businesses and growth and young people being positive. He understands that this language isn't being catered just for the Nicklasons. There was a request similar to this that was presented to the City of Nevis that he shared with the Board. Bullwinkle's wanted to have an outdoor area for dinner and music which was brought before the city council. They were hesitant and gun shy about allowing it, but it has turned out to be nothing but positive. There were time limits placed on the outdoor activity that would protect the neighbors. It has been going on for years and not one negative comment has been made regarding it. The noise and the music will be the sticking points that need to be addressed. He is in favor of growth for the town and area.

Dwayne Dudley gave public comment. He asked if there was a time limit in the noise ordinance for the County. He thought it was 10 p.m. which seemed like a decent time that any outdoor noise after that cut off time had to be moved indoors.

Grob stated that he was in favor of an event center. He asked that his comments not be taken to show he is not in favor or supportive of such. Most of the discussion taking place now is a conversation that will take place when a conditional use permit is being considered. The issue was raised to amend the ordinance to allow a use that is currently not allowed. It is the Board's job to put the most reasonable constraints on it and once that is done, then a conditional use permit is applied for and more property-specific conditions can be placed on the permit.

The public comment portion of the meeting was closed.

Buitenwerf stated that the County does not have a noise ordinance nor are there any noise regulations in the Shoreland Management Ordinance. Currently the only noise regulations that he was aware of were at a statewide level that the Pollution Control Agency administers.

The Board had further discussion regarding the proposed language.

Krueger stated he agreed with Mr. Johnson on the distance and where to allow this use. He asked Johnson if he thought to allow the use in the third tier or simply state non-riparian lots.

Johnson stated that specifying that it be only on non-riparian lots was sufficient. He liked the suggested draft that was provided in the April 2014 Planning Commission/Board of Adjustment Staff Report.

Grob's concerns are still that the term non-riparian doesn't specify where in the non-riparian area this use can be. He felt that if the term non-riparian meant that it would be 250 feet back from the water, that would be specific enough, but non-riparian simply means that it doesn't have lakeshore.

Krueger thought that stating it has to be on a non-riparian lot would be sufficient because the rest can be addressed during an actual conditional use permit application.

Johnson understood where Mr. Grob was coming from, but felt that the distance back and other issues will be discussed in a conditional use application for a specific property.

Christenson felt strongly that it should be specified what tiers this use is allowed in. She expressed her concerns and experience at the last meeting regarding a similar situation in another County and felt that the more specifics that are placed right away the better. A definition will be set and preliminary guidelines in place. She wanted to see Mr. Grob's suggestions incorporated into what was recommended by the staff.

Christianson agreed with Mr. Johnson.

Krueger called for a motion.

Grob moved to adopt the language and conditions presented by the April 2014 Planning Commission/Board of Adjustment Staff Report with the addition of two other conditions labeled I and J that consist of Section 402, Item 10, subitems A and B.

Christenson seconded the motion.

The adopted definition, language and conditions are as follows:

**Section 111. Definitions as Used in this Ordinance**

**Event Center:** A for-profit facility consisting of multipurpose meeting and recreational facilities typically consisting of one or more meeting or multipurpose rooms, kitchen, and/or outdoor cooking facilities and/or outdoor meeting/recreational space, that are available for use by various groups for such activities as meetings, parties, weddings, receptions, and dances.

**Section 401. Permitted, Condition, Special and Non-Permitted Uses**

Use	Table 1				
	NE	RD	GD	SP	All other Rvr sgmnts
Event Center*	N	C	N	N	N

**Section 402. Special Provisions**

11. Event centers and related outdoor items must be consistent with the following provisions:

- A. An event center use requires a conditional use permit.
- B. An event center conditional use is only allowed on a non-riparian lot located in a Recreational Development (RD) classified management district.
- C. The event center property shall be served by a minor collector or higher functional classification of roadway (per the classifications shown on the official map of Hubbard County Ordinance No. 34), except that the proposed use may be served by a lesser functional class of roadway if the responsible road authority grants written permission for such use at the proposed location. Written permission from the responsible road authority is required to be submitted as part of a conditional use permit application.
- D. On-street vehicle parking is not allowed.
- E. Off-street parking areas shall be improved with a durable and dustless surface. Such areas shall be so graded and drained as to dispose of all surface water accumulation within the parking area in accordance with an approved stormwater management plan. Durable and dustless surface may include crushed rock and similar treatment. Parking areas for six (6) or fewer vehicles shall be exempt from this provision.
- F. Off-street parking areas shall be of sufficient size to provide parking for patrons, customers, suppliers, visitors and employees and shall provide one parking space for each three seats.
- G. A parking space shall be at least nine (9) feet wide by twenty (20) feet long. In considering parking lots, a standard of three hundred (300) square feet per parking space shall be used to

compute total requirements including maneuvering areas.

- H. Where any commercial use is adjacent to property zoned or developed for residential use, that commercial use shall provide screening along the boundary of the residential property. Screening shall also be provided where a commercial use is across the street from a residential zone or use, but not on that side of a commercial use considered to be the front as determined by the Environmental Services Officer. The screening required herein shall consist of fence, earth mounds/berms, trees, or shrubs. Plans for such screening shall be approved as part of the conditional use permit before the screening is erected.
- I. The event center use property must be located within tier three (3) or four (4) from the ordinary high water mark of a lake, pond or flowage or the landward extent of a flood plain designated by ordinance, whichever is greater.
- J. The lot or parcel on which an event center use is located must be a non-riparian lot or parcel that does not have access to a lake, pond, flowage, river or stream by a controlled access lot, easement or by any other means.

The motion passed unanimously.

The Planning Commission meeting was closed at 6:42 p.m.

Minutes respectfully submitted by:

Maria Shepherd  
Recording Secretary

**Hubbard County  
Planning Commission**  
May 27, 2014 meeting minutes

Chairperson Krueger opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson, Arne Christianson and County Commissioner Greg Larson. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and read through the meeting procedure.

**Approval of Minutes:** April 28, 2014

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

**Old Business:**

There was no old business to discuss.

**New Business:**

**Final Plat of West Portage Estates** by Portage Investments, LLC: Applicants are requesting to plat 15.26 acres in Todd Township into six residential lots. Parcel: 27.05.02420

Victoria Moen, Chief Manager of Portage Investments, LLC was in attendance and presented the final plat.

Krueger asked Mr. Buitenwerf if all of the requirements of the plat had been met.

Buitenwerf stated that requirements needed for the final plat have been provided and the township gave their approval on May 12, 2014. Everything is in order.

No written correspondence was received and no public comment given.

Johnson moved to approve the final plat.

Grob seconded the motion.

The motion passed unanimously.

The Planning Commission meeting was closed at 6:04 p.m.

Minutes respectfully submitted by:

Maria Shepherd  
Recording Secretary

**Hubbard County  
Planning Commission**  
June 23, 2014

Chairman Krueger opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, and Tim Johnson. Also present were Environmental Service Officer Eric Buitenwerf and recording secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and went through the meeting procedures.

**Approval of Minutes:** May 27, 2014

Christenson moved to approve the minutes as presented. Grob seconded the motion that carried unanimously.

**Old Business:** None

**New Business:** None

With no further business to address the Planning Commission meeting was closed at 6:03 p.m.

**Board of Adjustment**

**Approval of Minutes:** May 27, 2014

Grob moved to approve the minutes as presented. Christenson seconded the motion that carried unanimously.

**Old Business:**

There was no old business to discuss.

**New Business:**

**Variance Application 12-V-14 by David and Sandra Wingert:** Lot 3, Belletaine Westview Beach, Section 13, Township 140, Range 34, Nevis Township on Lake Belletaine. Parcel: 21.52.00300. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed upper, above ground level main floor addition to an existing nonconforming residential structure and a lakeside deck.

David and Sandra Wingert were in attendance and presented their application. They recently purchased the property on Lake Belletaine. They are interested in completing the main level of the home. It is currently a walk out basement that is located within the 100 foot ordinary high water setback. They are requesting a variance to complete the main level of the home. Currently, it is a one bedroom home and actually it isn't a legal bedroom. They would like to go straight up on the existing foundation. The neighbors on either side of them are very similar and started out this same way. They were allowed to build the main levels of the homes.

Krueger asked how many bedrooms were currently in the structure.

David stated that it was one big bedroom but does not have egress windows. It has the small basement windows that would be tough to scramble out of in case of a fire.

Christenson wanted to know if the applicant's plan was to put in egress windows if this variance is granted.

David stated that the basement would be left alone and use it as a basement and complete the upper level for living with two bedrooms. There is an existing patio on the lakeside. They hoped to do a deck that would be the same dimension as the patio with an access walkway on the South side of the house. They are planning on installing gutters and bring it to the South so that it would go out onto the lawn instead of dropping straight off towards the lake.

Krueger stated that the narrative commented that there wouldn't be any change in runoff but the applicant's are agreeing to using gutters.

David answered that the because the addition would be going straight up and with the same dimensions there wouldn't be any changes but currently there isn't a gutter system so they would install them to improve the situation.

Krueger stated that was very desirable.

Grob asked why the front yard was terraced.

David didn't know the answer to that. It has been that way for several years. It was the previous owner that did it. He stated that he would like to go back to a more vegetative state. His plan would be to bring it back natural and would like to bring back in plants and grasses.

Grob stated that the drawing currently shows the cabin was located at 41 feet from the ordinary high water mark. He asked if that was correct.

David stated that it is 41 feet from the water. The property is quite elevated from the shoreline. The intent is to complete the original cabin design.

Christenson stated that it would appear there would be room to move the entire structure back to a conforming setback if they opted to. She wondered if the applicant's had considered that option.

David stated that they had considered it but didn't like the idea of ripping out an existing foundation that is functional. They are looking for a small cabin to use and aren't looking to expand it. It made sense to them to go up and complete what the original plan for the property was.

Grob commented for the applicant's benefit that the 100 foot setback is what would be a conforming setback and the first 50 feet is considered the shore impact zone where very little construction is allowed, whether new or alterations. He stated that the cabin is in the red zone. It seems that there is more than ample room to build at a conforming setback. He didn't see that there was a practical difficulty that would allow the granting of this variance. He didn't see that the drainfield or well would cause any issues that would restrict them from building at a conforming setback.

Johnson asked what the legal obligation would be, in regards to the basement, if they were to build back at a conforming setback.

Buitenwerf answered that the foundation walls and floor would be able to stay if they chose to build in a different location.

Krueger stated that in the staff report it states that the department is unsure of when this structure was built, if it was before the Ordinance or sometime after the Ordinance was in effect. He wondered why Section 704.6 doesn't apply to this situation. It is for structures that were built at a conforming ordinary high water mark setback and no long comply with that setback. The interpretation states that it was supposed to be because there were two different classifications on natural environment lakes, some were 100 feet and some were 150 feet. Once those two classifications were combined this section was added. He wanted to know if it specifically stated that it applied to Natural Environmental lakes.

Buitenwerf answered that it doesn't specifically state natural environment lakes. That was the original purpose and over the years has been applied to other situations. A good example would be Lake Belletaine, where the ordinary high water level was raised by the Department of Natural Resources in 2006. Structures that were build per the previous 100 foot setback may not meet that same setback from the new ordinary high water mark. This section of the ordinance allowed them to make additions and alterations to their structures by permit.

Grob asked for clarification on the request. It appears that the applicant's are asking to double the size of the current structure where if it were outside of the shore impact zone only a 50% addition would be allowed.

David stated that it would double the living space square footage. They weren't trying to build a large cabin but simply want to complete what was started. Their thought process was to utilize the current foundation like the neighbors has been allowed to.

Krueger felt that on the lot viewal, neighboring properties were similar to this one. It looked like there hadn't been any erosion issues either.

There was no written correspondence that was received and no public comment was made.

Johnson stated that he is in favor of this request. Since the applicant is allowed to keep and use the current structure for storage and then build a home back at a conforming setback, the amount of impervious surface is being doubled.

Krueger agreed. He wasn't in favor of doubling the impervious surface on the lot.

Grob commented that they are doubling the size of the house and only 27 feet from the lake. There is room to build it back at a conforming setback. There is no practical difficulty that could be justified by the criteria necessary to warrant an approval. He isn't in favor of it.

Krueger stated that he wanted to do what was best for the lake and environment. Sometimes it doesn't always follow the rules exactly, that is what variances are for. Leaving a large patio and then building a home further back increases the impervious surface of the lot.

Grob countered that it is hard for him to see how leaving the structure where it is would be better than moving it back. The lot is very large. The amount of impervious surface, even if it doubled from what is there currently, would still be within the allowed amount.

Krueger commented that the structures on both sides of this lot that were the exact same situation.

Christenson commented that the request is practical since the foundation is existing but this is the Board's chance to implement what is required, which would be the 100 foot setback.

Krueger stated he would be inclined to agree but the concrete slab and foundation is already there, or if the Board were able to make the applicant's remove what is there but it is legally allowed to remain.

Christenson asked what the answer to the first question on the findings of fact.

Krueger stated that the intent of the ordinance is to protect the environment and lake. If there is less impervious surface and requiring on this cabin that they work with the zoning office to ensure the proper water control.

Grob felt that was an argument that could be made but it is totally out of step to do new construction in the shore impact zone.

Krueger stated that this will be an addition not new construction.

Johnson commented that the footprint will no bigger than what is currently there. He observed no erosion while on the lot viewal. Building a new home, along with what is existing, is creating a situation that has the potential for runoff and cause an erosion issue.

Grob moved to deny the variance request and adopt the findings of fact as presented in the June 2014 Planning Commission / Board of Adjustment Staff Report.

Christenson seconded it.

The adopted findings of fact are as follows:

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

The lot possesses sufficient depth for the proposed structure to be located at a conforming 100' OHW setback. Given the structure is currently just a block basement and the proposal is to construct a full home on top of the basement, now is the time to move the structure further from the lake – as there is room to do so at a conforming OHW setback such that a variance is not needed.

2. Without the variance, is the owner deprived of a reasonable use of the property? No ( X )

The property is currently being used as a seasonal residence and for lake access – which are reasonable uses. There is depth on the lot to construct the proposed structure at a conforming OHW setback so there is no deprivation of the proposed use.

3. Is the stated practical difficulty circumstances unique to this property? Yes ( X )

The exact date when the basement structure was constructed is not known. It was constructed in the early 1970s, but there is insufficient information to know if it was legally constructed before the shoreland ordinance was adopted in 1971 or if it was illegally constructed after the ordinance adoption date. The structure's being just a block basement with a roof on it and the location of the structure being in the shore impact zone are circumstances unique to the property that result in the stated difficulty of wanting to place an above-ground story to the structure, but needing a variance because the structure doesn't comply with the 100' OHW setback.

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

The difficulty is the existing structure's being just a block foundation with a roof on it and the structure being located in the shore impact zone such that the ordinance requires a variance in order to make any modification to it. The structure was constructed by a previous landowner and the current landowner thus did nothing to cause or contribute toward the stated practical difficulty.

5. Will the issuance of the variance maintain the essential character of the locality? Yes ( X )

The area consists of single family seasonal and year-round residential structures similar to the one proposed on this lot. Additionally, the residences on the adjacent properties are located at a similar OHW setback so the locality's character would be maintained if the requested variance was issued.

6. Does the stated practical difficulty involve more than economic considerations? Yes ( X )

Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the stated difficulty involves the structure's being constructed by a previous owner at a nonconforming OHW setback in the early 1970s.

The vote was tied with Johnson and Krueger voting nay.

Buitenwerf stated that since no decision was made the department would extend the review period to the full 120 days in hope that a fifth Board member would be found to break the tie vote.

**Variance Application 13-V-14 by Donald and Lisa Anderson:** Lot 11, Crescent Beach Wolf Lake, and Part of Government Lot 4, Section 01, Township 145, Range 32, Farden Township on Big Wolf Lake. Parcels: 07.39.00600 and 07.01.01100. Part 1: Applicants are requesting an after-the-fact variance from Sections 502.2, 704.7 and 904.6 of the Shoreland Management Ordinance (SMO) for a new residential structure that: 1. does not meet the ordinary high water mark (OHW) setback from Big Wolf Lake, 10 foot side lot line setback and 20 foot road right-of-way setback; 2. exceeds the 25% impervious surface area threshold; and 3. was built larger than the design approved in Variance 44-V-13. Part 2: Applicants are requesting a variance from Sections 502.2, 704.7 and 904.6 of the SMO for a proposed deck attachment to the above-mentioned residential structure that will not comply with the 100 foot OHW setback and the 25% impervious surface area threshold.

Lisa Anderson was in attendance to present the application. A variance application was applied for and approved in October 2013. Before a building permit could be issued the application also had to receive the approval of the Mississippi Headwaters Board. That was done early November and a building permit was issued later that month.

Krueger commented that what was approved by variance and what is actually built today are not the same. He asked for clarification on why that is.

Lisa answered that there were numerous unforeseen issues that came up after they started the remodeling project. When the variance was applied for, they did not realize what a mess they were getting themselves into. Prior to applying for the original variance, several contractors had come out and said that the structure was sound enough to hold a second story addition which was why they applied for an addition of a second story instead of a rebuild. She addressed the discrepancy in the height of the structure first. There is no formal house plans or drawings. The builders went in and built what they could with the structure as it was. The height that was applied for in the variance was a guess as to what it would be. They eyeballed the neighbor's home and thought it would be about that high. They did not take into account that the house roof and floor drop in three different spots and so the house itself is three feet higher than the garage floor. When the builders then tried to merge all of that together, the height needed to be raised by four feet to have it all come together. They were then informed that there wasn't a space that was structurally sound enough to use to grant access to the second story. The stairs would need to be outside. She did not want to have the stairs outside, especially with three little kids. She made the call and told the builders to do whatever needed to be done to get the steps inside which is why the breezeway was expanded. They knew that by expanding that area they would be over the impervious surface limit that was allowed to them by the variance so a shed that was removed to try and balance it out. Originally they were told that the existing walls would work and then they found out there was black mold in them so they had to go. There had been so much remodeling done already that it was a huge mess that wasn't structurally useable. They had to start over with new walls, but kept and built on the existing foundation.

Krueger wondered why, when the first set of problems came about, didn't they come back and discuss it with the Environmental Services Office to look at options.

Lisa stated that they should have, but it was getting to be wintertime and they had a small window of opportunity to get any work done that year so they just went and did it.

Johnson asked if they had hired a licensed contractor for the project. He asked if the builder read the variance and what was approved.

Lisa stated that they did hire a licensed contractor, but she wasn't sure if he had seen a copy of what was approved by the variance or not.

Johnson questioned how the builder knew what to build if there were no drawings and he had not seen the approved site plan from the variance.

Lisa answered that the builder ran the show for the most part because they were blind with what needed to be done. They weren't educated enough to make a lot of those decisions. The stairs were her decision and were done before the contractor was hired.

Johnson commented that on the lot viewal he observed that the main floor is way higher than the original cabin. He wanted to know what the plan was to get out the sliding door to the ground. It looked like the sliding door was at least 30 inches off of the ground now.

Lisa stated that there were steps there originally that were pulled away. They planned on having two steps again with a small landing to grant access in and out of the house.

Grob asked what the reasoning behind increasing the width of the breezeway was.

Lisa answered that the breezeway was expanded so that the steps could be built and located inside the home.

Grob asked if that area was going to be heated.

Lisa stated that it will be part of the main floor.

Christenson asked if the use of a spiral staircase was ever explored instead of expanding the breezeway.

Lisa stated that they had not.

Christenson asked for clarification on whether or not the lakeside portion of the floor was raised or changed in height.

Lisa answered that the lakeside floor was not changed. The back of the house had to be raised to come to what the rest of the house was at.

Christenson stated that the steps were not included in the request which would make the impervious surface calculation incorrect.

Buitenwerf stated that a 4' x 4' landing would be allowed in order to grant access to an exterior doorway.

Grob asked if there were steps that went down to the garage.

Lisa answered there are three or four steps down to get to the garage.

Christenson stated that the garage has living quarters above it.

Lisa answered that was part of the original request. There is one room above the garage.

Christenson went back to what happened and the comments and notes that were submitted as to why they didn't follow what was approved. She asked the applicant to tell the Board if she attempted to comply with the law by obtaining the proper permits.

Lisa stated that they should have gone back to the Environmental Services once they discovered the stairs would have to be placed on the outside and once they found out that the walls were not useable for a remodel.

Christenson asked why it wasn't done.

Lisa didn't have a reason. She admitted that she should have. It was late in the year and getting cold so she made a decision.

Christenson commented that one question the Board has to answer is did the applicant act in good faith. She asked the applicant to respond to that question.

Lisa answered that as soon as they knew the breezeway needed to be expanded to allow for the stairs to be inside, they attempted to comply with the impervious surface allowance. They removed a storage shed to try and offset the expansion. They are willing to take out part of the parking area if needed as part of a negotiation. She said that she guessed at the height and didn't realize how specific to what was approved it needed to be.

No written correspondence was received and no public comment was given.

Grob felt that this was a very difficult decision. He was not at the lot view for this request but remembers the lot from last October. It appears to him, with the exception of the new deck that is being requested, this fundamentally is a similar request from the one that was approved last October. The changes being new construction verses a remodel and the change in height from a guess of 24 versus the actual height of 28. The height, even though it is four feet higher than what was guessed, is still under the Ordinance limit of 35 feet. Many of the concerns that the Board had last October still exist today. There is no other place on the lot for this home to be located. Any runoff goes into a wetland and not the lake. Mitigation measures were required with the last approval between the road and Mud Lake. The impervious surface calculation is over the allowed 25%, but over half of that is the road. They are being penalized because of the road. When that amount gets taken out of the equation, they are more in compliance. It is flat and is buffered from the lake. Other than the surprise of it being new, fundamentally what was done doesn't alter significantly the criteria that was talked about at the past meeting. He was inclined to be in favor of the after-the-fact request, but not the deck. That is the straw that breaks the camel's back. A shed was removed to offset the additional impervious surface of the breezeway expansion.

Krueger stated that each part should be acted upon individually unless the motion for both part one and two are the same. He wanted a condition placed on part one of the request if it were approved that specified that the landing for the front steps can be no greater than 4' x 4'.

Christenson commented to the rest of the Board that whether the applicant acted naively or not, she can't give a good reason as to why they didn't go back to Environmental Services for guidance. If this were to be approved as is, how can the Board encourage people to make sure they comply with a permit and variance.

Grob stated that he isn't in favor of after-the-fact requests and is very disappointed with the number of people that come in with after-the-fact requests, but he felt that it is a matter of degree. In this case, the changes that were made were not significant.

Christenson countered that the plan wasn't well thought out in the beginning and there were alternatives such as a spiral staircase that would have allowed them to have the stairs inside and stay within the permit limitations. She could have called Mr. Buitenwerf at any time during this whole process.

Grob agreed that is what the Board likes to encourage applicants to do.

Christenson moved to deny the variance application as presented and adopt findings of fact numbers 1-6, and 10-14 prepared in the staff report. The applicant answered questions 7,8, and 9.

The motion did not receive a second.

Krueger moved to approve Part 1 of the variance request with the following conditions: 1. a maximum of a 4' x 4' (16 square feet) platform is allowed for providing ingress/egress access to the lakeside sliding door, and 2.

a no mow vegetative buffer zone must be established and maintained along the shoreline of Mud Lake that is 25' deep (as measured from the ordinary high water mark) and runs the full width of the lot. The sole exception to the "no mow" requirement is that new trees that become established in the zone can be clipped.

Discussion ensued regarding the clarification of what exactly the no mow zone meant.

Johnson seconded the motion.

The Board answered the findings of fact as follows:

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

They enclosed the stairway for safety reasons. With the exception of the breezeway and the minor squaring off of one corner of the cabin, the addition is going up instead of out which keeps the structure footprint contained and thus in keeping with the ordinance intent. Additionally, the increased storm water runoff and aesthetic impact of the proposed addition is being offset by a vegetative buffer being required to be installed along the Mud Lake shoreline.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( X )

Asking for additional living space in a cabin that is 1028 square feet including the garage is a reasonable request.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( X )

The lot and structure were created prior to the ordinance's enactment. The lot lacks depth to be able to meet the ordinary high water mark from Big Wolf and Mud Lakes.

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

As mentioned in question 3, the difficulty was created by parties other than the landowner. The lot was created by a party other than the landowner and the cabin was constructed by a party other than the landowner. The practical difficulty relates to the placement of the structure at that location on the lot.

5. Will the issuance of the variance maintain the essential character of the locality? Yes ( X )

The locality's character consists of single family seasonal and year-round residences. While the structure was overbuilt and is larger and taller than what was designed, many of the residences along this part of the lake are excessively large relative to their lot sizes such that this structure does not stick out or alter the locality's character.

6. Does the stated practical difficulty involve more than economic considerations? Yes ( X )

The stated difficulty is that the landowners did not do their homework sufficiently before applying for the October 2013 variance and they knowingly constructed a structure larger than what was presented and approved in the variance and permit applications.

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

The applicant did fail to obtain a variance and comply with the applicable requirements. The applicant gave permission to the footings contractor to extend the breezeway because she wanted the steps inside the structure.

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

No. The applicant stated that she should have gone back to Environmental Services but didn't and couldn't give a reason why not.

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

Not that we are aware of.

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

Yes. The old structure was essentially torn down and the current structure is over 90% brand new with new stud walls, sheathing, siding, windows, doors, etc. as documented by pictures taken by the department during its site inspection.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

No. The exterior was shelled in and vapor barrier was installed on the outside of the structure. The interior was not finished and consisted of just roughed-in stud walls with no interior finishes, insulation, or sheetrock installed. The landowners were specifically informed by the department when it discovered the ordinance violations that no further work may be conducted on the structure until the outcome of this variance application is known.

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

Yes, there are other structures along this stretch of the south shore that are similarly oversized for the size of the lots in this area they are located on.

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?

If the County were to approve such after-the-fact variances, there would be no incentive and reason for anyone to comply with the ordinance regulations; however, the amount of change is not significant relative to the original variance and therefore there would be minimal benefits to the County to require that the structure be removed.

The answer to findings of fact question 13 was approved on a 3 to 1 vote with Christenson voted nay.

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

No. The Board approved a previous variance that allowed the majority of the footprint and the design of the construction. The changes are minimal compared to the impact to the area and waters on both sides of the property.

The answer to findings of fact question 14 was approved on a 3 to 1 vote with Christenson voting nay.

The motion carried on a 3 to 1 vote with Christenson voting nay.

Krueger moved to deny Part 2 of the variance request.

Grob seconded the motion.

The Board answered the findings of fact as follows:

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

The impervious surface is already over what is allowed considerably and there isn't a need to add anymore.

2. Without the variance, is the owner deprived of a reasonable use of the property? No ( X )

No. They don't need a deck to be able to use the property. There is plenty of walking space.

3. Is the stated practical difficulty due to circumstances unique to this property? No ( X )

No. There isn't a practical difficulty. There is no need for a deck. It is on the side and will be blocked off by the house.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? No ( X )

The application states that the difficulty was the landowners' lack of proper planning and homework as to what the structure could accommodate for an addition and that they knowingly built the structure higher and larger than what they presented in the variance and building permit application.

5. Will the issuance of the variance maintain the essential character of the locality? No ( X )

The impervious surface calculation is already at 41% and adding to that is not in character with the locality.

6. Does the stated practical difficulty involve more than economic considerations? Yes ( X )

The stated difficulty is that the landowners did not do their homework sufficiently before applying for the October 2013 variance and they knowingly constructed a structure larger than what was presented and approved in the variance and permit applications.

The motion carried unanimously.

**Variance Application 14-V-14 by Richard Hoium:** Part of Government Lot 8, Section 27, Township 141, Range 33, Mantrap Township on Spider Lake. Parcel: 20.27.02100. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance for a proposed retaining wall project in the shore impact zone that will exceed the permissible volume of material.

Cheryle Wilke, authorized agent, was in attendance and presented the application. There is a wall built out of railroad ties that is starting to fail. The basement is starting to crack as well as the cement wall and retaining walls are starting to disintegrate. The proposal is to remove the top row of railroad ties and replace it with anchor blocks. The plan is to use geogrid material that will reinforce the block which is why the wall needs to extend two feet into the shore impact zone. This is a large project. Almost 30 cubic yards of material would be removed and stored on the property. Once the tiers and retaining wall are completed the stored material would be put back. There is a lot of material movement in this area but it has to be completed by hand and any material that is removed will be used again once the project is complete. A silt fence will be utilized since the material will need to be stored between the project and the lake. They will replant and bring in a little dirt for the plants once it is done.

Christenson asked for clarification regarding the deck that is out there.

Cheryle stated that the sono tubes need to be replaced to keep the deck from collapsing.

Christenson asked Buitenwerf if an additional variance would be needed to do that work.

Buitenwerf stated that if the foundation is being repaired then it will not need a variance or permit to do the work.

Johnson asked for clarification on the railroad ties. He thought he heard that only one layer was being removed.

Cheryl stated that all of the railroad ties are going to be removed.

Christenson asked if the shrubs that are existing are going to be replaced.

Cheryl stated that the plan is to remove what is existing and plant new material in. The current shrubs are too old to transplant and have them live.

Krueger asked how deep the foundation went into the ground.

Cheryle stated that she was told only about one foot. This will not be an easy project.

No written correspondence was received and no public comment was given.

Christenson moved to approve the variance and adopt the findings of fact as presented in the July 2014 Planning Commission / Board of Adjustment Staff Report.

Grob seconded it.

The adopted findings of fact are as follows.

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

The request will allow the slope to be stabilized which will ensure that the soil stays in place and does not enter the lake and that the structure's foundational integrity will be maintained. The slope will remain essentially the same after the project. The project simply seeks to remove an inadequate railroad tie retaining wall and replace it with an inert block product that will be more environmentally friendly than creosote railroad ties.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( X )

The structure's foundational integrity is in jeopardy because of the failing railroad tie retaining wall. Thus, it is a reasonable use of the property to allow the retaining wall to be replaced/repared so that the reasonable residential structure use on the property can be maintained as well.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( X )

The structure was constructed prior to enactment of the ordinance at a 17' OHW setback at the crest of a steep slope. The retaining wall holding the top of the slope in place is failing and in need of repair/replacement.

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

The slope is a natural land feature and the structure was constructed in its present location by a previous landowner well before the shoreland ordinance took effect in 1971.

5. Will the issuance of the variance maintain the essential character of the locality? Yes ( X )

The area consists of single-family seasonal and year-round residential structures and the proposed retaining wall project will in no way alter or harm this character. Rather, by preserving the slope and integrity of the structure's foundation, the project will maintain the locality's character.

6. Does the stated practical difficulty involve more than economic considerations? Yes ( X )

As stated previously, the difficulty involves the slope and the fact that the structure was placed at the slope's crest when it was constructed at least a decade or more before the ordinance took effect. Economic considerations were not cited in the application as a difficulty.

The motion carried unanimously.

**Miscellaneous:**

There was no miscellaneous business to discuss.

**Adjournment:**

Johnson moved to adjourn.

Christenson seconded.

The meeting was adjourned at 7:32 p.m.

Minutes were respectfully submitted by:

Maria Shepherd  
Recording Secretary

DRAFT

**Hubbard County  
Planning Commission Meeting Minutes**

July 28, 2014

Chairman Krueger opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, and Tim Johnson. Also present were Hubbard County Commissioner Greg Larson, Environmental Service Officer Eric Buitenwerf and recording secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and went through the meeting procedures.

**Approval of Minutes:** June 23, 2014

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

**Old Business:**

There was no old business to discuss.

**New Business:**

**Conditional Use Permit 2-CU-14 by Brent and Lindsey Nicklason:** Part of the NE ¼ of the SW ¼, Section 10, Township 140, Range 33, Nevis Township by Lake Belletaine. Parcel: 21.10.00410. Applicants are requesting a conditional use permit for an event center per Section 401 of the Shoreland Management Ordinance.

Brent Nicklason was in attendance and presented the application. There is an existing structure that was previously used as a dairy barn. The request is for an event center. The property is separated from Lake Belletaine by State Highway 34. It will be for seasonal use and have a maximum occupancy of 300 people.

Krueger stated that there were items that the fire marshal needs done to get the structure prepared for use. He asked if the applicant was aware of all of those additional requirements.

Brent answered that he had been in contact with the fire marshal and working with him as well as the local fire chief to create a fire protection plan.

Krueger thought that when the Board was onsite Brent thought that they would be open for business in August. He asked if that was still the case.

Brent didn't think August was going to work.

Christenson asked if the applicant had looked into hiring an architect and if anymore thought was given to putting lighting in for the parking lots.

Brent stated that he drew up plans and has an architect in mind but has not yet met up with him and showed him the plans. He will though if it is necessary. He submitted his plans to a sprinkler contractor to get an estimate on the fire sprinkler system. As far as lighting, he was thinking solar lights if the Board sees that as an acceptable form of lighting.

Krueger asked if all of the activity will be contained within the building or if outside activities will happen.

Brent stated that outdoor activities would be allowed. There are people who are going to want an outdoor wedding ceremony and they are going to try and accommodate such requests. Any outdoor activities will occur on the East side of the building.

Grob stated that there are neighbors that have expressed concern regarding outdoor noise. A wedding outside wouldn't create a lot of noise but he inquired if there were any plans for music outdoor activities.

Brent answered that at this time there was no plans for outside concerts or anything like that. It is possible at some point in the future that someone could come to them and want to hold a concert there but the property isn't that large and could turn into a Moondance Jam event.

Grob stated that one of the requirements of the Ordinance involves screening. He asked the applicant what he has done or what his plans were regarding fulfilling that requirement for noise and visibility.

Brent answered that he recently planted a line of white cedar trees that starts a ways East of the building and goes beyond the property line away from the highway to the South. He plans on continuing the planting of the trees so that it will create a buffer screen.

Grob had some questions and concerns regarding the parking area. It is in a low area and was concerned about what will happen if there is a large rain.

Brent stated that there is no way to know if something is going to work until you try it. He felt that from an environmental standpoint it is better to leave the parking area as a field and not pave it. His plan is to leave it alone, mow it and since the heavy use will be primarily on weekends so there will be ample time for the field to recover. There is a decent slope on the ground. The hope is that it will drain or that the ground will accept the water and not wind up with a mud run.

Johnson asked if the applicant had considered any alternatives that the State is requiring, such as putting the bathrooms on hold, in order to get the property up and running more quickly.

Brent had not had a chance to talk to the State yet. He asked if Mr. Johnson thought there would be an issue with utilizing satellite toilets.

Johnson was wondering how far the applicant was going to go so that they could be operational but not have met all of the requirements per se.

Brent stated that the fire code was the main thing in his eyes that needs to be addressed. There were other things that he had wanted to do and upgrade but that has changed since will take a large portion of the budget. A kitchen, bar, and even inside bathrooms is a little bit on the back burner at this time and satellite facilities will be used in the mean time as long as the clients are okay with that as well as the State. His main objective is to get the green light from the fire marshal.

Christenson informed the applicant that an email was sent to the Board from Mr. Thomas Jensen. There were a lot of items that he addressed that would need to be done in order for

this use to get the green light. She asked if Mr. Nicklason has had a conversation with Mr. Jensen to know if outdoor bathrooms are acceptable.

Brent stated that he did not have a chance to talk to the State as this time on whether or not indoor restrooms would be acceptable at this time.

The floor was opened for public comment.

Lynda Axberg made public comment. They are concerned about noise, traffic, possible theft, vandalism and possible liability problems. There are things that could be done that would please everyone. Setting up rules up front regarding curfews, strategic entrances and exits to cut down on traffic congestion. They are very concerned about outdoor concerts and dances taking place outdoors. If the intent is not to allow outdoor concerts and dances, they would like to see that in writing which would ease their minds. Monitoring the alcohol consumption that takes place during the parties would be important. By monitoring this it will cut down on the possible vandalism and theft that could take place or someone driving back onto their property. They are concerned that if someone got hurt while on their property that they would be liable. If this property is ever sold that the conditional use permit be readdressed at that time.

With no further public comments that portion of the meeting was closed.

Brent respected the comments that were made. One of his biggest concern is the neighboring landowners and addressing their concerns. They are going to do everything in their power to be good neighbors. He stated that he isn't ready at this time state that there won't be any outdoor activities or that there will not be any noise past a certain time. Any bar or restaurant in the area is allowed to be open and operate until 1 o'clock. He did think that it was fair that if there was going to be an outdoor wedding and or music that it would be done by 10 or 11 and any other activities would be limited to indoors.

Krueger stated that there were some conditions that were recommended by the Environmental Services staff but he felt there were a couple more that should be added. He thinks there needs to be lighting in the parking lot. He asked Mr. Buitenwerf to clarify the meaning of the proposed condition " The event center use's indoor activities are only allowed to occur in the structure proposed as the event center in this application".

Buitenwerf answered that was the activities would be held to indoors but that condition could certainly be modified after the discussion that was just had.

Grob stated that above mentioned condition is rather general and this area of noise has been his main concern this whole time. He knows that without special equipment it is almost impossible to regulate noise to a certain decibel. He proposed the following language as clarification and more detail regarding noise: all events that will involve sound generating activities shall be restricted to indoor use. Outdoor music and or artificial sound production activities shall not be allowed. Those were the best words he could come up with but felt it allowed outdoor activities outside such as weddings but nothing that involves music or anything else that generates noise. he concurred with adding the condition that would require lighting in the parking area.

Brent stated that he would rather see a time limit placed on it verses not allowing any outdoor music and activities period.

Grob commented that he lives on a lake and has neighbors that are 500 yards away, across the lake that occasionally during the summer will have outdoor music and it sounds as though they are right next door. There are a lot of people that come to the lake for peace and quiet and even having music during the day is unreasonable. When the Ordinance was amended to allow event centers that was one of the major concerns and this is the first test of that. He is insistent that as a condition of approval of this request that no outdoor music and activities allowed. The neighbors concerns need to be taken into account. He felt the applicant was doing nice job of trying to address all of the issues and was working hard to accomplish that.

Krueger felt that because of the close proximity to the City of Nevis and the lake he was inclined to agree with Mr. Grob.

Christenson asked how the condition for the lighting in the parking area would be defined and stated. She looked to Mr. Buitenwerf for help on how to word that condition.

Buitenwerf stated that it would take some thought but sufficient lighting would be needed for people to safely see where their foot traffic is taking place to get to and from their vehicles. He couldn't give any suggestions off the top of his head as to the actual wording.

Christenson stated that she was in agreement with the other conditions that were proposed in the staff report.

Johnson stated that he didn't interpret the condition that was questioned earlier as keeping all noise indoors. His interpretation was that the use will be inside the structure of the application. He felt that music on the East side of the property, away from the lake would not be an issue. If the wind was coming out of the North they might not even hear it.

Brent agreed with Mr. Johnson. The property isn't locate on the water. Water is definitely a carrier of sound but didn't think in this situation it will be an issue.

Johnson asked if there were complaints regarding the Muskie Days celebration and bands that are there. That would be about the same distance from the lake as this place.

Grob moved to approve the conditional use permit application with the proposed conditions that were suggested in the July 2014 Planning Commission / Board of Adjustment Staff Report with two additional conditions to read as follow: 9. Adequate parking lot lighting shall be installed for safety and 10. All events that will involve sound generating activities shall be restricted to indoor use. Outdoor music and or artificial sound production activities shall not be allowed.

Krueger stated that if someone wanted to have an outdoor wedding ceremony will have noise, music and microphones.

Grob didn't think that a wedding would be considered a noise generating event.

Christenson was having an issue with the wording of that condition. The way it is proposed that would include a sound system for a wedding.

Commissioner commented that artificial sound isn't defined. Unreasonably loud music is what is trying to be prohibited. Highway 34 is between the event center and the lake and will be a sound barrier in of itself. He felt that if the intention is to limit the noise then maybe decibels is the way to go.

Johnson felt that placing a condition that states any bands or music needed to be on the east side of the building which is away from the lake.

Commissioner Larson felt maybe it was better to state no unreasonable noise.

Grob asked Mr. Buitenwerf if he is was familiar with Minnesota Pollution Control Agency's noise control.

Buitenwerf stated that they are extremely difficult to enforce due to the fact that proper sound measuring equipment needs to be on site at the time of the event.

Grob couldn't imagine that people who live across the road would want to listen to outdoor music late at night. Maybe an alternative would be to limit the time that music is allowed outdoors.

Krueger felt that a time should be stated so that outdoor activities and music is allowed but only until the listed time.

Christenson asked Krueger how he would word that into a condition.

Krueger felt that adding the statement all outdoor activities will end at 11:00 p.m. to condition number 7 would be sufficient.

Christenson

Grob countered that it should be a separate statement instead of burying it inside a different condition.

Grob moved to approve the conditional use permit request with the following conditions:

1. This conditional use permit (CUP) is for the operation of the entire premises as one event center 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 subsurface sewage treatment system (SSTS) that is to service the event center use structure must be installed and receive a certificate of compliance before the CUP operating permit will be issued.
3. Written proof of the required driveway access permit from the Minnesota Department of Transportation for the access onto State Highway 34 must be submitted to the Environmental Services Department before the CUP operating permit will be issued.
4. This event center use can only operate between the hours of 7:00 a.m. and 1:00 a.m. and between the dates of April 1 and December 15 each year.
5. The maximum number of occupants allowed to be in the event center structure at any given time is 300 people.
6. Written copies of the event center structure's remodeling plans from a licensed architect, written proof that said structure fully complies with the State Fire Code, and written proof that Minnesota Department of Health licensing has been obtained must be submitted before the CUP operating permit will be issued.

7. The event center use's indoor activities are only allowed to occur in the structure proposed as the event center in this application.
8. Vehicles of event center use patrons must be parked in the area marked as "event center parking – approx.. 2 acres" on the application site plan sketch. The parking area must remain fully vegetated in the 100% grass cover present at the time this conditional use permit is issued. Patron vehicles can only enter/exit the property at the two access points designated on the application site plan sketch as the "CR 13 road approach" and the south of the two driveways shown accessing State Highway 34.
9. Adequate parking lot lighting be installed for safety
10. All outdoor activities must end by 11 p.m.

Grob moved to adopt the findings of fact as presented in the July 2014 Planning Commission / Board of Adjustment Staff Report.

Christenson seconded the motion.

The adopted findings of fact are as follows:

1. Is the requested use consistent with public health, safety, and welfare? YES (X)

An event center use is allowed on a non-riparian, recreational development classified lake such as Lake Belletaine as a conditional use per Section 401 of the Shoreland Management Ordinance. The conditions being placed on the permit address any public health, safety, and welfare concerns that were identified during the application review and hearing process. Two vehicle accesses (one on State Highway 34 and another on County Highway 13) provide for sufficient patron vehicle ingress/egress without creating safety concerns for either roadway. The two road authorities have provided written comment that neither entity has any safety concerns with the proposed use. Vegetative buffers along appropriate property lines have been implemented as a condition of the permit. Written evidence must be submitted showing MN Department of Health licensure, State Building and Fire Code compliance, a compliant septic system servicing the event center structure, and MnDOT access permit issuance before the conditional use permit operating permit will be issued.

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

No land alterations are proposed to the property. The property is largely covered in good grass cover that will be kept and used for vehicle parking and driveways to avoid creating additional impervious surface area on the property and thereby prevent water pollution from being a possibility. State Highway 34 separates the property from Lake Belletaine and its ditch system and built-up road bed will not physically allow any stormwater runoff from this property to enter the lake.

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

The use will occur in the existing structure on the property labeled as the "event center" on the application site plan sketch. The application states that no topographic, drainage feature, or vegetative cover changes are proposed to these existing items on the property. The patron vehicle parking area will be kept in 100% grass cover as a means of mitigating any potential impervious surface area caused by the vehicles themselves when parked on the property during a rain event.

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

There are no FEMA-designated floodplains in Hubbard County.

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 alterations to the property's vegetative cover or topography are proposed. As mentioned in answers to previous questions, the parking area is being kept in grass cover as a means of mitigating and avoiding any impervious surface area issues related to vehicle parking and driveway/access areas. The vehicle-related needs associated with the use are the only things that might cause any erosion potential as the use will occur within the existing former dairy barn that will be converted into the event center.

6. Is the site in harmony with existing and proposed access roads? YES (X)

Both the Minnesota Department of Transportation (for Highway 34) and the County Highway Engineer (for County 13) have provided written comments that neither party has any concerns with the proposed use and its vehicle-related traffic count, use timing, and access point locations. County 13 does not see a large traffic volume and the existing access point approaches the highway at a 90 degree angle with good sight lines both directions so it should handle the volume of traffic entering/exiting the parking area.

7. Is the requested use compatible with adjacent land uses? YES (X)

There is a mixture of land uses on properties adjacent to and surrounding this property. The adjacent property to the north is a commercial storage facility. Highway 13 abuts the east property line and there are a residential property, agricultural field, and mixed residential/agricultural commercial property on the other side of Highway 13. The adjacent land uses to the south are low-density residential consisting of two residences and a large amount of open and wooded acreage. To the west of the property lies Highway 34 and then a number of small residential riparian lots along Highway 34. Thus, it is a diverse mixture of land uses where this proposed mixture of a commercial event center use coupled with a residential structure on the property is compatible with the surrounding mixture of land uses.

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

Hubbard County has a large number of lakes with accompanying shoreland zoned area that took effect after many areas of the county were developed. This property lies just outside the Nevis city limits and along Highway 34 which is a highly used traffic corridor. The proposed use will have less impact on the lake than other types of commercial uses such as resorts and restaurants that are allowed to be located on riparian properties by conditional use permit. Given the minimal environmental impact of the proposed use and the quantity of shoreland area in the county, it is reasonable to allow the use in a shoreland location.

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

A septic system design for the proposed use (without the proposed kitchen) has been submitted to and approved by the Environmental Services Department. If a design is submitted to incorporate the kitchen, ESD SSTS staff feel there is adequate room and soils on the property to accommodate the needs of such a system. There is ample acreage on the property to provide room for an alternate drainfield site if/when such would ever become necessary.

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

The event center structure is ~440' from the ordinary high water mark of Lake Belletaine. The proposed use is located on a non-riparian lot that does not fall within the shore impact zone so there is no way the property can fall under the regulations of Section 901 because it addresses vegetative screening in the shore impact zone.

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

There is a well on the property and a design for an SSTS to service the proposed event center structure has been submitted to and approved by the Environmental Services Department staff. Said design did not factor in the proposed kitchen in the event center structure. If this kitchen is added, an amended design will need to be submitted and approved, but ESD staff do not feel that there will be any issue with having adequate soils, topography, or room to install the necessary system.

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 watercraft use of the lake as part of the proposed event center use is proposed. The event center use will occur on a non-riparian lot that does not front any public water nor have any legal access to such so there are no public waters that will be affected by any watercraft.

The motion passed unanimously.

**Conditional Use 3-CU-14 by Lakes Area Windsurfing Inc.:** Part of Outlot 1 and Pleasant Avenue (vacated), and Lots 1, 2, and part of 3, Block 3, Pine Cone Camp, Section 35, Township 141, Range 34, Lake Emma Township on Big Sand Lake. Parcels: 16.37.01610, 16.37.01620, and 16.37.01630. Applicants are requesting to amend existing conditional use permit 6-CU-07 (a resort use) on parcels 16.37.00700, 16.37.00800, and 16.37.01600 per Section 401 of the Shoreland Management Ordinance by adding additional property and rental units to the conditional use permit.

Bonnie Brand was in attendance and presented the application. This property is really complicated. Pine Cone Lodge has been around for quite some time. It was originally purchased by family members in 1961. In 1993 one parcel needed to be sold off for financial reasons. They now are at a place where they can purchase the lot back and are now requesting that it be added onto the conditional use permit as well as add the other two properties that were subdivide off in 1996. At one point there were 22 cabins on Pine Cone lodge, most of which have been torn down. They have provided the lakeshore with fewer structures and fewer people using the lake. They are requesting a permit to expand their business.

Krueger asked what the plan was for the structure that that is only a few feet from the lake.

Bonnie stated that the walls would remain the same but the roof would be raised 2 feet according to the Ordinance. All homes are licensed by the State of Minnesota.

Christenson asked how many people can sleep in the home and living quarters above the garage for the property that they are trying to purchase.

Bonnie answered that the guest cabin can have a total of 6 people in it and the three bedroom home can have 14 people in it according to the State of Minnesota. She felt that was too many and they would limit it to less than what the State would allow. She didn't feel stuffing a ton of beds in a room just because it is allowed is a wise use of the property.

Christenson commented that during the lot viewal it was noted that this property doesn't have a regarding about parking. She wondered how parking was going to be addressed.

Bonnie stated that there is an easement back between the house and garage and that will be left alone to grant access to the neighbor. She stated that she created a map of sorts that shows people where they can and can't park that she uses for the other cabins and it has worked really well. Her plan would be to create a similar map for this property as well. Her plan would be to utilize one of the driveways that the neighbor isn't using for parking.

Grob thought the improvements that have been made make it a very attractive resort. He felt that the number of dock locations needs to have a condition on it. The ordinance states that centralized docking will need to be used. He felt that two centralized docking systems and the swimming dock would be sufficient. The other issue relates to the 50% of the shoreline needs to be in natural buffer requirement. He calculated that figure to be roughly 275 feet.

Johnson commented on the septic system. There is a large system out there that would be easily removed, cleaned and the area could be reused as septic so he isn't concerned about an alternate site.

The floor was opened for public comment .

Everett Duthoy made public comment. He currently owns the property that applicant's are in the process of purchasing. He purchased the property 19 years ago and at that time Pine Cone Resort was aging and needed a lot of care. Through the years they have made first class changes. They have high class clientele. There has never been any need for concern and no violations have occurred. They have been good neighbors. When they purchased the property the entire shoreline was a beach. Now it is back to natural vegetation. There is a current septic site as well as an alternate site for the property. The rooms are big sized and could handle a lot of people but didn't feel that was wise. Pine Cone Camp has really turned around and is something to be proud of now.

With no further public comment that portion of the meeting was closed.

Christenson asked Ms. Brand for more clarification on the dock locations as well as what her thoughts were regarding where the vegetation buffer would be located.

Bonnie answered that one of the docks was going to be removed that is currently located on the property they are purchasing.

Duthoy stated that one of the docks was custom made and contours to the bottom of the lake. It will be extremely expensive to replace that dock.

Bonnie stated that part of the problem with putting in a single dock in that is longer is the drop off. It would make it difficult to put in a dock that would be long enough to accommodate the number of boat slips that are allowed. That is the main reason why smaller docks are being proposed and make more sense.

Christenson asked how many docks in total were planned.

Bonnie stated that there would be 4 docks used for boats and one that would be used as a swimming dock.

Krueger asked how many slips that would accommodate.

Bonnie stated that they were allowed eleven boat slips but were only requesting nine on the Big Sand Lake side.

Grob thought it was ten but that it didn't matter if it were ten or eleven because the proposal is for nine which is under the ordinance requirements. He asked where the locations of those docks would be.

Bonnie stated that there is a drawing that shows where the proposed docks are.

Christenson asked again where the vegetation buffer would exist.

Bonnie stated that one of the lots being added to the conditional use has not been touched and the entire shoreline, approximately 170 feet, is all natural and would stay as such. The remaining 105 feet would be added with the purchase of Mr. Duthoy's property.

Grob clarified that the shoreline of parcel 16.37.01630 in its entirety would remain natural which is approximately 170 feet and the remaining 105 feet would be located on parcel 16.37.01610 or Mr. Duthoy's property. The expectation is that the buffer would be at least 25 feet wide.

Buitenwerf clarified that the Ordinance requires that the entire shore impact zone be reverted to natural condition in that area so it would be 50 feet in depth instead of the 25 that Mr. Grob stated.

Bonnie added that on the Loon Lake side of the property, the only area of the shoreline that has been touched is where the docks are located so another 600 plus feet of shoreline is natural condition. She knows that is part of the original conditional use permit but wanted to Board to be aware of that fact.

Grob still felt that a centralized dock, with 5 slips, would be better for parcels 16.37.01630 and 16.37.01620 especially if that is the area that is being allowed to be natural vegetation. He felt that would be more friendly to the water, vegetation, and wildlife.

Bonnie felt that as far as safety goes, having the two separate docks is better. It directs the boat traffic better around the swimming dock. Putting out longer docks won't necessarily work.

Grob asked if longer docks would be needed verses what is there now.

Bonnie stated that the docks would need to be much longer for the additional boats. The depth of the water at the end of the docks is at least 6 feet.

Christenson asked Mr. Buitenwerf if an access path could be cut through the natural vegetation buffer.

Buitenwerf answered that it was a possibility and then whatever that width of the cut was would need to be added to another vegetation area to make the total still add up to the required 275 feet.

Krueger brought up the issue of part of Mr. Duthoy's house is located in the road right of way.

Bonnie stated that the issue will be resolved. They are in the process of working on that right now. She is confident that it will get resolved.

Grob stated that the two buildings that are in need of repairs, labeled as Juniper and Birch, need building permits and because they are located in the shore impact zone the footprints of the buildings are not allowed to be expanded.

Buitenwerf stated that all of the structural elements have to be kept original as they currently exist. The only modification allowed is that the roof height can be increased two feet. The siding, windows and doors would be able to be replaced under the repairs and maintenance section of the ordinance.

Grob asked if that needed to be placed as a condition since it is spelled out in the Ordinance.

Buitenwerf didn't feel there was a need for it to be a condition.

Krueger felt that one thing that needed to be considered when making a motion is how to handle the road right of way issue. Does that need to be resolved first or approve the conditional use permit application as is and let it work itself out.

Christenson stated that in the staff report a recommended condition was that the road right-of-way had to be obtained prior to the conditional use operating permit being issued.

Krueger questioned if that was the right way to do it since the request isn't just for that property but also adding in two other buildings which they already own. What happens if the issue can't be resolved.

Johnson felt it should be approved as is.

Christenson moved to approve the conditional use permit application with the following conditions:

1. This conditional use permit (CUP) is for the operation of the entire premises as one commercial 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 required septic system components for cabins “Juniper” and “Birch” must be installed and be given a certificate of compliance before the operating permit will be issued.
3. This amended CUP allows the existing resort CUP 6-CU-07 involving parcels 16.37.00700, 16.37.00800, and 16.37.01600 to now also include parcels 16.37.01610, 16.37.01620, and 16.37.01630 as shown on the attached copy of the current tax parcel map labeled Exhibit A.
4. This amended CUP allows the following resort guest dwelling units to be rented: house and the guest cottage above the detached garage on parcel 16.37.01610, the “Pines” and “Maple” on parcel 16.37.01600, the “Duplex” on parcel 16.37.00700, the “Spruces” and “Housekeeping Cabin” on parcel 16.37.01620, and “Juniper” and “Birch” on parcel 16.37.01630.
5. The number of docks and watercraft slips allowed for the property involved in this CUP amendment and the original CUP 6-CU-07 is as follows and shown on attached Exhibit B: Loon Lake: 1 dock with two watercraft slips, and 2. Big Sand Lake: 3 docks with nine watercraft slips total.
6. Fifty percent of the shore impact zone on the three new parcels being added to the original CUP must be preserved in a natural state as shown on attached Exhibit C. This means the natural state area must not be mown and the vegetation in it must be allowed to grow naturally and unaltered by humans – aside from noxious weeds and dead, dying, or safety hazard trees being able to be pruned or removed if/as needed. The location of the natural shoreline will be the full length of parcel 16.37.01360 (approximately 170 feet) and the remaining 105 feet will be located on parcel 16.37.01610.
7. The house, driveway, and septic system on parcel 16.37.01610 are partially located (constructed) on some land not owned by the applicant (i.e. First Street – a public road right-of-way in the plat of West Pine Cone) as shown on the survey attached as Exhibit D. The applicant for this CUP amendment must obtain ownership of this First Street right-of-way shown on the survey in Exhibit D by having said right-of-way vacated and then obtaining title to the vacated right-of-way and filing proof of the same with the Hubbard County Recorder and Environmental Services Department prior to June 1, 2015 or this CUP amendment is void and of no effect. These right-of-way vacation and title acquisition actions must be completed before the CUP amendment operating permit will be issued.

Christenson moved to adopt the findings of fact as presented in the July 2014 Planning Commission / Board of Adjustment Staff Report.

Grob felt that the docks needed to be more centralized. He proposed 1 dock on Loon Lake with 2 slips, and on Big Sand Lake 2 docks are allowed with 9 boat slips plus a swimming dock with no mooring slips. He felt that the docks on parcels 16.37.01620 and 16.37.01630 should be consolidated into one dock.

Christenson countered that for safety reasons she would rather approve five docks instead of four.

Krueger seconded the motion to approve and adopt the findings of fact.

The adopted findings of fact are as follows:

Hubbard County Conditional Use Permit - Findings of Fact

1. Is the requested use consistent with public health, safety, and welfare? YES (X) NO ( )

A resort commercial planned unit development is allowed on Big Sand Lake (a recreational development lake classification) and Loon Lake (a natural environment lake classification) as a conditional use permit per Section 401 of the Shoreland Management Ordinance. The conditions being placed on the permit address any public health, safety, and welfare concerns that were identified during the application review and hearing process. The use is also an expansion of an existing resort use which has shown that such a use can be congruent with public health, safety, and welfare.

2. Is the requested use consistent with the goal of preventing and controlling water pollution, including sedimentation and nutrient loading? YES (X) NO ( )

No modifications to the existing topography and vegetation are proposed in the application. Additional shore impact zone area will be required to be left in a natural state – thereby offering a greater vegetative buffer between the property and the two lakes. No new structures are proposed to be constructed as well.

3. Will the requested use not adversely affect the site's existing topography, drainage features, and vegetative cover? YES (X) NO ( )

As mentioned in the answer to question 2 above, no modifications to the existing topography and vegetative cover are proposed so the drainage features also will be unchanged. No new structures will be constructed and the property will continue to look as it currently does in terms of number, location, and size of structures.

4. Is the requested use's site location reasonable in relation to any floodplain and/or floodway of rivers or tributaries? YES (X) NO ( )

There are no FEMA-designated floodplains in Hubbard County.

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 this requested use? YES (X) NO ( )

As stated in answers to previous questions, no vegetative or topographic alterations are proposed in the application. Additional shore impact zone will be required to be allowed to revert to a natural state as a condition of the permit which will provide additional protection of the lake from any stormwater that might originate from or cross over this property.

6. Is the site in harmony with existing and proposed access roads? YES (X) NO ( )

No new access roads are proposed in the application and most of the new additional rental units consist of existing structures that also have existing driveways and approaches onto Grouse Road. The structures on parcel 16.37.01610 have previously been used residentially so there ought not to be much of a change in the pattern and type of vehicle traffic occurring. Grouse Road's speed limit coupled with its route layout do not allow for excessive speed through the resort so there ought not to be concerns with pedestrian resort guests crossing the road.

7. Is the requested use compatible with adjacent land uses? YES (X) NO ( )

As previously mentioned, the proposed use is an expansion of an existing resort onto parcels that historically were included as part of the resort. Three lots adjacent to the resort are bare land and the surrounding land uses are residential.

8. Does the requested use have a reasonable need to be in a shoreland location?  
YES (X) NO ( )

A resort's draw for customers is its proximity and access to a water body – primarily a lake. Without such water proximity/access, a resort would not have much draw for or appeal to customers. Thus, to stay in business, a resort needs to be located in a shoreland area.

9. Is the amount of liquid waste to be generated reasonable and the proposed sewage disposal system adequate to accommodate such use?  
YES (X) NO ( )

The proposed occupancy of these new rental units to be added to the resort is as follows: a. Spruces' occupancy is listed as 17 people, b. Housekeeping Cabin is listed as 8 people, c. Juniper is listed for 5 people, d. Birch for 3 people, e. the house on 16.37.01610 is listed for 9 people, and f. the guest cottage above the detached garage on this parcel is listed for 6 people. The total comes to 48 people residing on 3.8 acres. The SSTS is able to accommodate this volume of usage and there are alternate drainfield sites that are available should the need for such arise. Some of these alternate sites will require the reuse of the current drainfield sites and thus will need to have operating permits.

10. Will the visibility of structures and other facilities as viewed from public waters comply with Section 901 of the Ordinance?  
YES (X) NO ( )

The required 50% of the shore impact zone being added to the conditional use permit that must revert to natural conditions will comply with Section 901.

11. Is the site adequate for water supply and on-site sewage treatment systems?  
YES (X) NO ( )

Alternate drainfield space is very limited on this property should a drainfield ever fail and need replacement. The house on parcel 16.37.01610 would require reuse of the current drainfield site which would require an operating permit. Juniper and Birch on parcel 16.37.01630 and the Housekeeping Cabin on parcel 16.37.01620 pump into the large SSTS on the hill whose alternate site is installing trenches between the existing trenches. The Spruces on parcel 16.37.01620 does not have an alternate site. If its drainfield fails, it is in a similar position as the house on parcel 16.37.01610. These SSTS can be converted to work as holding tanks as well should the need ever arise.

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 ( )

The proposed use is an expansion of an existing resort conditional use permit that involves watercraft usage of the lake. The number of proposed permanent watercraft slips complies with the allowed ordinance density for such. Big Sand Lake is a large recreational development lake capable of accommodating many watercraft. It also possesses a public access and thus has the potential for a large number of watercraft to be on the lake at any given time. Only two watercraft

slips are proposed for Loon Lake which is fitting given Loon Lake is a natural environment classified lake.

The motion passed unanimously.

**Preliminary Plat of Sky Manor Aero Estates 2<sup>nd</sup> Addition** by Mark Hobson: Applicant is requesting to re-subdivide three existing tracts into five platted lots. Parcels: 02.58.00500, 02.58.00600, and 02.58.00700.

Mark Hobson was in attendance and presented the application. He purchased one of the properties in 2011 and just recently purchased the other two lots this last spring. He built an airplane hangar on the property in 2011. The total acreage of the three lots combined is 25. The lots were created in 2007. His plan is to even out the runway frontage and create five lots out of the three that he owns.

Christenson commented that the Board received a few letters by residences who were concerned about safety. She spoke with Mr. Buitenwerf regarding what the Board's role is when it comes to addressing these concern. She was informed that the air field is not something that they take into consideration. They simply look at the development of the lot.

Mark did a lot of research over the weekend once he became aware of the concerns late last week. The State and Federal Government do not have any requirements for airplane hangar setbacks from the runway lot line. They do have a requirement for private runways that states there can be no obstructions within 100 feet of the centerline. The lots in question don't start until 100 feet from the center of the runway. He is going to place restrictions in the deeds that would require a 50 foot setback from the property line for any structures.

The floor was opened for public comment.

Jim Vogelgesang made public comment. He relayed the message that a gentleman from the Department of Aeronautics of Minnesota is going to come out and check out the runway in September. There is an issue with some safety issues with the runway. He is concerned about noise. There will be five more lots, or a total of five airplane lots. What about high performance airplanes. More people should have been notified besides those in a half mile since they will be effected by the additional noise. The association is aware of it. He was not in favor of Mark forming more lots.

Mark felt that the concern of noise isn't relevant because there have been 40 lots available at Sky Manor for a very long time. Anyone can buy those lots and operate an airplane. The potential is there for 40 airplanes out there and currently there are five people who operate airplanes. There is, on average, at most one to two flights per day during the week and maybe three or four on the weekends. There won't be a massive increase in traffic. This development could possibly add one or two flights per week. Covenants already are in place that have restrictions on what size of airplanes are allowed which are only single engine. No high performance airplanes or jets are allowed.

Joni Karl, read a letter on behalf of her husband who couldn't be at a the meeting due to a work conflict. As a member of Sky Manor he is requesting that the Board votes against this platting request for the time being and table the request for consideration in three to five years. He had three concerns. The first being aesthetics. He is concerned about the aesthetics and beauty of the northwoods. He and his wife were attracted to the Park Rapids area several years ago due

to the beauty of the towering pines, lakes and landscape. The second concern is safety. With more hangers and homes being built there will be more traffic on the runway and in the air raising the potential for collisions. Most public airports are governed by very strict guidelines for buildings and changes to towers and trees all which have to be properly notified to the pilots and other government procedures. As a private strip there is no such protection. With a variety of untrained vendors, contractors and homeowners, which won't necessarily be pilots, the traffic on the runway will increase dramatically. This again will cause more accidents. There is no way to control access to the runway and taxi ways from the people outside, or those outside of the association. With the recent sales we are already having issues with pilots parking their planes on the runway. The owners have been notified to stop this activity. People are leaving tracks on the runway that other planes could hit and non members using the runway for personal use not related to air traffic. For 50 years everyone has operated safely with no accidents and want to keep it that way. In addition there are ten lots on the south side of the runway and with these lots soon to be added there will soon be more traffic. Most of the homes are currently on the north taxi way which is not an active runway. As a pilot who flies into Sky Manor regularly he knows that less distractions are better when landing at 80 miles per hour on a grass strip that is heavily lined with trees. In addition to watching for deer and turkeys, they will now have to monitor for more traffic. Adding more homes is dangerous and unnecessary at this time. The third concern is traffic and noise concerns. With more hangers comes more traffic in and out of Minnesota 86, which is the airports identification number. They have operated peacefully and quietly near Island Lake. As traffic increases the potential for complaints from other home owners increases as does the possibility of air collision. As a private strip there currently isn't a system in place to enforce compliance of safety procedures. The current mix of pilots are very respectful of the policies and there have been no issues. The sudden and aggressive development of the remaining lots and the potential for additional lots on the north side of an active runway this will change. Again they are respectfully requesting that this be denied and deferred this plan for three to five years until there has been time to see how the south side of the runway is developed and for everyone to develop additional procedures and policies for subsequent traffic and congestion. Admittedly this is only two more lots but it is two more lots. The incremental revenue to the county is negligible.

Tim Kjellberg made public comment. He and his family have been involved with Sky Manor since it first started with the original developer and owner who had very dramatic plans for this place including wanting to put in a tower for when it was busy. He likes Mr. Hobson's idea. He came to the meeting thinking a condition could be placed to have a setback from the runway sidelines. Mr. Hobson has already addressed this and proactively is putting a setback in place. He feels that idea has more value than the concerns regarding three lots that currently don't have that for a stipulation when the new five lots will have this stipulation. He supports Mr. Hobson's approach because of his consideration.

Mark Hobson stated that he recognizes these concerns and will place a 50 foot setback requirement in the deeds and will put in a visibility requirement so that any intersection with the runway will be able to see down the runway. He is doing his best to address all of the concerns.

Carol Berg made public comment. Her family has had a vacation home on one of the original lots of Sky Manor for the last twenty years. They plan on retiring here. There will come a time when her husband's flying days will be done and there will be no more family members using the runway. This has always been a concern with Sky Manor. A few years ago there were five airmen that used the strip, of those five, three are near or over the age of 80. A common concern among the younger generation has always been what can be done to attract more pilots. The land around the original owners was platted and everyone had an opportunity to

purchase more lots and very few took advantage of that. Thanks to those new lots there are two new, younger pilots using the strip. It would seem new members would be the answer. She thought it was sad that Mr. Hobson will more than likely observe his neighbors as a bunch of complainers and doesn't see everyone as a community that works together to solve issues. Mark has been a good neighbor. He moved his hanger back to the tree line at this expense even though he was building it at the legal setbacks but the neighbors weren't comfortable with where it was located. He continues to allow others to use his property as a taxiway and for emergency landings. He wants to change three lots into five lots. She is in full support of his request. It is a well thought out development plan.

Eric Ramlo made public comment. He owns several lots on the lakeshore portion of the development. In terms of what the role of the Board and what Mark has accomplished so far there aren't any outstanding issues, assessments or problems against the property, no erosion or shoreline impact. It has passed all of the well and septic requirements. He felt that the proposed change of dividing the three lots into five is in harmony with the adjacent lots and what they are trying to accomplish out there. There were issues addressed as far as traffic, safety and noise, the FAA itself doesn't typically look at those issues until there are at least 700 jet operations per year. Jets are not operated out here. It is an unpaved runway. They are nowhere near a thousand operations. He felt that this was a minor increase and what could potentially happen by subdividing these lots is minimal compared to the overall community. It is a private, quite, private use airport. There aren't commercial operations. Over the fifty plus years, everyone prides themselves of being good stewards and community members. He is definitely in support of what is proposed. Some of the issues as far as setbacks are addressed with both what Mr. Hobson is proposing as well as the current airport property that is leased is such that it extends 100 feet from the runway. Currently the tree line runs at about 80 and he is willing to extend that another 50 feet beyond that.

With no additional public comments that portion of the meeting was closed.

Christenson asked Mr. Buitenwerf to explain exactly what the Planning Commission as a board needs to look at in regards to the concerns for the safety of the airstrip that were presented tonight.

Buitenwerf stated that the plat application concerns the Subdivision Ordinance of the County which primarily is concerned with meeting minimum lot requirements, buildable lot area requirements, space for two septic systems on each lot and having access for vehicles, cars and trucks to the lots from a public road. Those are the considerations that the Planning Commission is charged with taking a look at. If the subdivision as proposed meets those criteria then that would warrant the Planning Commission's favorable recommendation to the County Board on the application. The issues concerning the runway really aren't germane to the requirements of the Subdivision Ordinance because the County has chosen not to have jurisdiction over those issues.

Grob moved to accept the preliminary plat based on the information presented. He didn't see any need to add any conditions.

Johnson seconded it.

The motion carried unanimously.

With no further business to address the Planning Commission meeting was closed at 7:32 p.m.

Minutes respectfully submitted by:

Maria Shepherd  
Recording Secretary

## **October 27 & 28, 2014 Planning Commission/Board of Adjustment Meeting Minutes**

Members present were: Charlene Christenson, Ken Grob, Tim Johnson, Tom Krueger and Greg Larson. Also present was Environmental Services Officer Eric Buitenwerf.

### **Board of Adjustment:**

**Approval of minutes:** September 23, 2014 meeting

Motion by Christenson to approve September 23, 2014 meeting minutes with no edits, second by Grob. The motion carried 4-0.

### **Old Business:**

**Variance Application 30-V-14 by Dana and Jennifer Cirks:** Lot 6, and part of Island Drive, Belletaine Park, Section 1, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel: 21.51.00600. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed residential structure that will not comply with the required 100 foot ordinary high water mark (OHW) structure setback and from Section 902 of the SMO to bring in a quantity of fill material that exceeds permissible thresholds within the 100' OHW setback.

Dana Cirks presented the request for variance and explained that in 2005 the property was purchased after research that the variance on the property was good for the life of the property and thus the property was purchased with this in mind. In 2006, the DNR raised the OHW on the lake which eliminated the building envelope. When we started preparations to build the cabin, we were then told we would have to apply for a variance. In 2007, we received the proper permits and installed the septic system and the well for the future cabin. The requested information by the board was: 1. show how I would protect the structure against the highest water level, 2. show where the normal high water location is relative to the proposed structure, and 3. provide information on the amount of fill needed to accomplish the project. Three of the four corners of the structure are higher than the neighbor's lot elevation. The foundation will be built on concrete or concrete block to assure the minimum elevation level between the 1st floor of the cabin and highest known water level.

Krueger questioned that the deck was not on the original application?

Cirks responded that after this variance was tabled, the deck was added due to the elevation and is willing to accept whatever the board decides.

Krueger requested the distance from the deck to the OHW?

Cirks responded that it is 22' and that can be eliminated.

Johnson asked Mr. Cirks to explain the original variance on the property.

Cirks explained that the previous owner went through the process in 1989.

Johnson wanted to know what the original variance was for?

Buitenwerf explained the original variance was in 1990 and was to allow the lot to be declared buildable. There was no mention or variance sought concerning the OHW setback so the lot was buildable with a structure meeting the 100' setback.

Grob wanted to know how far the proposed deck is from the highest water elevation that occurred back in 2000 where the flags are now verses where the deck is?

Cirks explained that the deck was probably exceeding that and one corner by the garage.

Grob stated that building and your deck would actually be in the water if the water came up as high as it was in the 2000s.

Cirks replied yes.

Christenson commented that she lived on a lot like this for 10 years and bought when the water was low and had sand bags around the house for 3 years trying to save it. Have you given any thought to what you would do if the variance was granted and the water came up that high?

Cirks replied that he was born and raised in Nevis and is familiar with the lakes and water levels. If the cabin is up high enough on a foundation with concrete and use fill to slope away from the cabin, that should solve the issue.

Grob made an observation that the board would have to approve fill in the shore impact zone. You will be within 22' of the water. By approving this variance, we are setting you up to a situation that should the water level go up could be devastating.

Cirks replied that he had an investment in this property, and deeming it unbuildable would impact this investment significantly. Also he believes that the water levels will not impact this lot if built properly.

Johnson commented that he has a good plan for this structure and the elevation from the back side of that structure to the high ground. There is an alternate site for the septic. Another board had granted that this lot was buildable.

The Board asked if there was any public comment. There was none.

Johnson made a comment that this property was bought expecting to build and is being taxed the same as the neighbors as far as value.

Krueger made a comment that if this is approved, there is no way of knowing what the high water levels will be at in the future. This cabin would be sitting 37' from the water. If something should happen, people would question why this was allowed.

Grob made a comment that in 2005 the property was bought and if you had done your research, you would have realized if this lot was buildable. This OHW was made and buying this property was a very risky thing to do.

Cirks explained that he did research on the lot before he bought it and made sure the buildable site was at an elevation that could be built on. Other property owners were allowed to bring in significant amounts of fill during the 90's high water levels. This property did not have that opportunity.

Christenson made a motion to deny the variance since it is too close and accept the staff report findings of fact.

Grob seconded the motion.

The motion carried 3-1.

Findings of fact:

- 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? Per the original plat, this lot is just over half an acre in size. Only around 10,000 sq. ft. of the lot is located above the highest known water level elevation. This is insufficient room on which to site a proposed 28' x 60' house with an 8' x 60' lakeside deck in addition to the existing SSTS and a well. Also, over 200 cubic yards of material are proposed to be brought into this ~10,000 sq. ft. envelope for landscaping in addition to the ~186 Cu. yds. of material that will be needed to raise the floor of the house to an elevation that complies with Section 507.1 of the shoreland ordinance. Additionally, the requested ordinary high water mark setback is only 37' - which would place the structure significantly in the shore impact zone.

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

Yes ( ) No ( X)

Why or why not? The lot can be used recreationally to enjoy the outdoors and as a means of accessing the lake for recreational purposes. A variance could also be granted from the ordinary high water mark setback to allow a lesser scale structure (such as a travel trailer) to be placed on the lot. Such a removable structure would also help if/when the lake level rises again as it could be easily removed from the lot during times of high water.

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

Yes ( X ) No ( )

Why or why not? The lot was platted in 1963 before the shoreland ordinance was enacted. The State of MN also raised the OHW in 2006 by 1.6' which significantly moved the 100' OHW setback further back on the lot — reducing the area that meets all setbacks on which a structure could be placed.

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 stated in the answers to the previous questions, the difficulty is caused by a combination of the small lot size to begin with that was created by the original plat developer and the State of MN raising the OHW 1.6' in 2006.

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

Yes( ) No(X)

Why or why not? The proposed house would be one of the larger ones in the locality and with the lakeside deck only being 22' from the ordinary high water mark and over 200 cubic yards of fill being needed to landscape the yard and protect against high water levels (in addition to the fill needed to construct the house), it would not fit in with the area that is largely comprised of smaller houses sited on lots where the natural topography has not been altered. Placing this much fill on this lot would make it look out of place and possibly create stormwater runoff issues for adjacent lots.

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

Yes ( X ) No( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty is the small lot size to begin with and the OHW being raised 1.6' in 2006 by the State of MN that significantly moved the 100' OHW setback location further toward the rear of this lot.

#### **New Business:**

**Variance Application 34-V-14 by Gary and Tina Riggs:** Sublot E, the East half of Sublot D, and part of Outlot F, Akeley Industrial Gardens, and part of Gov't Lot 4, Section 22, Township 141, Range 32, Akeley Township on 11th Crow Wing Lake. Parcels: 29.22.00700 and 29.39.41300. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for a proposed addition to a nonconforming residential structure located in the shore impact zone that does not comply with the 50' road right-of-way (ROW) setback. The proposed addition will encroach further into the ROW setback.

Gary Riggs presented a summary explaining that the new addition would be 20' from the right of way setback and also seeking a 6' property line variance. The addition is to the back of the structure away from the lake and is connected to the city water & sewer.

Grob questioned if the current road is an easement or a platted road and the current road does not run where the easement was established and the centerline on the current road is not the actual easement?

Riggs replied not to my knowledge.

Buitenwerf reported that we do not know if the centerline of the actual road is or is not inside the exact center. There is no platted right of way here. The County Highway Department has

informed us that they would have a 66' right of way there and the centerline would be the center of the road.

Grob commented that it is established that where the building sets it is less than the 20' from the right of way. So if you took the 66' right of way and take 33' from the centerline, do they have the 20' setback for the building?

Riggs replied that it would be 20' from the right of way.

Johnson: Give me your thoughts on the elevation on this site for the addition. Riggs

replied that it looked right there on the elevation.

Grob commented that this structure meets the guidelines for the elevation. The Board opened the meeting for public comment.

No public comments were given.

Grob motioned to approve the variance and adopt the staff report findings of fact.

Krueger second the motion.

Motion passed 4-0.

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 proposed addition is only roughly 25% of the existing structure footprint and will be located away from the lake on the non-lakeside exterior wall of the existing house. The addition will only be 1' higher than the existing structure and thus will have negligible aesthetic impact as viewed from the lake. It would be unreasonable to deny the request.

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

Yes (X) No ( )

Why or why not? The requested addition is a reasonable size relative to the existing structure (-25% of the footprint) and located on the side of the house opposite the lake. The structure does not meet the 100' OHW setback or the 50' ROW setback (which overlap one another) so there is no place to add onto the structure without a variance. The addition's size in order to make the structure livable and move from seasonal use to year-round use is reasonable.

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

Yes (X) No ( )

Why or why not? The structure was constructed in the early 1980s at a nonconforming OHW setback in the shore impact zone. The lot is unique in that it is very long in the north-south direction, but only ~100' wide. County 23 bisects the lot just south of the existing structure. Thus, the 100' OHW setback and the 50' ROW setbacks overlap on the lot such that a variance would be needed for any addition made to this structure.

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 answer to question 3, the difficulty on this lot is caused by the structure being located at a nonconforming OHW setback and the location of County 23 being just south of the house. There is not room on the lot to add onto the structure without a variance because the 100' OHW setback and 50' ROW setbacks overlap. The landowner did not create this unique situation of how County 23 bisects the lot.

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 residential structures with a near even mixture of nonconforming structures located on the north side of County 23 and other residences located on the south side of County 23. This house is average in size compared to the other structures in the area and the proposed addition is small enough in size that it will not alter the structure's "average" status. The addition is single story like the existing structure and thus should blend in well on the lot.

6. Does the stated practical difficulty involve more than economic considerations? Yes ( X ) No( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the structure is located between the lake and County 23 and there is no room on the lot to add onto the structure by permit because the OHW and ROW setbacks overlap.

**Variance Application 35-V-14 by Steve Duer:** Lot 3, Block 1, West Pine Cone, Section 35, Township 141, Range 34, Lake Emma Township on Big Sand Lake. Parcel: 16.37.50300. Applicant is requesting a variance from Sections 502.2, 503, and 704 of the Shoreland Management Ordinance (SMO) for a proposed roof alteration on a nonconforming residential structure that is located in a bluff impact zone and at a nonconforming ordinary high water mark setback.

Greg Norwood, the contractor representing Steve Duer, presented the variance request to put an addition onto this structure to change the roof line which currently has a flat roof. This roof would allow for everything to conform to 8' inside.

Krueger commented that the height of the roof would not exceed the maximum height already there.

Norwood responded that that is correct.

Krueger questioned that the square footage inside would remain the same? Norwood responded yes.

Christenson commented that there was water leakage damage inside that needed repair.

Norwood commented that there is a water stain inside caused by rubber roof, this could use a real roof where you put in a ridge beam, create a gable end and run the roof pitch over the flat addition for better drainage.

Krueger questioned if there would be anything done for the drainage in the back of the home?

Norwood responded that the back would be left the way it is, do not want to dig into that earth, but may put gutter on west side for drainage.

The Board asked for public comment.

There was none.

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

Variance approved 4-0.

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 variance is only asking to increase the roof height over part of the residential structure an average of 6' to provide a uniform roof design

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

Yes (X) No ( )

Why or why not? The structure's location in a bluff impact zone requires a variance for any modification to the structure. Not allowing the roofline to be modified to provide increased roof pitch for proper stormwater shedding would deprive the owner of a reasonable use of the structure as the current roof system lacks adequate slope to properly shed rain and snow.

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

Yes (X) No ( )

Why or why not? The structure was constructed before the shoreland ordinance was enacted and it is located in a bluff impact zone which requires a variance for any modification to the structure. These aspects of the property create the practical difficulty.

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 stated in the answer to question 3, the difficulty is caused by the residence's location in a bluff impact zone and the structure's having been constructed before the ordinance was enacted at a nonconforming ordinary high water mark setback.

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 single family seasonal and year-round residences with a commercial resort property a few lots south of this property. The roofline modification will not alter this character in any negative way.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the residence was constructed at a nonconforming OHW setback before the shoreland ordinance was enacted and it is located in a bluff impact zone.

**Variance Application 36-V-14 by Don Goodmanson:** Lot 7, except the North 26 feet thereof, Eagle Bay, Section 9, Township 139, Range 33, Hubbard Township on Long Lake. Parcel: 14.41.00700. Applicant is requesting a variance from Sections 502.2 and 801.2 of the Shoreland Management Ordinance (SMO) and Article V, Section 2.01 of the Subsurface Sewage Treatment System Ordinance for a septic system drainfield to be installed at less than the required 10' rear lot line setback.

Don Goodmanson explained that the current septic system is failing and the intent is to put in a pressurized system in the same spot that they currently have.

Grob asked if the road is a heavily traveled road?

Goodmanson replied that it is not a heavily traveled road, especially this time of the year. Grob asked if the drainfield is inside of the hedge row?

Goodmanson replied that the drainfield is inside the hedge row.

Krueger asked if the hedge row is staying?

Goodmanson replied the hedge row is staying.

Johnson commented that this is the best proposal that this homeowner can have.

The Board opened the meeting for public comments.

There were none.

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

Grob seconded the motion.

Variance approved 4-0. 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 variance will allow a standard drainfield septic system to be installed on this lot whereas the alternative is to install a holding tank which has greater potential for environmental issues to arise from its operation. The intent of the 10' lot line setback is to provide a buffer from a property line to hopefully see that the drainfield is installed on the subject property and not a neighboring property. In this case, the rear lot line corners are present so there is the ability to see that the drainfield is installed on this property. Environmentally, the system will meet the required ordinary high water mark setback and vertical separation requirement from the periodically saturated layer — which are the key items for the ordinance.

- 2 Without the variance, is the owner deprived of a reasonable use of the property?  
Yes (X) No ( )

Why or why not? Per the licensed SSTS designer/installer who designed the proposed septic system, the lot is small enough that the proposed location is the only location available in which the needed replacement drainfield could be placed. Having a standard drainfield septic system vs. a holding tank 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 property lacks depth to be able to install the needed drainfield and meet the 10' rear lot line setback. There are no other available drainfield sites on the lot aside from the one being proposed — per the licensed SSTS designer.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?  
Yes (X) No ( )

Why or why not? Yes, as mentioned in answers to the above findings of fact questions, the difficulty is the size of the lot and its lack of lot depth which cause the proposed drainfield site to be the only remaining such site left on the lot.

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 single family seasonal and year-round residential structures. Allowing a drainfield to go up to the rear lot line vs. 10' from the rear lot line will not alter the locality's character in any way.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the lot is small, lacks depth, and has no other suitable area for a drainfield.

**Variance Application 37-V-14 by William Eckles:** Lots 12, 13, and 14, Block A, Shorewood, Section 26, Township 141, Range 34, Lake Emma Township on Big Sand Lake. Parcel: 16.42.00700. Applicant is requesting a variance from Sections 502.2, 503, and 704 of the Shoreland Management Ordinance (SMO) for a proposed addition to a nonconforming structure located in a bluff impact zone.

Grob made an observation that it is less than a 50% expansion and 120' from the lake, the only encroachment is that it is less than 8' from the bluff zone. Seems like a reasonable request.

Krueger asked Buitenwerf if this plan was going from a 2 bedroom to a 3 bedroom and if they have filed a design for septic, do you need a condition on the variance?

Buitenwerf responded that no permit would be issued without the septic portion.

Christenson commented that the addition will not be visible from the lake and the height is not increasing.

The Board opened the meeting for public comments. There were none.

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

Grob seconded the motion.

Variance approved 4-0.

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 proposed addition footprint is less than 50% of the existing structure's footprint and located outside of the bluff impact zone. The addition's height is the same as the current structure so there will be no increased aesthetic impact caused by the structure height. The addition will be to the rear of the structure — away from the lake and bluff impact zone — which is typically the preferred direction for an addition to a nonconforming structure.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

No ( )

Why or why not? Making an addition to allow for a third bedroom on a residential structure is a reasonable request — especially given the completed structure would still be under 2000 sq. ft. in footprint — which is a reasonably sized structure today for a one story home. The addition will be the same height as the house, located on the backside of the house, and as least intrusive on the BIZ and lake setback as possible for an addition to be on this structure.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

No ( )

Why or why not? The structure was originally constructed prior to enactment of the shoreland ordinance at a nonconforming location in a bluff impact zone. Because the structure is in a BIZ, there is no way to add onto it without a variance because of the requirement in Section 704.7 of the shoreland ordinance that any structure in a BIZ must obtain a variance in order for an addition to be made to 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? As stated in answers to previous findings of fact questions, the structure was constructed prior to enactment of the shoreland ordinance by a previous owner in a location that is now within a bluff impact zone. Section 704.7 of the shoreland ordinance requires that any alteration to a structure in a bluff impact zone only be made if a variance is first granted for the alteration.

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 single family seasonal and year-round structures. The structures on the two adjacent lots are slightly or much larger than this proposed house

and addition. Adding a bedroom addition to this structure will not harm the locality's residential character.

- 6 Does the stated practical difficulty involve more than economic considerations?  
Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the house was constructed by a previous owner at a nonconforming bluff impact zone setback before the shoreland ordinance was enacted and the ordinance requires that any alteration to such a structure be handled through a variance process.

**Variance Application 38-V-14 by Sherman Fickle:** Lots 10 and 11, Bubar's Addition, Section 17, Township 139, Range 33, Crow Wing Township on 3<sup>rd</sup> Crow Wing Lake. Parcel: 06.46.01000. Part 1: Applicant is requesting a variance from Sections 502.2, 503, and 704.7 of the Shoreland Management Ordinance (SMO) for a proposed lakeward addition to a nonconforming residential structure located in a bluff impact zone. Part 2: Applicant is requesting a variance from Section 801.2 of the Shoreland Management Ordinance (SMO) and Article V, Section 2.01 of the Subsurface Sewage Treatment System Ordinance for a septic system drainfield to be installed at less than the required 10' rear lot line setback.

Buitenwerf confirmed that this application has been tabled until the November meeting to give the applicant an opportunity to amend his request.

**Variance Application 39-V-14 by James Alexander:** Part of Government Lot 2, Section 10, Township 141, Range 34, Lake Emma Township on Pickerel Lake. Parcel: 16.10.00800. Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for a proposed greater than 50% addition to a nonconforming residential structure that does not meet the ordinary high water mark structure setback.

Ben Ott of North Country Structures representing James Alexander gave a summary of the project. What exists now is a basement cabin never completed. The proposal is a second level over the existing footprint and adding a 16' x 29' addition to make it adequate for year round living.

Krueger questioned whether the porch in front would remain?

Haag replied that it would be totally changed, the roof would be gable ended to correct the water runoff.

Krueger questioned if this porch would be enlarged making it closer to the lake?

Ott replied even with the new overhang, this part of the cabin would not go closer to the lake.

Christenson wanted to know what would happen to the trees?

Ott explained that there will be two trees in the front that will not make it through this project. Possibly a third off to the right. The trees are beyond the 75' setback.

Johnson questioned if the 8' x 10' shed structure that would be voluntarily removed.

Ott explained that the 8' x 10' shed structure is currently sitting in the alternate drainfield site and should anything happen to the current drainfield, this structure would have to be removed.

Johnson asked if there was an erosion control plan for this project?

Ott explained that gutters would be installed, running the water to the back of the property. Krueger

explained that they would like the 8' x 10' building removed.

Ott replied ok.

Grob wanted to confirm that the back of the structure is 18' to 20' from the road edge.

Ott explained that the road has an easement through the property so all setbacks are met from the easements.

Christenson would like to know how this will change the parking area?

Ott explained that this project will eliminate part of the parking area, but what is left will remain more than adequate.

Christenson commented that parking now would be on the back side of the cabin and more to the east.

The Board opened the meeting for public comments.

John Griebler, 18549 Ithaca Dr., is to the west of the applicant. He would like the board's consideration for denial of the variance. Mailed letter requesting denial, since this variance does not meet the requirement of practical difficulty. Explained that the application is misleading and deficient, the survey is incorrect and was prepared by the surveyor as directed by the homeowner. Suggested that the applicant is misleading and a portion of the existing septic system is on my lot. This is not in conformance with the ordinance requirements. The 10' setback from the lot line was not met. I object to any variance that does not bring the septic into compliance with this setback. The homeowner indicates a 2 bedroom structure will be built but the plans show a much more intensive use. I perceive the applicant is creating a duplex living condition with the present cabin being enlarged by more than two times in violation to the 50% ordinance allowance. The applicant has not considered a rearward addition and that the road setback is an easement that has been surveyed. The applicant has sufficient property available to construct a reasonable dwelling behind the existing building and in conformance with the 100' setback. There is no erosion control plan in place. The foundation disturbance will essentially cause a complete rebuild of this structure. Reasonable lakeside use can be had with the present consideration. Adding a second story will encroach into the trees causing additional visibility of the cabin from the lake.

Krueger interrupted and stated that the 3 minutes were up and would he be wrapping up?

Griebler responded that in summary, sufficient evidence exists to show that public and adjacent properties including the neighborhood are harmed by the proposal. Any variance allowed should be mitigated to reduce this harm is outlined in the draft that was submitted. A serious condition for denial should be made. In no case should an expansion of use be allowed without the septic setback requirements of the ordinance being met. Any addition or alteration to the outside dimensions of the nonconforming structure that cannot met these provisions must be authorized

by variance pursuant to article 11 of this ordinance and all other provisions of the ordinance are complied with. I object strongly to that septic system being on my property.

Grob asked facing the lake which side Mr. Griebler's property was on? Griebler

responded right or to the west.

Grob questioned the visibility issue, you are closer to the lake than he is so what constitutes a visibility issue?

Griebler replied that his property is not closer to the lake but farther back. Property owners do not understand where the lot lines are because the lot line is actually at an angle to the road easement creating an illusion. When he parks his lift on the property line, it is in my sight line to the lake because of the angle.

Christenson questioned whether the septic system was put in by the previous owner when you owned that property?

Griebler replied that the system was put in before I owned the property, but was put in under cover of night when the previous owners were on their honeymoon.

Christenson questioned that Mr. Griebler did not know that he had this septic system on his property when he purchased the property and asked Buitenwerf how this could happen?

Buitenwerf explained that contractors take the property owner's word as to where the property line is, as would our inspector.

Christenson asked if you would automatically order a survey?

Buitenwerf replied no.

Krueger asked if that septic system would be compliant if part of it was on another property owner's land?

Buitenwerf stated that compliance does not take into consideration the location of the system relative to property lines.

Ott explained that this issue had been resolved through the courts and there is an easement onto his property through the court. He had to give them an 18' easement onto his property.

Krueger stated that the courts gave an easement as it currently exists to repair and to maintain it, not to expand it, not to increase the size.

Krueger stated that the issue of the septic system and where it is has been settled.

Ott explained that there is an alternate site on the property should the current septic system fail and this system would be located completely on his property.

Grob asked the number of bedrooms in the current house?

Ott explained that it currently has one bedroom, one back kitchen area, and a little room with a bunk bed.

Grob asked how many bedrooms is the current septic system sized?

Ott answered two, new plans call for one bedroom in the current lower level and the addition of one bedroom on the new addition.

Mary Griebler, 18593 Ithaca Dr., is the property on the east of this property. I have calculated over 800' of easement, which was not included in the impervious calculation. Part of the easement requirements was that any construction on or improvements to that property that would cause any changes to the topography in that wedge coming down that driveway to the lakeshore, has to be consented to in writing by me. Based on the measurements that I made the septic is too close to my well. Feel the current septic is undersized for the

proposed space. This addition is well over the 50% from 725 square feet to 2,378. Smaller lots have to be developed to protect the future of everyone who is ever going to own that home and use it. Higher elevation on that property means there is going to be more runoff, that will affect neighbors. There are 15 lake lots along Ithaca Dr. and three of the lots are smaller and two are undeveloped. These are very average size on lakeshore frontage. The proposal for a 2378 square footage is not consistent with what the other properties currently have. This proposal puts the square footage at 2.23 times the average. Heated square footage is the only public record that could be used that gives the ability to gauge the population density, the use, and the impact on the neighborhood. If this is allowed, it will change the future of every lot.

Jim Alexander explained that he had an easement for the septic system from the judge to inspect, maintain, and repair my septic system. There are several larger homes in the area. I will be retiring here.

Ott explained that we are looking at 1200 square feet on the main level including the walkout basement. We might be at 2400 or roughly under. There are others larger in the area.

Public comments were closed.

Grob expressed a concern that a well is located too close to the septic system.

Ott explained that the septic site that is in question is the alternate site not the current site.

Johnson explained that the designer is responsible for the accurate measurements from the well to the septic.

Grob asked Buitenwerf a question regarding the existing footprint to do a 50% calculation, do you include the porch?

Buitenwerf replied that the porch was included.

Krueger asked if gutters would be installed for erosion control.

Ott replied that they would be installing gutters and having the water run to the backside of the cabin and that they could also use perforated pipe so the water disperses slowly.

Johnson asked Buitenwerf if during the remodel they find that the blocks need to be replaced, do they need a new variance to do the excavation?

Buitenwerf explained that the digging around the structure during the building process is part of the building permit. As far as repair, the statute would allow any damage to be repaired so long as it does not increase in size.

Grob questioned the maximum heights of the structure? Haag explained that this structure is way under the height allowed. Christenson asked if the shed would be removed.

Ott answered that it would.

Grob expressed that there was little buffer zone on this site, please review what is your plan for the buffer?

Ott answered that the roof line was being changed, on the west side gutters will run north to south and will take commercial gutters, downspouts that will discharge on the backside. Would also be willing to add some drain tile or discharge to the other side of the road.

Christenson asked if discharged toward the road, are you going to let it go onto the road?

Ott replied that drain tile would be wise in the sandy soil so it would penetrate into the ground.

Krueger asked if Buitenwerf had any recommendations on resolving any runoff problem?

Buitenwerf suggested that with what they have proposed with directing the runoff toward the rear of the structure, a possible use of a French drain by digging a hole vertically down into the ground and putting drain tile in the hole and filling with rock for drainage.

Grob expressed an expectation that there will be significant runoff down toward the lake and suggest that we recommend a buffer zone as a condition of this variance.

Ott explained that putting in this new structure with gutters, the runoff issue is changed since there was nothing there on the existing structure for runoff.

Christenson commented that she would concur that a buffer zone would be necessary for runoff since the grass goes right up to the lake.

Krueger commented that the French drain is a good idea. Ott stated that French drains were acceptable to them.

Christenson recommended a "no mow" zone with some vegetation to help with the runoff to the lake.

Grob explained that a 25' buffer "no mow" zone along the lake frontage would protect the lake from any runoff.

Ott stated that would be a good option for the variance.

Alexander, the homeowner, expressed that what you see is what he bought, he did not clear to the lake. This property has a nice sandy beach and he does not want to change it.

Grob explained good shoreline management practice is to have vegetation next to the water and explained to the homeowner what type of recreational area and pathway the ordinance would allow.

Grob moved to approve the application with the following conditions and adopting the staff report findings of fact:

1. A vegetative buffer zone must be created and maintained for the full width of the property from the ordinary high water mark (OHW) to 25' landward of the OHW. No

mowing is allowed in this buffer zone and low growing, deep rooted plants must be planted in it. One shoreline recreation use area and one access path may be located in this buffer zone as allowed by Section 901 of the Shoreland Management Ordinance.

2. The 8' x 10' footprint storage shed located to the east of the existing residential structure must be removed from the property.

Christenson seconded the motion.

Variance approved 4-0.

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 bulk of the addition is vertical instead of outward and the finished roof height will only be 21' with the structure at an 87' OHW setback. The finished footprint will be —1200 sq. ft. which is very reasonable for today's standards. Additionally, the existing accessory structure will be removed as a condition of this variance approval.

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

Yes (X ) No ( )

Why or why not? The existing house is just a 725 sq. ft. basement level with a roof on it. The addition will make the structure —1200 sq. ft. per level with a total of two levels which is a very reasonable size for a house today. There is not enough depth on the lot to locate a structure in compliance with the 100' OHW setback.

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

Yes (X) No ( )

Why or why not? The lot lacks sufficient depth because of the private road running along the rear of the cabin for the cabin to be moved back to a conforming OHW setback and still meet a safe setback from the road. The house was built by permit in 1977 and apparently the shoreline has eroded since then such that the structure no longer meets the 100' OHW setback and now requires a variance in order to make the proposed addition because of the ordinance requirement in Section 704.7.

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 fact that the house was built in 1977 at supposedly a conforming OHW setback by a previous owner and the shoreline has eroded enough since then that the structure is now at an 87' OHW setback and the ordinance requires a variance

to modify the structure to this degree. There is insufficient depth on the lot because of the private road location to consider moving this structure back to a conforming OHW location.

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 single family seasonal and year-round residences on lots that are similarly sized and smaller in scale. The proposed addition will result in a — 1200 sq. ft. footprint home that is within the range of home sizes in the neighborhood. Thus, the remodel will not harm the locality's residential character.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty, as previously stated, is the fact that the house was built in 1977 by a previous owner and the shoreline has apparently eroded such that the structure no longer meets the 100' OHW setback. Also, the road right behind the house does not allow it to be moved back any further to achieve a greater OHW setback.

**Variance Application 40-V-14 by Fred and Debbie Daily:** Part of Government Lot 1 and the SE 1/4 of the NE 1/4, Section 3, Township 140, Range 34, Henrietta Township on Lake Ida. Parcel: 13.03.00500. Applicants are requesting a variance from Sections 502.2 and 902 of the Shoreland Management Ordinance (SMO) for a proposed residential structure that will not meet the ordinary high water mark structure setback and to exceed the permissible volume of material that can be moved on a steep slope and in a bluff impact zone.

Ben Ott of North Country Structures presented a summary of this project. This lake has a 150' setback and a bluff. The applicant is proposing to use the one flat area on this lake property and construct a new residence. The home was designed to minimize the amount of fill and reduce the disturbance of the area.

Krueger commented that while on the site visit, he looked for another location for this structure which he did not find.

Christenson expressed that any other location for the structure would be so far back that there would be no view of the lake.

The Board opened the meeting for public comment.

Doug Kirkham, 22007 4th St. Dr., here as current neighbors. Runoff from the roof, there is a steep pathway to the lake and if the runoff gets to the pathway, we will have erosion issues. As neighbors we have been assured that this project will deal will drainage. We support this project.

Grob asked about the pathway to lake?

Kirkham expressed that he would like to see the homeowner held to the promise that the runoff issue would be addressed as part of the variance.

Tom Fogerty owns property and questioned if there is an easement for access to the property.

Krueger expressed that property line and easement issues are irrelevant with regard to this variance.

Fogerty asked if the other lots that this property owner owns will also be developed as part of this variance.

Krueger explained that does not pertain to this variance request.

Public comments were closed.

Grob commented that if the owners want any kind of connection to the lake, this probably is the only location for the structure.

Grob made a motion to approve the variance.

Johnson seconded the motion.

Variance approved 4-0.

Findings of fact:

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? The tract is 62 acres in size and there is ample acreage on the tract where the proposed residence could be sited and comply with the ordinance; however, this is the only site that is suitable for a connection to the lake which makes it reasonable.

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 findings of fact question 1 above, the property is 62 acres in size and this would allow reasonable use of the property on lakeshore.

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

Yes ( X ) No ( )

Why or why not? The topography of the property dictates the location that is needed and is in the natural environmental setback and is the only usable spot to be able to use the lake.

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

Yes ( ) No ( X )

Why or why not? The topography dictates that there is not another acceptable place that provides any connection to the lake.

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 single family year-round and seasonal structures that are located on lots ranging from just under an acres to 2-4 acres and a resort and arestaurant/bar on the east side of the lake. The proposed residence in the proposed location would not harm this mixed commercial/residential use that presently exists on the lake.

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

Yes ( X ) No( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The alleged difficulty involves a bluff and steep slopes that are located in the part of the property near the lake on which the applicants want to construct a house.

**Variance Application 41-V-14 by Garrick and Mary Larson** : Lots 8, 9, and 10, Block B, Camp Kenjocketee, Section 18, Township 142, Range 35, Clover Township on Little Mantrap Lake. Parcel: 05.37.04700. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance (SMO) for a proposed landscaping project that will exceed the permittable volumes of material allowed to be moved within the 100' ordinary high water mark setback and on a steep slope.

Cheryl Wilkie from Flying W represented the homeowner and explained that this project was designed to keep the water from coming into the house. The back end of the house toward the driveway slopes the water right to the house and on the sides slope down. Would like to take the extra fill from behind the house and use it on the left side of the house and build some rock walls to hold the fill there to get the water runoff away from the house.

Krueger questioned if there were mold issues in the basement?

Wilkie explained that this cabin does have mold issues and stood empty for many years.

Christenson asked if this was the cabin with vegetation all the way to the steps?

Wilkie explained that they would be putting wood steps in.

The Board opened the meeting for public comment.

There was none.

Grob commented that clearly something must be done to this cabin.

Johnson asked if they had a plan for erosion during the excavating?

Wilkie responded that a silt fence would be used.

Johnson made a motion to approve the variance and accept the staff report findings of fact.

Christenson seconded the motion.

Variance approved 4-0.

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 a steep slope on the lot with stormwater management issues affecting the existing residence such that they are creating moisture and health-related issues in the home. The purpose of a variance process on shoreland alteration projects of a certain magnitude is to allow for review to ensure the project is able to be done properly and protect the lake from negative effects. The project will segment the project area up well enough with several retaining walls and employ sufficient erosion control measures that the project poses no environmental concerns. Once completed, the character of the slope will be the same as what it is now — stormwater will simply be directed away from the house instead of toward it.

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

Yes (X) No ( )

Why or why not? Addressing moisture caused health issues in the house by landscaping the yard to direct runoff away from the foundation is a reasonable request to allow a reasonable use of the home which is to occupy it without endangering one's health.

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

Yes (X) No ( )

Why or why not? The structure was constructed prior to the ordinance enactment date on a steep slope that requires proper stormwater management and landscaping in order to avoid moisture issues in the house.

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 stated in the answer to question 3, the difficulty is caused by the steep slope and the location of the house on the slope. The house was constructed by a party other than the current landowner.

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 single family seasonal and year-round residences on lots of similar size to this one. The proposed landscaping project will not change the look of the slope much from how it looks today and will not alter the locality's single family residential character.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty involves the steep slope on the lot and the home's having been sited on the slope when it was constructed by a previous owner prior to the ordinance taking effect.

**Variance Application 42-V-14 by Gerald Nosbush:** Parts of Outlots No. 2, 3, 4, and 5, Shady Point, and Part of Lot 1, Block 2, Shady Acres, Section 28, Township 140, Range 34, Henrietta Township on Long Lake. Parcels: 13.44.00400 and 13.59.00310. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for proposed new replacement rental units and one lodge structure to be placed at less than the required 100' ordinary high water mark setback.

Gerald, Wanita & Lewis Nosbush were present to explain the variance request.

Wanita Nosbush explained that they would be replacing cabins 2, 3, 5, 6, 7, 8, and cabins 11 & 12 would become one unit and rebuild the lodge and removing cabin 4 & 12.

Krueger questioned the density on the property?

Buitenwerf explained that they would be under the property density by ~100 square feet.

Christenson questioned where cabin 8 would be moved back?

Wanita Nosbush explained that they would be moving up the hill somewhat and away from the boat landing.

Christenson asked if they had a footage for moving this cabin?

Wanita Nosbush said the current setback on cabin 8 is 50' and would like to make it 57' and "L" shaped around the cedar trees.

Christenson asked if cabin 7 could be moved back also?

Gerald Nosbush explained that there was not a plan to move that cabin back.

Lewis Nosbush explained that moving this cabin would make it difficult for parking using up that space.

Wanita Nosbush suggested that cabin 7 could be moved to the east and then bring it up without disturbing trees and that they would be able to get the permits early next spring for 6, 7 & 8 and do those in 2015-2016 and then in 2017 do two more. The plan would be to get the permits early next spring for 6, 7 & 8 and do those in 2015-2016 and then 2017 do two more. They have a

variance that they got in 2002 currently to rebuild cabins 2, 3, 4, 7, 8 & the lodge (11 & 12) right where they are with a 50% addition. At the time of the variance, cabins 5 & 6 were not included because they met the setback at that time.

Lewis Nosbush explained that because of erosion over the years these cabins no longer meet the setback.

Grob asked if berms would be built when rebuilding these cabins to keep out water? Gerald

Nosbush says using berms is reasonable to save run off.

Krueger made the comment that these cabins lacked handicap assessable bathrooms and the bedrooms do not meet Minnesota Health Department standards. So safety and health wise, rebuilding would be an improvement.

Grob asked if you could move cabins 5, 6, 7 & 8 back to the 100' setback and reroute the road?

Wanita Nosbush explained that under the road is the underground gas line, electric & water line which would have to be moved.

Gerald explained that these movements would also use up the alternate septic site across the road.

Christenson commented that the cabins that have been redone are very beautiful, assuming the variance was granted you would continue to be good stewards of the land?

Wanita Nosbush stated that in front of cabin 8, there is a terrible erosion problem and have talked to the Soil & Water Conservation people and talked to a environmental garden person and have done rip rap. They do leave a buffer zone to curb the runoff.

Johnson commented that the previous variances would all be void if this variance is granted?

Buitenwerf explained that if this variance application is granted that they as applicants would rescind their rights to the previous variances.

Grob asked if that needed to be made as a condition of this variance?

Buitenwerf suggested that this be made a condition of the variance.

Krueger explained that the previous variance was good for the life of the property and the variance granted today would be good for 5 years.

Wanita Nosbush explained that she did know that.

Buitenwerf explained that whatever is not done in 5 years, the applicant could then ask for an extension, which would be up to the Board and myself to approve.

Wanita Nosbush explained that with the ups and downs in the resort industry the goal would be to have it done and complete in the next 5 years but you get one or two bad years in there and that could be a huge setback for our plans. We currently have a variance to build 50% bigger on all but cabins 5 & 6 and they would have to be moved back to the 100' setback. We are within 5' or 10' of that now. There is no time limit on this variance and it is on the deed of our property. She discussed that the goal would be to get the permits early next spring for 6, 7 & 8 and do those in 2015-2016 and then 2017 do two more.

Christianson asked when they planned to remove cabin 4?

Wanita Nosbush replied that when they were done with cabin 2, 3 & 5, because the septic for 4 would be used.

Krueger asked - could we say that cabin 4 could stay until all cabins were done?

Wanita Nosbush asked if they would have to have the permit pulled the fall of 2020 to complete the variance?

Christenson commented that with what you have for the existing variance and what you want to do in this proposed variance it would be in the county's best interest to try to make this work. They are going to remove some cabins and moving back at least one cabin and the other variance would be existing up to 50%.

Grob asked when they intended to do cabin 1 getting rid of 12 and then building a new lodge?

Wanita Nosbush answered that that would be the last thing done since no revenue comes in on the lodge. So the plan is in 2015 redo cabins 6, 7 & 8 and in 2016 to 2017 redo cabin 5, 3 & 2 and then would redo 11 & 12 with the lodge last.

Krueger commented that doing the lodge last made sense.

Wanita Nosbush asked if cabin 12 would need to be removed since it is part of the current building?

Krueger suggested a stipulation that they could stay if they do not get them built in time.

Buitenwerf explained that this is new territory that the Board has not had reason to delve into before. The scope of this application is much larger than most applications so it does not necessarily fit a 5 year time line.

Gerald Nosbush asked if they could keep their original variance and as we rebuild, take cabins out, then we can keep original variance on lodge until we tear down. We void it as we use it up.

Buitenwerf explained that staff would recommend against that because we than get right back into the situation of having a complicated situation of trying to discern what is allowed and what isn't.

Grob explained that it is hard to see ahead 5 years, they have a plan that they think they can accomplish in 5 years and they have done the application. If approved would like to do it considering all that and if it is not working, they come back to the Board and ask for an extension.

Wanita Nosbush asked how often the Board has granted extensions?

Buitenwerf explained that the extension provision of the ordinance came into effect in 2011 and have not yet run into that situation.

Wanita Nosbush asked if it is then the same process?

Buitenwerf explained that an extension can be obtained by submitting that request in writing to the office and the request would need to state what your difficulty in meeting that deadline was and then I or the Board can grant an extension of 1 year with no extension after that.

Krueger asked if they would like a month to think about this decision?

Grob asked which units the current variance is on?

Wanita Nosbush responded that it was 2, 3, 4, 7, 11-12, and the lodge.

Gerald Nosbush asked if there is any way they can keep our current variance for 2, 3, 4, 7, & 8 and just seek out a variance for the new cabin 1, which would eliminate 11 & 12, lodge, and cabins 5 & 6. Is it possible to have two variances on the property? A variance just for 5 & 6 to be built where they are and for us to build a new lodge and the new cabin 1 where they are proposed on the site plan and keep in place our current variance on 2, 3, 4, 7, & 8?

Christenson commented that the lodge would be the last thing to do.

Grob asked what is the possibility that we accept the current variance if we do and the old variance applies to only 11, 12, and the lodge.?

Buitenwerf understands what is being proposed and suggests that the applicant table this application for a month to allow the application to be amended in that manner and hear the application in the amended form so that you are hearing the entire request in this new form and then the previous variances can be voided. Basically you would be incorporating in those past variances that you are wanting to into this variance, but that would be much cleaner to try to make sense of because 5 years down the road memories fade.

Grob responded that they would come back to change the variance to include everything from cabin 2 thru 8 and then stipulate the old variance on 11, 12 & lodge would remain effective until complete.

Buitenwerf responded no, what is being said is to take the pieces of the old variance and make them part of the new variance so that the old variances can be rescinded, but they become part of this application if approved. Then you are only dealing with one application and it is much cleaner, the idea is if that is the way the Board wants to go.

Krueger agreed that this would be the way to go to incorporate the old with the new and present it in a new form.

Grob expressed concern that writing this new variance to accommodate these changes could be done with Buitenwerf's help.

Buitenwerf stated that he is able to give some direction but cannot write the variance for them. Johnson suggested that they rewrite old variance to reflect no sunset clause.

Buitenwerf suggested that they solicit public comment before going into any motions. The Board opened the meeting for public comments.

Chuck Diessner, 24328 Hazelwood Dr., representing COLA, expressed concern that the Board needs to be aware that to do a rewrite, you do not create a situation where a variance is granted on certain cabins that you wouldn't grant but for the other changes being made. You would put them in a better position and get cabins 1 - 7 done and maybe look at the old variance which is more favorable to us and what we are going to get under the new, so let's sit on our hands and not do anything.

Public comment closed.

Gerald Nosbush requested that this variance be tabled until next month. Krueger motioned to table this variance.

Johnson seconded.

Buitenwerf explained that the application deadline for next month is tomorrow, October 27th and would need to have an amended application by Monday, November 2nd. Otherwise you can file a form to allow for an extension tabling longer than that.

Buitenwerf also explained that the Board should specify the reason for tabling so that the applicants and the office understand and would insure that we provide information that they are wanting to see in an amended request.

Krueger specified that the reason for tabling is to work out a plan for the old variance and a new variance and the five year deadline that would be on any new variance.

Christenson requested that they show that cabin 8 is being moved back 8' on the drawing and then that you would consider moving back cabin 7.

Buitenwerf asked the Board to please restate the motion.

Krueger made a motion to table the variance to come up with a plan for the old variance and the new variance and anything newly granted has that 5 year window on it. The reason is to have a plan in case there is any downturn in the economy and they have to be able to build something beyond the 5 years.

Buitenwerf did not understand the beyond the 5 year part. Staff does not want a hybrid that extends beyond the 5 year window.

Krueger explained that no changes would be made to the old variances on this property.

Buitenwerf explained that he would have to check with legal counsel but am not aware that you can keep pieces of an old variance and rescind the other pieces.

Grob expressed that the issue here is that the applicant is uncertain that they can meet the 5 year window on the lodge. From a Board standpoint, whatever is voted on that the old variances go away so there is no complication. Will need to find wording that will help with the "what ifs" that could arise if the time line goes beyond 5 years in the future.

Buitenwerf explained that any new variance you grant is subject to the 5 year provision in the ordinance.

Wanita expressed that a vote is in order since statutes will not allow pieces of the variances. Gerald submitted that if you cannot save part of the old variances, there is no need to table.

Wanita commented that we have two variances 90-V-02 and we have 95-V-73 which could be voided. 90-V-02 has to do with cabin 11 & 12. Cancel one and keep one.

Buitenwerf commented that we could take those setback or whatever size density variances that were authorized and the previous variances that you want to retain, mix that in the new that you

are also proposing, submit that in a new application understanding that if that new application is approved your past variances would be rescinded. You would still have those things in the variance but would have the 5 year sunset clause in them.

Christenson commented that if we were to vote exactly as presented tonight and then all was not done in 5 years according to the statutes right now they were still in place in five years they would be able to remodel up to 50%?

Buitenwerf explained that this is a commercial property and the 50% rule does not apply. Johnson asked when the variance clock starts ticking.

Buitenwerf explained that the 5 year clock starts ticking when the motion is made and the variance is approved.

Krueger withdrew the previous motion to table.

Christenson made a motion to grant the variance as requested with the following conditions:

1. The owners of the property involved in this variance application must rescind their rights to Variance 90-V-02 and Variance 95-73 in order to obtain permits per this Variance 42-V-14.
2. Earthen berms must be placed between Cabins 2, 3, and 5 to address the stormwater runoff issues present in these areas.
3. Proposed Cabin # 8 must be constructed at a 65' ordinary high water mark setback.

Grob seconded the motion.

Variance approved 4-0.

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 property is 10 acres in size but it would be hard to move the structures elsewhere because of septic, water and electricity.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

No ( )

Why or why not? The cabins need to be brought up to code and this is their business and so it is important that they be able to do that.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

No ( )

Why or why not? The placement of the septic, water and electrical lines make it difficult to move elsewhere also the road is right behind the cabins.

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 placement of the septic, water and electrical lines make it difficult to move elsewhere also the road is right behind the cabins.

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 a mixture of commercial resort and single family seasonal and year-round residences. The proposal would result in new cabins being placed in approximately the same locations as the existing rental cabins. The cabins would be slightly larger and taller, but they should not alter the locality's character.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty.

## Planning Commission

### New Business:

#### Wildwood Retreat First Addition plat correction

Christenson commented that this is just a correction for the title.

Buitenwerf commented that they need to read the letter that Mr. Murray provided and that explains the correction.

Larson stated that Mr. Murray added an area that was not previously included along the lake. Open for public comment.

None.

Christenson made a recommendation to approve the plat correction as presented and recommend to the Commissioners that they approve it.

Grob seconded the motion. Plat

correction approved 4-0.

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**Final Plat of Sky Manor Aero Estates 2nd Addition** by Mark Hobson: Applicant is requesting to re-subdivide three existing tracts into five platted lots. Parcels: 02.58.00500, 02.58.00600, and 02.58.00700.

The preliminary plat was approved by the County Board on August 19<sup>th</sup>. No conditions were placed on the approval. The property is Torrens and clear title is in Mr. Hobson's name. The plat has been proofed by an independent surveyor and found to comply with Minnesota Statute 505 that governs plats. No new roads are involved in the plat. The application complies with the ordinance so the department recommends that a recommendation to approve the final plat application be made to the County Board.

Christenson asked what the plan was for the road?

Hobson stated that the road is private right now but has cleared the brush along the edges and has widened out the first half of the road. After more lots are sold, will put more gravel on it to bring it up to Township specs.

Buitenwerf stated that the right of way is 66' on this plat and is an easement. Mr. Hobson owns the southern half of that right of way. My recommendation is to process the plat application as presented and then it would be up to him if he is interested in this becoming a township road to work with the parties on the north side of the right of way to see if they can agree to work with the township.

The Commission opened the meeting for public comment. There was none.

Christenson made a recommendation to approve the final plat as presented and recommend to the Commissioners that they approve it.

Krueger seconded the motion.

Final plat approved 4-0.

### **Shoreland Management Ordinance — proposed amendments**

Grob asked if the appendix A-1 & A-2 are going away? Buitenwerf responded yes they are being deleted.

Krueger commented that the definition of Variance should be user-friendly. Why is appeal not defined in the definition?

Buitenwerf explained that the State Statute changes and you run the risk of our ordinance not being in line with the change. From an administrative standpoint and a liability stand point of the County, it is to our benefit to use the Statutory definition. The definition could be updated as the statute changes.

Larson stated that if you key your definition to what the current statute is and say what it is right now, that puts the burden on the customer knowing what the statute is. The County could update the definition as the statute changes.

Krueger commented that if someone picked up this ordinance and looks at what they want to build and finds out that they cannot build it and they do not know anything about a variance they may not know to go look on line at the State Statute. Why not put the State Statute definition in there.

Buitenwerf replied that it is because the statute changes and we are then in a constant process of trying

to catch it and then having to go through the Public Hearing Ordinance Amendment process to make those minor corrections. We could accommodate that by the definition is what is found in the State Statute which is currently as follows and then if it ever changes, we could change it without going through hearing process.

Krueger requested that we have a definition for Appeal because some homeowners do not know that that is available.

Buitenwerf replied that there is not a good definition out there when there isn't a definition listed in that section of the ordinance. You have two types of appeals, one would be appeal of a variance and one would be an appeal of an administrative decision which the latter is what you are talking about.

Larson questioned if the administrative appeal goes to the Board of Adjustment? Krueger replied yes, and how would the general public know.

Buitenwerf explained that there is a form available on the forms page of the website and then it is also content in the variance section of the Shoreland Ordinance.

Christenson commented that the State Statute is constantly changing and we do have to adhere to what the State Statute says. Therefore, by referring to it this way, it would not have to be constantly brought before a hearing.

Grob commented that under the definition of bluff, it stays the same with removing the Appendix A illustration only?

Buitenwerf responded yes.

Grob asked why the definition of a building deleted.

Buitenwerf replied that we have a definition of a structure and they are duplicative.

Krueger questioned why the definition of Conditional Use was being taken out only using the State Statute?

Buitenwerf responded that the rationale for that one is the same as the variance rationale. Krueger asked if this is being looked at from the customer point of view.?

Buitenwerf replied that he is aware of what they look at and what they don't look at. Most people are looking at the definition section of the ordinance to find information about what a Conditional Use is, they we look at the actual form where there is more detailed information available as to what the application is used for.

Grob commented that he might side with Krueger on this issue.

Buitenwerf commented that he doesn't disagree, but has to balance a number of factors one of which is a cost to the taxpayers to update the Ordinance when things get changed and they do change fairly often.

Grob commented on the controlled access or recreational lot definition being deleted because you in fact are deleting as this is not an option at all.

Buitenwerf replied yes that is the recommendation. They are a nightmare to administer after they are in place. The homeowners association does not maintain itself and getting to problems then of who is in charge and who do you contact to work with. The long term sustainability of them in terms of ownership is the issue.

Larson questioned if we want to remove access for non-riparian lots to the lake.

Buitenwerf commented that it is 200' wide by 400' deep minimum and that allows a certain number of watercraft - typically up to 6. For every additional watercraft above that that you wish to have a slip for, you have to increase the size of the lot based on the acreage of the lake and the length of shoreline.

Larson explained that under the current ordinance it is very limited.

Buitenwerf explained what the procedure is for a PUD under the current ordinance language. There is a means to address lake access.

Grob explained that by giving non-riparian property owners access to the lake, it is not fair to lakeshore owners and not good stewardship of the lake.

Christenson agreed.

Grob asked for the reasoning on the expansion, enlargement, or intensification definition?

Buitenwerf explained that that language is key to the nonconforming structure language that you will see in Article 7. The statute allows a nonconforming structure to be rebuilt, repaired, replaced and does not go into detail but we and legal counsel feel is needed as to finding the parameters of can it be enlarged or not. A number of counties have worked in defining definitions so that there is a clear boundary to what that statute represents.

Johnson asked about the definition of a crawlspace and the space needed for the separation from the water table also my definition of a crawlspace is anything you can crawl under?

Buitenwerf commented that it is a house on pilings or piers, or tree stumps or cinder blocks, whatever.

Johnson commented that a mobile home needed to meet the 3' water table.

Buitenwerf responded that if you have 3 vertical feet between the water table and the floor of that mobile home you meet our ordinance criteria. If you want to add a statement to 507.1 to make that clear, that would be something you could do.

Johnson commented that unfinished floors, dirt or whatever, so we called the bottom of the floor of a crawlspace the floor and that needed the 3' separation from the water table.

Buitenwerf confirmed that the distinction is if the space is enclosed or unenclosed. Johnson questioned the 6' height on the definition of a crawlspace?

Buitenwerf replied that the height is low enough that it is not a finished height per code. Johnson explained that a crawlspace should be anything under what the code is for living.

Buitenwerf explained that the reason 6' was chosen was because people were trying to create spaces that were livable but they weren't technically basements and so they were enlarging the size of the structure that they could build and get around the 50% addition language.

Christenson asked if you are wanting the wording enclosed added?

Buitenwerf replied that it can be added if you want it.

Christenson asked if the wording for guest cottage needed to be removed?

Krueger asked what would happen to the Hagert property if this definition was removed?

Buitenwerf explained that there was a resolution that was being worked on to resolve the issue on the Hagert property. If this ordinance draft is made effective and that item is not resolved yet, it would eliminate the dwelling and density issue on that property.

Grob commented that if we no longer have a Guest Cottage definition anymore, we will have to address how we will handle those accessory structures that one can live in and how do you control that situation.

Buitenwerf commented that Article 6 would explain that.

Krueger commented that he liked the old definition of Home occupation better than this new one.

Grob commented that we should move past the definitions to get to the ordinance itself to make sense of the definitions.

Krueger commented that you have a nice definition for Interim use and but why can't Conditional Use be defined just as nicely.

Buitenwerf explained that it is just a matter of what statute defines and the language for interim use does not have a statutory definition.

Christenson commented that on page 8 correct the word "he" to the. Grob asked about the lot width definition, what is your intent?

Buitenwerf replied that the intent is to define it with the weird lot shapes, a lot of counties try to provide a definition as to how to measure lot width at the building setback line from the lake and that gets extremely difficult to describe effectively so that it is clear as to where the measurement is taken. This would simply say it has to be the shortest distance at any point along the side lot line so if your lines are jogging goofy you have to be 150' wide at the narrowest point on those side lot lines.

Grob commented that the current rule is that you have a 150' at the building site and if you had a pie shape or odd shape.

Krueger commented that if you allow this definition you would not be able to have a pie shape lot be buildable.

Buitenwerf responded that the issue with pie shapes it that you are necking the lot down right at the point you don't want to neck it down because you are very severely limiting septic system area. Once someone puts their driveway in, that takes up one side of the lot and then you put a detached garage on the other side, now you are greatly reduced where you septic site can be.

Grob explained that with lake lots you are going to see irregular shapes.

Buitenwerf also responded that you see people do crazy things to make 150' at the building setback line and then they neck it down on the back line to 40' and do all kinds of goofy things with the lot and come back out currently in the minimum requirement for the rear lot line which is half the required lot width at the shoreline and the 100' setback so you have 150' at the shoreline, 75' at the rear lot line and from the 100' building line and the rear lot line have all kinds of issues with structures and septic spaces.

Grob understood the point in creating new lots but there are a lot of lots either built on or not built on that point that are not that way.

Krueger explained that pie shape lots would have to be rectangular shaped. Christenson asked if this definition should be left as is or eliminated?

Krueger replied that he would like this left as is.

Christenson asked if it could be broken out riparian or non riparian. Krueger replied no.

Grob recommended we keep the current lot width definition and remove the riparian and non riparian as shown.

Christianson commented that there is a typo in the multiple dwelling definition "by more than one".

Krueger again objected to the use of the Minnesota statute to define Nonconformity.

Buitenwerf again advocated to keep it the same as the others using the current statute.

Grob asked why certain words were taken out of Planned unit development, planned unit development,

commercial, planned unit development, residential?

Buitenwerf said the ordinance requires a minimum of 5 units, and single family residences, duplexes, triplexes are above that threshold. Try to eliminate the confusion.

Larson asked why bed and breakfast is being removed?

Buitenwerf responded that in his opinion that should stand on its own since it is separate, not part of the planned unit development, commercial as it is covered in the Conditional Use Table.

Krueger commented that the repairs and maintenance examples are good.

Buitenwerf commented that the more specific you get, the more loop holes are created. For instance the 2' height increase roof allowed in this section currently is worded so vague that we are obligated to allow people to increase the wall height of their cabins by 2' which was not the intent. Our legal counsel is recommending that we address that section.

Johnson questioned why RV camping vehicles do not include licensing? Buitenwerf explained that the licensing issue is covered under Sections 510 & 511. Christenson questioned the fees for land use permits?

Buitenwerf explained that we are actually going to be issuing land use permits, not building permits and building permits represent state Building Code. What we are doing is issuing permits for structures to be used on the land.

Krueger commented that under the definition resort where it says temporary daily or weekly duration, that should be changed to transitory. The state classifies anything that is less than 30 days as transitory.

Buitenwerf replied that there is no objection to using the term transitory. Krueger asked why decks were not included in the setback definition?

Buitenwerf explained that if decks were specified there and someone would say you did not specify a platform, a person gets into arguing technicalities so the best way to handle this is to eliminate this part of the definition.

Grob asked what is the use of the "I" under Section 401, Permitted, Condition, Special and Non-Permitted uses means.

Buitenwerf explained that is the reason for adding interim use permit, it is something that was added to statutes a few years ago to give counties more flexibility in dealing with uses that have a very short time line. Conditional use is a permit that runs with the property and you are not able to extinguish.

Grob suggested that it be defined in the upper section as done with the others. Buitenwerf agreed.

Grob commented that under Section 402.7, correct G to F.

Buitenwerf commented that under these land use things, the DNR is working on scrapping these land use things altogether and sticking to primarily environmental issues, so these could potentially go away in the future.

Grob asked if the counties would retain some of these things even if the State does not.

Buitenwerf commented that it is possible that they would but with a limited staff of 2 to cover 1000 square miles it is virtually impossible to get into home use occupation issues. Would recommend that under Section 402.9, "C" be removed.

Christenson made a motion to reconvene on Tuesday, October 28, 2014 at 5:00 p.m. Grob seconded the motion that passed unanimously.

Krueger opened the continuation of the meeting at 5:00 p.m. on Tuesday, October 28, 2014.

Grob asked why under Section 402.12.A the setback is 200' instead of 150' on a Natural Environmental Lake.

Buitenwerf reviewed that Minnesota Rule 6120.3300 subpart B reflects that requirement.

Grob questioned the deletion of Section 501.7 Minimum Width at Rear Lot Line?

Buitenwerf reviewed that based on the edit made yesterday that the original language in Section 501 be re-added, therefore, 501.7 would be not be deleted from the ordinance.

Grob wanted an explanation of getting rid of the Guest Cottage definition or explain how we handle these situations.

Buitenwerf explained that to remove the guest cottage language, you would need DNR approval because it is a deviation from the state rule. What we are proposing is to treat a guest cottage as an accessory structure and accessory use which in the table are permitted uses as accessory uses to a primary single family residence use and so it would be allowed as an accessory use and then we wouldn't have to worry about is this allowed, is this not, does it meet requirement. It would all be handled under the impervious surface threshold on all properties because if you segregate it out, we end up right back in the situation trying to discern if something is a guest cottage or not.

Grob expressed concern about eliminating this piece of the ordinance due to what would be allowed in the future in the shore impact zone.

Buitenwerf expressed that he has no concern about what is on the inside of the structure and the impact that it might have on the lake is minimal. That gets us back into now we are having to decide is this or is this not

a guest cabin and what in the draft is to get away from that.

Grob commented that what we have over something major is impervious surface and the fact that in the shore impact zone basically you are not allowed to make a structure larger.

Buitenwerf commented that anything made larger in the shore impact zone would require a variance.

Grob commented that outside the shore impact zone as long as there are 2 septic sites and do not go over impervious surface, a structure could be built with a permit.

Buitenwerf commented that the structure would have to qualify as an accessory structure, yes.

Larson asked if what our intent was to eliminate sub standard structures, instead we are allowing them to increase?

Grob commented that the only constraint you would have is not to allow expansion in the shore impact zone.

Buitenwerf reviewed that State Statute Article 6 for several years now has allowed nonconforming structures to be reconstructed without any reason. The Legislature has changed direction on that subject.

Christenson explained that since we have no one to enforce what we have and I am wondering if that is why the State did the 180 on this subject.

Larson explained how this happened at the state level.

Johnson commented that under Section 507.1 the addition of crawlspace was good, but wanted to know where trailer houses were excluded in this section.

Buitenwerf responded that they aren't. The floor of the trailer must meet separation.

Grob suggested that the floor of the mobile home would have to be 3' above the highest known water level.

Krueger asked what the purpose of "sunlight is able to reach all area beneath the boardwalk to do"?

Buitenwerf explained that having the boardwalks higher off the ground in wetlands prevents the killing of the vegetation beneath the boardwalk.

Grob questioned the reduction in days on the Temporary Structure from 180 to 120 and the reasoning for that reduction.

Buitenwerf explained that 180 days is 6 months and a little too long, when you think of the typical window that someone is camping. It would make it easier to administer the Ordinance if we had a smaller window of time.

Grob asked if other counties were scaling this down as well.

Buitenwerf answered yes, there are a number of counties that give a smaller window than what we are proposing.

Grob asked what a temporary structure was?

Buitenwerf explained that a screen tent would be an example.

Christenson asked how long you could park a trailer on a lot out of the shore impact zone?

Buitenwerf stated that the trailer has to meet setback and we do not permits trailers outside of shoreland zoning.

Johnson stated that in Section 511.1 Recreational Vehicles, you removed "setbacks established by the Board of Adjustments"?

Buitenwerf reviewed that it is an unnecessary statement since should the Board rule such, that would take precedence.

Grob reviewed that in Section 511.2, a camper would need permitting if left for more than 30 days?

Buitenwerf explained that the cost of permitting is \$100.

Krueger asked if you are using a motorized RV to go south and you just need a place to park it, would you need to permit that RV?

Buitenwerf reviewed that just parking that vehicle would be allowed, but if you are using it as your primary residence it would me a land use permit. The ordinance allows intermittent use.

Grob asked if there should be a statement in Article VI Accessory Uses and Structures regarding all detected accessories including ones with living quarters shall be located in compliance?

Buitenwerf stated that if we try to put constraints on accessory uses and structures, we are right back to trying to figure out if a structure is or is not a guest cabin and that is what we are trying to get away from.

Christenson asked if we approve the Ordinance this way and found something was not working and needed to add something in it, can that be done?

Buitenwerf explained that you draft language for that change and go back through the amendment process.

Johnson question if Section 701.H conflicts with Section 702.B?

Buitenwerf saw no conflict.

Grob asked if in Section 702.B, the 180 day statement was a change from a year?

Buitenwerf replied that this is exactly as the state statute is written.

Grob reviewed Section 702.0 that is was possible if a structure was damaged in the shore impact zone and this could be required to move back away from water if space were available.

Buitenwerf stated that this too is exactly as the state statute is written.

Krueger questioned the Section 704 Nonconforming Lots of Record language in Section G, width footage?

Buitenwerf explained that this is for developing an unimproved lot. You have an improved lot as long as you get a permit for the new structure before you remove the existing and the new structure can meet setbacks - you can get a permit for it. This section pertains to an unimproved lot meaning a lot that does not have a residence that is connected to running water and a septic system.

Grob explained that it is not clear to anybody if they pick this up and read this ordinance regarding the lot widths on unimproved lots. We would like to see a definite distinction written in here regarding improved and unimproved lots.

Buitenwerf responded that he would take that into consideration. This is to contain regulations. You do not want it to contain informational content.

Christenson asked if they kept the sentence in Section 704.1 "This section applies to unimproved lots." would that satisfy this issue?

Buitenwerf agreed that the easiest way is to reinsert this sentence in 704.1. Grob questioned in 704.2 the language change?

Buitenwerf explained that this is State Statute language.

Larson asked if this section defines common ownership?

Buitenwerf explained that standard legal criteria would be applied in those cases. Grob questioned the statement in Section 705 regarding water use appliances?

Buitenwerf responded that if the system was designed to accommodate the maximum water use appliances as most new systems are, then adding an appliance would not constitute an upgrade. We are not going to follow the appliance salesman.

Grob requested that a correction be made on Section 901.2.F. It should state "Item E" not D. Krueger would like to see the access path Section 901.2.E defined by lake type.

Buitenwerf commented that this section specifies "up to" and this allows one access path to the lake per standard lot.

A discussion was held.

Johnson questioned on Section 901.6 as to whether this is added or not?

Grob commented that for someone to come in and request a variance and then be required to plant or restore no less than 50% tree and shrub canopy coverage and the State and counties are moving this direction. We need to continue to work on this restoration, but for now on a case by case basis during the variance process.

Voted to remove the proposed shore impact zone revegetation draft language in Section 901 4-0.

Johnson asked for the reason to add "any newly created" in Section 1003.1?

Buitenwerf explained that was put in so that someone cannot argue that somehow what they are doing does not constitute a subdivision. It is to eliminate any chance of a loophole.

Grob questioned the removal of the Section 1005 Controlled Access & Recreational Lots?

A discussion was held.

Buitenwerf commented that State Shoreland Rule 6120.3300 speaks to controlled access lots and our ability to decide if we wish to allow them.

Johnson wanted clarification on Section 1103. Variances and Appeal would like to make sure that the appeal is up to the Board.

Buitenwerf commented that if the variance criteria has not changed, no appeal would be brought forward.

Larson commented that before once a person was denied a variance that was it, they had to appeal to district court and if they did not, they could not reapply for a different variance. State statute says the decision of the Board of Adjustment is final, but what this says is the decision of the Board of Adjustment is final but only for one year. They can come in for the after the fact appeal, get denied, go through the appellate process which delays enforcement. A year passes and they come back here and reapply. I do not think that is good, you are allowing someone to have an illegal structure. Would like to see that you cannot resubmit the same variance again.

Buitenwerf responded that we want it in there to keep people from being able to reapply with the same variance. Wearing the board down potentially.

Krueger asked if the wording of this should be changed.

Larson asked if we could remove 11.

Larson asked if this language was recommended by the model ordinance?

Buitenwerf responded that our attorney has been consulted on this and it has been recommended that the wording be retooled.

Grob asked to remove "and use permit" under Section 1104 Permits.

Buitenwerf will remove it.

Larson questioned the land use permit term?

Buitenwerf explained that building permit really should be used. Building code matters and since we do not administer the building code, we want to get away from that term and most counties use land use permit instead because what you are issuing is a permit for someone to use a piece of land in a certain way by building a house on it or a pole barn. You are really not issuing a building permit and it also gets us out of possibly risky waters due to some court cases that have been decided recently that concern the 60 day rule and there they use the term building permit and it is associated with the building code. We want to take

that liability away.

Christenson made a motion to forward a draft as edited to the County Board for consideration for public hearing.

Krueger seconded the motion.

Approved 4-0.

**Miscellaneous:**

The County Board asked the Planning Commission/Board of Adjustment to see if its meeting dates could be moved so that the Park Rapids City Council could use the Board room for its meetings as the Council meets on the second and fourth Tuesdays of each month in the evening. The Planning Commission members found that the 2nd Monday of the month meetings could work for next year. Buitenwerf said he would share this information with the County Board and report back to the Planning Commission on what the County Board might say or put into a motion.

**Adjournment.**

Grob moved to adjourn the meeting.

Johnson seconded the motion that carried unanimously.

Approved 4-0.

## **September 2014 Planning Commission/Board of Adjustment Meeting Minutes**

Members present were: Charlene Christenson, Ken Grob, Tim Johnson, and Tom Krueger. Greg Larson was absent as there was no Planning Commission Business. Also present was Environmental Services Officer Eric Buitenwerf.

Krueger called the meeting to order at 6:00 p.m. and explained the meeting procedure to the audience.

### **Planning Commission:**

**Approval of minutes:** August 25, 2014 none.

**Old Business:** None.

**New Business:** None.

### **Board of Adjustment:**

**Approval of minutes:** August 25, 2014 meeting.

Motion by Grob, second by Christenson to approve August 25, 2014 meeting minutes with no edits. The motion carried 4-0.

### **Old Business:**

**Variance Application 27-V-14 by Todd and Kristin Kittleson:** Outlots A and B, Liberty Ridge, Section 12, Township 140, Range 33, Nevis Township on 8th Crow Wing Lake. Parcels: 21.69.00700 and 21.69.00800. Part 1: Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for proposed additions to a rental unit located in the shore impact zone. Part 2: Applicants are requesting a variance from Section 902 of the SMO to excavate more than the permissible volume of earthen material in a steep slope.

Todd Kittleson presented the amended application. He explained that due to the fact the State of Minnesota is requiring that this structure be brought up to code, the original 50% addition would not bring this structure up to code in bedroom sizes. He is requesting double the square footage footprint of the original cabin.

Krueger commented regarding removing the 5' X 22' second up front.

Kittleson commented that it would be removed to the side of the cabin.

Krueger questioned if the door would be moved also.

Kittleson commented that it would be moved and there would be no entrance on the front of the cabin.

Johnson requested that the amended drawing be presented for public viewing and show the Board where the existing doorway is now.

Johnson questioned why they would need that deck from the corner over if the entryway was being moved.

Kittleson explained that that is why he is taking that section and moving it to the back side of the cabin.

Grob requested that the amended drawing that was produced for the application be put up on the screen for viewing. The dotted line is now in line with the house.

Kittleson replied yes and the front deck will be removed during the process and reused by moving to the backside of the existing deck. It will no longer be on the front side of the cabin.

Grob requested that Mr. Kittleson review what he is doing with the deck on this cabin.

Kittleson said he will be removing a 5' x 22' section on front or lakeside of the cabin and adding a 12' x 9' section to the rear of the 11' x 9' remaining existing deck.

Krueger requested the square footage of the current bedrooms.

Kittleson replied Minnesota Department of Health (DOH) required that for two people to be in a bedroom needs 60 square foot per person minimum requirement which is 120 square feet finished.

Krueger commented that bringing the cabin in to DOH code is a safety issue.

Kittleson commented that the closets do not count for the square footage requirements.

No public comment on the application was made when solicited.

Krueger commented that Mr. Kittleson is adding on to the bedrooms to bring this structure into compliance with the Minnesota Department of Health. This is an improvement in regard to public safety.

Christenson commented that Mr. Kittleson as a resort owner, she wishes for success, but questioned if moving the cabin cost would be a possibility.

Kittleson wants the cabin to stay where it is.

Johnson commented that if this application is denied, this cabin would stay where it is and would eventually be rebuilt at a future date and it would be better to bring this cabin up to State requirements.

Johnson motioned to approve part one of this application.

Krueger seconded.

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 property is well under its allowed rental density. The addition is not being built toward the lake. The addition will make the structure Minnesota Department of Health compliant and a 28' x 28' structure will be in harmony with other structures on this property.

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

Yes ( X ) No ( )

Why or why not? This structure is located on a flat area and very user-friendly for access to the lake and will meet Minnesota Department of Health standards for usable size. Moving it back from the current location would raise it up to a 25' elevation.

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

Yes ( X ) No ( )

Why or why not? The cabin was built before the Shoreland Ordinance was enacted. Moving the cabin away from the lake to meet setback would create a steep slope situation.

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 cabin was built undersized and before the ordinance by a previous owner.

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 larger tracts of land on this west side of the lake with a number of the tracts to the south of this resort still being undeveloped. To the north of the property, single family seasonal and year-round residences exist. The resort has been here for many decades. The proposed addition would not change the area's character in any way.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty.

The motion carried unanimously.

**Variance Application 27-V-14 Part 2:** Applicants are requesting a variance from Section 902 of the SMO to excavate more than the permissible volume of earthen material in a steep slope.

Grob made a motion to approve Part 2 with a condition that a buffer be constructed 15'W x 85'L from the ordinary high water mark (OHW) and be put in place with natural vegetation – a no mow zone to prevent runoff.

Kittleson commented that putting in a buffer zone on this area would take away his play area for guests. The actual excavation on this project is well over 50' away from the shoreline and that moving the drive area behind the cabin instead of the front would put the excavation area out of the shore impact zone.

A discussion followed regarding a buffer on this site and what plants constitute a buffer. Removing the grass to replant also constitutes a situation for erosion.

Kittleson explained that they do not mow to the lake and now have ample buffers along this property.

Grob asked what the drop off to the water is?

Kittleson replied that there was very little slope, very flat.

Johnson requested that a topical map be displayed for viewing.

Kittleson showed what parts of his lakeshore have not been altered in any way with very good buffers.

Johnson expressed the concern with erosion on this site due to excavation.

Kittleson replied that there will be a retaining wall in place to help with erosion during excavation.

Grob requested the ordinary high water mark on this site.

Buitenwerf explained that it is the first contour line around the shoreline on the map.

Grob repeated his motion to approve with a condition that a buffer of 15' W x 85' L be put in.

Christenson asked if that included the cattails.

Johnson wanted to know where the walkway from the cabin to the lake was.

Johnson requested that Kittleson draw in where the parking area would be on the aerial view map.

Kittleson noted the location on the viewing map.

Johnson asked what the distance is from the OHW to the current drive.

Kittleson explained that 20', 25' to the edge of the road.

Grob motioned to approve Part 2 with a condition that a 15' X 85' vegetative buffer be maintained with the findings of fact from the staff report included.

Motion dies for lack of second.

Christenson motioned to approve Part 2 with a condition that a 10' W x 85' L vegetative buffer be maintained with the findings of fact from the staff report included.

Krueger seconded the motion.

Vote as follows:

Johnson: Nay

Grob: Nay

Christianson: Yea

Krueger: Yea

Motion did not pass.

Grob restated that the reason for the dissenting vote was that he felt the Board had been very generous with the remodel of the cabin and that a 15' buffer was within the Board's discretion to ask for.

Johnson wanted to know what type of material would be used?

Kittleson replied that class 5 gravel would be used in the parking area.

Buitenwerf explained that since there was a 2 - 2 vote with reasons given by the members voting "nay", that Part 2 of this application had been denied.

Christenson explained that by doing nothing, the road would continue as is very close to the lake.

Johnson made a motion to approve Part 2 of the application with a condition that a 5' W x 85' L vegetative buffer be maintained from the Ordinary High Water Mark in front of the proposed project area and adopt the findings of fact from the staff report.

Christenson second the motion.

Motion approved 3-1 with Grob voting Ney.

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 excavation area is needed to safely accommodate guest vehicle parking by the cabins and the percent of slope is not significant such that erosion problems ought not to be caused by removing the slope's toe to expand the parking area. Also, a vegetative buffer is being required to be installed along the shoreline in front of this parking area as a condition of the variance to ensure that the additional impervious surface area created by the parking area enlargement does not harm the lake.

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

Yes (X ) No ( )

Why or why not? The parking area enlargement is reasonable to provide enough room for guests to safely maneuver and park their vehicles.

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

Yes (X ) No ( )

Why or why not? This slope poses difficulty in having enough space for a guest parking area. The cabins to be serviced by the parking area were constructed at nonconforming ordinary high water mark setbacks before the ordinance was enacted.

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 stated in the answer to question 3, the difficulty is caused by the slope's location and the two cabins' locations being at the base of the slope and at nonconforming ordinary high water mark setbacks.

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 larger tracts of land on this west side of the lake with a number of the tracts to the south of this resort still being undeveloped. To the north of the property, single family seasonal and year-round residences exist. The resort has been here for many decades. Enlarging this existing parking area will not harm the locality's essential character.

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

Yes (X ) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the cabins were constructed at a nonconforming OHW setback before the shoreland ordinance was enacted and the slope's location relative to the cabin locations.

## **New Business**

**Variance Application 33-V-14 by Richard Anderson:** Lot 6, Block 1, Sunny Point Addition, Section 21, Township 139N, Range 33, Crow Wing Lake Township on 2<sup>nd</sup> Crow Wing Lake. Parcel 06.37.00600. Applicant is requesting a variance from Sections 502.2 and 706 of the Shoreland Management Ordinance for a proposed lakeside platform addition that

will exceed the 400 sq. ft. maximum allowed size and a proposed lakeside deck that will exceed the allowed 15% of the structure's ordinary high water mark setback and encroach on the 10' side lot line setback.

Krueger asked for a summary of what the applicant is requesting.

Anderson stated that he is requesting an increase in the deck size and a platform increase over what is allowed. He explained that he is negotiable on that there may be water runoff.

Krueger asked if the deck was over the proposed requested platform.

Anderson stated the deck will go over the platform which is currently an 8' x 8' cement patio on the back lower level of the house. He is proposing a 10' on one end and a 12' bump out on the other end of the deck.

Krueger asked what was the reason for the request?

Anderson explained that this space is used considerable in the summer and 8' is not adequate for dining chairs and table.

Christenson questioned run off, and asked that as a trade-off if Mr. Anderson would consider a trade-off of what you are over on your deck for a buffer zone installation.

Anderson answered that with nothing controlling the run off now, he would consider installing a dry well to control the run off from the patio.

Anderson questioned what type of buffer zone on the lake they were asking for.

Christenson suggested instead of grass right up to lake, using natural vegetation along the shoreline for erosion purposes.

Krueger explained that with the proposed patio extension, that left only 37' to the lake for adsorption and that a buffer zone would help.

Grob suggested that the Ordinance allows a platform to stay at 400 square feet and that the retaining wall be replaced with a permit. The applicants could go out to 14' x 28' and still meet the 400 square foot. This would allow for more grass area.

Anderson was open to this suggestion.

Krueger questioned what portion of the deck brings it into a variance situation.

Buitenwerf explained that when you exceed the 15% of that 53' setback which is 7.95'. He is proposing a 12' extension on part of the deck which would be 4.05' over the 15%.

No public comment on the application was made when solicited.

Grob made a motion to deny the platform application and accept the staff findings of fact.

Christenson second 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 ( ) No ( X )

Why or why not? The proposed platform expansion is excessive given its location at the top of a steep slope that runs toward the lake and the fact that a 14' x 28' lakeside platform can be built by permit – which is a very reasonable, functional size.

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, the existing lakeside platform can be expanded 6' lake ward to create a 14' x 28' platform by permit – which is a very usable platform size.

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

Yes ( ) No ( X )

Why or why not? The application provides no practical difficulty as to why the permissible 14' x 28' size platform is not able to meet the landowner's needs. The lot is not unlike many other lake lots with nonconforming residential structures with walkout basements that do not meet the OHW structure setback.

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 is no practical difficulty on this lot because a very functional permissible platform expansion can be made as mentioned in the answers to previous findings of fact questions. The alleged difficulty appears to be created by the landowner's desire to have a particular size platform.

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 single family seasonal and year-round residential structures so the proposed platform expansion would not alter the locality's character as such structures often have a lakeside platform associated with them.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicant as a difficulty.

The motion was denied unanimously.

Krueger asked for motions on the proposed deck addition.

Grob asked since the platform is being expanded and used for sitting why there is a need a deck wider than 8' which is allowed by the ordinance.

Anderson replied that an 8' wide deck does not accommodate a table and chair situation for dining and being their kitchen area is on the upper floor of the home, it would be nice to enjoy a meal or dinner on the deck.

Buitenwerf commented that the 53' setback includes a 2' eave on the structure. So you have to factor that in for the width of the deck so it is 7.95' allowed lakeward from the overhang.

Grob commented that this application is asking for is 10' so all that is being asked for in an addition on the bump out. The rest of the deck needs approx .5'.

Grob made a motion that the deck be approved as presented and accept the findings of fact in the staff report.

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? The shoreland ordinance allows the existing platform to be extended 6' lake ward by permit. The proposed deck will be two feet further from the OHW than the 14' lake ward permissible platform that can be built beneath it so no additional impervious surface area will be created beyond what is permissible.

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

Yes ( X ) No ( )

Why or why not? Section 706 of the shoreland ordinance would allow a lakeside deck to be constructed by permit that would extend 7.95' lake ward per the stated 53' OHW structure setback in the variance application. A deck that is just shy of 8' in width is not very usable. Having a wider deck that will be located above a platform that can be built by permit and extend 2' further lake ward than the proposed deck is reasonable as the amount of impervious surface area will not be increased.

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

Yes ( X ) No ( )

Why or why not? The house is located at a 53' OHW setback per the variance application sketch. Section 706 of the SMO only allows a 7.95' lake ward deck based on this 53' setback.

However, the same section of the ordinance allows a 14' lake ward platform to be constructed beneath the proposed deck if the platform runs the 28' width of the house. This is a unique situation where the deck will be above the platform and not be any larger than the size of platform that can be built by permit so the impervious surface area will not increase.

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 before the shoreland ordinance was enacted at a 53' OHW nonconforming setback. Section 706 of the ordinance only allows a 7.95' lake ward deck to be constructed on this structure based on this 53' OHW setback – which is difficult because it is not a very usable width.

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 single family seasonal and year-round residential structures that have lakeside decks as a common feature on them. Thus, the construction of a lakeside deck on this structure will not harm the locality's character in any way.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicant as a difficulty. The difficulty is the fact that the structure was constructed before the shoreland ordinance was enacted and Section 706 of the ordinance only allows a 7.95' wide deck based on the structure's 53' OHW setback as shown in the variance application.

The motion carried unanimously.

#### **Miscellaneous:**

#### **Communications:**

Buitenwerf shared that the next meeting will consist of Ordinance changes as well as Board of Adjustment business. He would like to get through it all so the process can be completed on the Ordinance by the end of the year.

#### **Adjournment.**

Motion by Christenson, second by Johnson to adjourn the hearing at 7:15 p.m. The motion carried unanimously.

Respectfully submitted,

Eric Buitenwerf

Environmental Services Officer

## **HUBBARD COUNTY**

### **Planning Commission/Board of Adjustment meeting minutes**

6:00 p.m. on Monday, November 23, 2014

Chairman Tom Krueger opened the meeting with the following members present: Ken Grob, Tim Johnson, Charlene Christenson and Greg Larson. Also present was Environmental Services Officer Eric Buitenwerf.

Krueger 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 the October 26, 2014 minutes:**

Christenson moved to approve the October 26, 2014 minutes as presented.

Grob seconded the motion.

The motion carried unanimously.

**Old Business:** None

#### **New Business:**

##### **Proposed Liquor License Ordinance and repeal of Ordinances 9, 16, and 24.**

County Attorney Don Dearstyne, representing Hubbard In Prevention, reviewed that the purpose for changing the ordinance is to first compile all the ordinances into one to make it a little easier for people so they do not have to go to three different ordinances to come up with what the regulations are as to running a liquor establishment. What we are finding is that when we have compliance check failures and law enforcement charges them to be prosecuted by our office, it has been ineffective insuring compliance when we are going after a 18 or 19 year old clerk instead of the establishment. Our ordinance, as it is, does not address the establishment and so this proposed ordinance can incorporate 9, 16 & 24, and would have provisions for enforcement as to the establishment as well. Under the administrative penalties, section 14, the actual establishment or licensee would have a monetary fine levied against them administratively to be handled by the County Board or their designee and the establishment would have the opportunity to reduce that fine or that administrative penalty by ensuring that all their employees attend alcohol awareness within three months of the violation. Our goal is not to punish anyone. Our goal here is to ensure compliance so that our establishments are not selling to underage individuals, which reduces the number of alcohol offenses that we have and the problems that come with alcohol overindulgence by the youth. Our goal is to have 100% compliance and have no administrative penalties. There is nothing in the ordinance against the establishment as it is, only the bartender or the clerk at the liquor store.

We did make calls to the liquor establishments regarding this change and some of the feedback has been positive in that they do not want to sell to underage people and are in favor of this change to the ordinance.

We would like to recommend that Section VII, Subd. 4 "Distance from School or Church. No license shall be granted for a building within 1,000 feet of any school or within 1,000 feet of any church." be included in this new ordinance and also recommend this statement get added to Section VII Subd. 3 of the license application under the criteria.

Sheriff Cory Aukes commented that the need is there especially for establishment owners with back to back compliance failures themselves.

Krueger asked about the application procedure regarding licensing and the requirement for different licenses for different applications.

County Attorney Dearstyne explained that on sale requires one license and off sale requires a different license.

Larson asked if the process in front of the County Board would be recorded so that there could be an appeal process in place?

County Attorney Dearstyne commented that he would recommend that there is due process and that there is a clear record in the event of an appeal to district court.

Larson asked if that process needed to be stated in the ordinance?

County Attorney Dearstyne did not believe that it needed to be stated in the ordinance since we have the equipment to record the meetings.

Grob asked if there was anything new in this new ordinance that was not in the old that the establishments would now have to comply with, are we adding any additional restrictions other than the penalty?

County Attorney Dearstyne replied that he does not believe so, that the existing license on establishments would be grandfather in.

Larson agreed.

Krueger asked if it was a winery manufacturer, could they operate an event every year without a change in the ordinance?

Sheriff Aukes commented that yes they could, the only difference is that if they had a compliance check at the event and they failed, they could have their license suspended.

Grob commented that this now allows you to deal with the establishment when there is a violation, is the person who actually sells to an underage person still subject to the current law?

County Attorney Dearstyne replied that they are still subject to the current law under 340a which is the state statute and so they can be prosecuted as the need arises.

Larson commented that under Section XIV Subd.1, it talks about individual misdemeanor liability.

Sheriff Aukes gave an example where this proposed ordinance can benefit. Currently you can have the 22 year old who maybe did not get any training, they can get charged and go through the system. The establishment owner can keep them or fire them and the next person comes in with no training so they fail again. This shows us that the establishment owner does not take this seriously and is not training the staff and this will help hold the establishment accountable.

County Attorney Dearstyne explained that he reviewed our ordinance with many counties around the state and tried to take the best of all the ordinances.

Johnson asked if Section XII Subd 2 is new or is that in our old ordinance?

Sheriff Aukes responded that it is in our existing ordinance.

Krueger asked about Section XII Subd 2 on premises on site sales or hours, is there separation there.?

County Attorney Dearstyne explained that this is after the liquor establishment closes, everyone is supposed to be off premises one half hour after closing.

Larson asked if Section XVII has ever been enforced?

County Attorney Dearstyne explained that the establishments do maintain laws and are very good about that and would recommend leaving that in the ordinance to cover keg parties.

Sheriff Aukes has checked on the use of that and it has not been used in a while.

No correspondence was presented.

No public comment was given.

Grob made a motion to recommend to the County Board that they adopt the proposed Liquor License Ordinance as presented with the addition of Section VII, Subd. 4 "Distance from School or Church. No license shall be granted for a building within 1,000 feet of any school or within 1,000 feet of any church." into the new ordinance under Criterion Subd 3, Item 8 and repeal Ordinances 9, 16, and 24.

Christenson seconded the motion.

The motion carried unanimously.

There being no further Planning Commission business, the Planning Commission meeting was closed at 6:20 p.m.

#### **Board of Adjustment:**

#### **Approval of the October 27, 2014 Minutes:**

Christenson moved to approve the October 27, 2014 minutes as presented. Grob seconded the motion. The motion carried unanimously.

#### **Old Business:**

**Variance Application 38-V-14 by Sherman Fickle:** Lots 10 and 11, Bubar's Addition, Section 17, Township 139, Range 33, Crow Wing Township on 3<sup>rd</sup> Crow Wing Lake. Parcel: 06.46.01000. Part 1: Applicant is requesting a variance from Sections 502.2, 503, and 704.7 of the Shoreland Management Ordinance (SMO) for a proposed lakeward addition to a nonconforming residential structure located in a bluff impact zone. Part 2: Applicant is requesting a variance from Section 801.2 of the Shoreland Management Ordinance (SMO) and Article V, Section 2.01 of the Subsurface Sewage Treatment System Ordinance for a septic system drainfield to be installed at less than the required 10' rear lot line setback.

Neither Sherman Fickle nor his agent were present to answer questions.

Christenson commented that this request was due to damage, but on site, the review showed other areas of the deck that were damaged that would not be covered under this request. She would have liked to talk with the homeowner regarding all the work that was done on the lake side.

Krueger asked if the work that was done would require an after the fact variance?

Buitenwerf stated that our office has not had a chance to go out and do additional measurements to see if the threshold for a variance was exceeded with that project.

Grob asked if the SSTS plan meets all the requirements for this property?

Buitenwerf replied yes as far as what is being proposed with the bedroom sizing. The rear lot line setback cannot be met so it would need Board approval.

Johnson commented that the original roof design seemed flawed.

Christenson commented that the pillars on the side of the deck have the same damage as the pillars where he is asking to put a roof over. My question would have been, how are you going to prevent the rest of the pillars from damage?

Krueger asked if this application stated that he was going to install gutters to prevent the damage or could this be a condition?

Buitenwerf stated that the application would have to be reviewed, but did not recall that a statement was made on the application regarding gutters.

Grob stated that he is only solving a piece of the problem, but what he really needs is gutters. Now that he wants to extent the roof lakeward after he has already encroached heavily into the slope area makes this application not reasonable for approval.

Krueger asked if you could put a roof extension on this structure without going closer to the lake?

Grob commented he did not know how this could be done.

Krueger commented that if the roof goes to the posts already there, then the roof would not be going any closer to the lake.

Johnson asked if the setback is measured to the edge of the roof line?

Buitenwerf responded that the measurement is to the nearest point of the structure whatever that is.

Krueger explained that if you put a roof over an existing deck, you are not encroaching closer to the lake.

Christenson reviewed that the drawing extends the roof over the posts, making it encroach closer to the lake.

Krueger stated that the real problem is not having gutters on this structure and that if we approve this request, we can put a condition on it that would help with the water problems.

Grob explained that the water control issue on the front of the house is not well done. His premise for this request is to protect the wood structure that he has, not to control runoff. The reason for the variance request is not enough to warrant an addition to the structure lakeward.

Krueger again explained that if the roof was approved, that would allow the Board to set conditions regarding the water runoff.

Johnson wanted to include a vegetative buffer in the conditions.

Grob commented that a vegetative buffer in this case seems that it is already there on this hill. A better condition would be to have the downspouts going into a French drain for water runoff. We should also require the area to be replanted where there has been new construction work.

Christenson commented that a condition that the road be removed, he could object since he uses it to get his dock in and out. Whether we approve or not, he still has water problems that will have to be addressed.

Grob commented that we are not the ones to design his water runoff system, that is his option to come back with a well designed water control plan in order for us to approve it.

Krueger would not like to see him have to wait a year to come back to resolve this issue, but it would take a significant change in the plan to review.

No correspondence was presented.

No public comment was given.

Christenson made a motion to deny Part 1 of Variance Application 38-V-14 by Sherman Fickle and accept the Findings of Fact provided in the Environmental Services Staff Report and to approve Part 2 of Variance Application 38-V-14 by Sherman Fickle and accept the Finding of Fact provided in the Environmental Services Staff Report.

Grob seconded the motion.

Motion passed 3 to 1 with Krueger voting nay.

### **Part 1 Findings of Fact**

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? The alleged water damage problem with the lakeside deck wooden posts and railings can be resolved by installing gutters on the lakeside-facing portion of the roof. The proposed roof addition would not cover the entire lakeside deck that has wooden posts and railings along its full extent so it is hard to believe that the proposed roof addition is strictly to solve the post/railing rot issue because the proposed roof will not cover the entire deck and thus the rot problem will persist along the rest of the deck not proposed to be covered by this roof addition. A different material could also be used for the posts/railings

that would satisfactorily address the rot issue. Allowing the structure to encroach on the 100' OHW setback when alternative solutions to the alleged problem prompting the proposed addition exist would not be in keeping with the ordinance intent.

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

Yes ( ) No (X)

Why or why not? The owner has a very nice residence, detached garage, and pole building on the lot that afford a typical residential riparian lot use and multiple related reasonable accessory uses. Denying the expansion of this house into the 100' OHW structure setback will not deny the owner of a reasonable use of the property.

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

Yes ( ) No (X)

Why or why not? The alleged difficulty is that the rainwater runoff from the roof is landing on the lakeside deck and rotting out the wooden railing and posts. This difficulty could be corrected by the installation of a gutter on the roof and posts and railings of a rot-resistant material like steel or PVC. These circumstances have to do with the structure's design and construction materials used – not aspects of the property that are unique.

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

Yes ( ) No ( X)

Why or why not? The current owner made the past modifications to the structure's roof and deck that are now causing the post and railing rotting.

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 single family seasonal and year-round residences whose character would not be negatively affected by the construction of this lakeside covered deck.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The alleged difficulty concerns the home's design and construction materials used.

## Part 2 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 of the 10' lot line setback is to provide a buffer from a property line to hopefully see that the drainfield is installed on the subject property and not a neighboring property. Environmentally, the system will meet the required ordinary high water mark setback and vertical separation requirement from the periodically saturated layer – which are the key items for the ordinance.

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

Yes (X ) No ( )

Why or why not? Having a standard drainfield septic system vs. a holding tank 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 lot has a bluff on the lakeside half of it that prevents installation of the drainfield in the bluff impact zone. The location of a well on the property also limits where the drainfield can be installed and meet the required well setbacks. Also, the existing septic system tanks and lines are in locations that work best with a drainfield in this location. Moving the drainfield to another rear corner of the lot would involve significantly more work and cost and not improve the OHW setback or vertical separation of the drainfield from the periodically saturated layer so there is not any reason to do so.

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 lot's topography (i.e. bluff on the lakeside half) and location of an existing well.

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 single family seasonal and year-round residential structures. Allowing a drainfield to go up to the rear lot line vs. 10' from the rear lot line will not alter the locality's character in any way.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. The difficulties involve the lot's topography and location of an existing well.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1103 of the Hubbard County Shoreland Management Ordinance.

**New Business:**

**Variance Application 44-V-14 by William and Rose Davidson:** Lot 4, Block 1, Holiday Acres, Section 16, Township 139, Range 33, Crow Wing Lake Township on Third Crow Wing Lake. Parcel: 06.52.00400. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a detached garage that is located over the side lot line and not in compliance with the required 10' side lot line structure setback.

William Davidson presented that this home was purchased in 2013, the garage was constructed in 2004 and discovered that it was not compliant with the lot line setback when the offer was made. There was an easement made for the property for the lot line issue to take care of the lot line setback issue.

Krueger asked why use an easement and not a property line adjustment?

Davidson explained that the bank owned the adjacent property at the time of sale but that could be done with the current owner of the adjacent property. The after-the-fact variance seemed like the quickest way to proceed.

Krueger explained that for future sale, it would be cleaner to do a property line adjustment.

Davidson did not disagree, but was going to do this process to make sure it was compliant first and then do a property line adjustment once we know everything is in compliance.

Grob commented that to clean up the after-the-fact thing is what we need to focus on right now.

Davidson mentioned that the easement states that should this garage burn to the ground, the new structure would have to meet setback.

Received correspondence from Krist Olson who is in favor of this application.

No public comment was given.

Grob made a motion to accept Variance Application 44-V-14 by William and Rose Davidson as presented and adopt the Findings of Fact as presented in the Environmental Services Staff Report. Johnson seconded the motion.

Motion passed unanimously.

#### 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 side lot line setback is used to provide a reasonable buffer from a property line to hopefully allow for uncertainties or discrepancies in a property line's physical location so that a structure is constructed on the property of the party building it and not on a neighboring property. In this situation, an easement is already in place from the neighboring landowner allowing the garage to be partially located on the neighbor's property. The structure is over 190' from the lake ordinary high water mark per the application sketch and over 126' from the rear lot line. There are no negative environmental impacts that will occur from the granting of this variance.

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

Yes (X ) No ( )

Why or why not? Having a garage for vehicles and storage on a residential property is a reasonable use. Since the neighbor granted an easement for the garage, it would be unreasonable to require the garage to be moved because the 10' side lot line setback is in place to guard against property line infringement issues between neighbors and in this case, the neighbor was okay with the infringement.

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

Yes (X ) No ( )

Why or why not? The garage is misplaced and the easement provides 10' setback, situation unique due to previous owner action.

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 previous landowner and that landowner's contractor in 2004. The current landowner acquired the property in 2013.

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

Yes (X ) No ( )

Why or why not? The lake is classified as a recreational development lake and the locality consists of single family seasonal and year-round homes. Many of these lots also have

detached garages on them – similar to this one – so the area’s character will not be harmed by granting the variance. Detached garages are able to be permitted as accessory structures. The only issue is that the garage partially sits on the neighboring property. This matter has been resolved between the neighbors via the granting of an easement. The garage’s sitting astride the property line is not going to change the locality’s character.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicants as a difficulty. The cited difficulty is that the garage was built over the property line by a previous landowner and the landowner’s contractor who constructed the garage.

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? The applicants inherited the illegal structure when they recently acquired the property in January 2013 as the structure was constructed by a previous landowner.

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

Yes ( ) No ( X )

Why or Why not? The applicants did not construct the structure as stated in the answer to question 7. Rather, the applicants inherited the structure when they acquired the property in January 2013. The applicants have shown good faith and cooperated in taking steps to bring the structure into compliance by applying for an after-the-fact variance.

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

Yes ( ) No ( X )

No. The applicants did not construct the structure or own the property at the time the structure was built. The applicants submitted this variance application immediately after being made aware that such was required in order to bring the structure into compliance with the ordinance.

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

Yes ( X ) No ( )

Yes. The applicants purchased the property in January 2013 and per the deed tax shown on the deed provided in the application, did make a substantial investment in the property.

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

Yes ( ) No ( X )

As previously stated, the applicants did not construct the structure. The structure was already on the property when the current landowners acquired the property. The structure was constructed by a previous landowner.

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

Yes ( X ) No ( )

Yes – as mentioned in the answer to question 5 above.

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 ( X ) No ( )

Yes. There already is an easement in place from the neighboring property owner that allows the garage to remain in its current location. The purpose of the 10' side lot line setback is to provide a buffer against property line encroachments by structures when constructed. The easement shows that this issue for which the setback is in place to protect has been resolved between the property owners to their satisfaction so it would be extreme for the County to require this structure to be moved or removed given the cost of doing so and the fact that the easement exists.

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

Yes ( X ) No ( )

No. The neighbors have already settled the property line encroachment caused by the garage by agreeing upon and conveying an easement for the garage to be partly located on the neighboring property. Thus, the primary purpose for the 10' side lot line setback requirement in the ordinance has been satisfied and there is no good reason for the County to not grant the variance. There is no environmental harm caused by the garage encroaching onto the neighboring property.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1103 of the Hubbard County Shoreland Management Ordinance.

**Variance Application 45-V-14 by Marshall Howe and Janet McMillen:** Part of Gov't Lot 2, Section 36, Township 141, Range 34, Lake Emma Township on Little Sand Lake. Parcel: 16.36.00900. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for a proposed addition to a nonconforming structure that does not comply with the 100' ordinary high water mark setback, has already utilized the allowed 50% addition option, and was previously added onto by variance.

Marshall Howe, 21172 Glacier Drive, Park Rapids on Little Sand Lake presented the application request. The year round cabin is a non-conforming structure, about 57' from the lake. The previous owner had expanded the structure as allowable maximum under the shoreland regulations. Our proposal is to add a small addition to the rear of the house to serve as a mud room and to provide additional storage and laundry space. The size of the addition is 14 1/2' x 10', presently our doors open directly into the living space as we do not have any way of entering the house in a dirty condition without messing up the interior. We feel our plan is consistent with the spirit of the shoreland regulations because the nearest point to the lake would be 2 or 3 feet from the 100' setback on the lake. It does not increase the living capacity of the cabin and does not put any additional strain on the septic system. It is not visible from the lake and only visible to one neighbor and then barely so in the winter time.

Grob commented that the expansion is small and the home is not particularly large and saw no reason not to allow this expansion.

No correspondence was presented.

No public comment was given.

Christenson made a motion to approve Variance Application 45-V-14 by Marshall Howe and Janet McMillen as presented and adopt the Findings of Fact as presented in the Environmental Services Staff Report. Krueger seconded the motion.

Motion passed unanimously.

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 proposed addition is only 10' x 14' in footprint compared to the existing footprint of 1128 sq. ft. The combined square footage is still a very reasonably sized structure for the lot. The addition will be to the rear (non-lakeside) portion of the cabin and 14' high while the cabin is 26' high which is in keeping with the ordinance intent of getting things as far back from the lake as possible and not creating any negative aesthetic impacts from the lake.

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

Yes (X ) No ( )

Why or why not? The requested addition is a reasonable size relative to the existing structure and located on the side of the house opposite the lake. The addition will provide the residence with a laundry room and mud room which are reasonable and standard components of a reasonable and permitted residential structure use.

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

Yes (X ) No ( )

Why or why not? The structure was constructed per a 1977 variance at a nonconforming ordinary high water mark setback. Section 704.7 of the shoreland ordinance requires that the proposed addition go through a variance process because the cabin was initially placed on the lot by variance.

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 answer to question 3, the difficulty on this lot is caused by the structure being originally constructed by variance at a nonconforming ordinary high water mark setback. The landowner did not own the property at the time of the 1977 variance that authorized placing the cabin on this lot at a nonconforming setback.

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 residential structures – many of which are also located at similar nonconforming ordinary high water mark setbacks. The addition of a mud room and laundry room to this cabin will not change the locality's essential character as they are typical features in a residential structure and the addition is only 10' x 14' in size and 14' high.

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

Yes ( X ) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty is caused by the previous variance that was granted for a reduced ordinary high water mark setback and the latter addition of Section 704.7 to the ordinance that requires a variance for any modification to a structure previously constructed or modified by variance.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1103 of the Hubbard County Shoreland Management Ordinance.

**Miscellaneous:**

For the record, the Variance Application 43-V-14 by Richard and Nancy Mueller has been removed from the agenda and is being processed by permit.

December 2, 2014 at the next County Board meeting at noon is when the Shoreland Ordinance amendment will be heard at a public hearing.

Reviewed the agenda for December.

County Board would like us to look at dates for 2015 PC/BOA meetings. The Board is trying to accommodate the Park Rapids City Council that meets the second and fourth Tuesdays of each month so the second meeting conflicts with our date that we have reserved for our meetings with long agendas that go past 10 p.m. Christenson made a motion that we would prefer to keep it "as is" because that works the best for all of us and if the Board will not accommodate us in that matter, we could make the first Monday work. We are a County board and are employed by the County Commissioners and we should have precedence. Johnson seconded the motion. The motion passed unanimously.

**Adjournment:**

With no further business, Krueger made a motion to adjourn the meeting. Johnson seconded the motion. The motion carried unanimously. Krueger adjourned the meeting.

Respectfully submitted by,

Barbara Barth

Recording Secretary