

## **HUBBARD COUNTY**

### **Planning Commission/Board of Adjustment Meeting Minutes**

6:00 p.m. on Monday, November 27, 2017

Vice Chairman Tom Krueger opened the meeting with the following members present: Tim Johnson, Ted VanKempen, Mark Petersen and Cal Johannsen, ex-officio Planning Commission member. Also present was Environmental Services Officer Eric Buitenwerf.

Ken Grob, Chairman, was absent.

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 Minutes:** None.

**Old Business:** None.

#### **New Business:**

##### **County Ordinance No. 10 – Surface Water Use draft review:**

Sheriff Aukes presented background on County Ordinance No. 10 - Surface Water Use. For the past several years, I have heard occasionally from the public that they have issues with the speed regulations after 6 p.m. and prior to 9 a.m. on 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Crow Wing Lakes. More recently, I have heard from more and more people on why the ordinance is lacking. I did some research and I see no legitimate purpose in regulating the speed on those three lakes. It is not a matter of the size of the lakes, two out of the three are two of the bigger lakes on the Crow Wing chain. It is not like Lester Lake, a tiny pothole. It is not like LaSalle Lake that is part of Itasca State Park. The ordinance came into effect in 1978. I spoke to Barb Lee, the President of the Lower Crow Wing Lakes Association, and met with the Board of Directors. I also spoke to a previous commissioner and a resort owner on one of the affected lakes, Floyd Frank. Both Lee and Frank said the ordinance came to be because some fisherman and a resort owner wanted peace and quiet to fish during prime fishing times. The stated purpose of the ordinance is inconsistent with why it was created. There is no public safety issue with the 15 mile per hour speed limit. If we have a public safety issue needing a 15 miles per hour speed limit, why not at all times of the day? Why is it not on all the Crow Wings? Why is it not enforced on all lakes in Hubbard County? The ordinance purpose also states “to promote its fullest use and enjoyment, to promote the general health safety and welfare”. If we are truly doing that, then why are we limiting the use of that lake after a certain period of time? I brought it to the Board for discussion which is why we are here today. I also researched the Department of Natural Resources (DNR) regulations. This ordinance does not meet the DNR’s requirements either.

Krueger asked do you get very many complaints on it?

Sheriff Aukes replied we do not. We average less than one person per year complaining about the speed. That does not mean they are not speeding out there, it just simply means that people are not reporting the speeding. When I went to the Lower Crow Wings Lake Association Board of Directors meeting, none of the members knew what the ordinance said. It is certainly not a widely understood ordinance, even though it has been in effect since 1978.

Krueger commented I lived on 2<sup>nd</sup> Crow Wing so I am quite aware of it. It used to be a resort. When I bought my property in 1990, there were a couple of people on the lake who would immediately give me a call when they saw one of my customers speeding and violating the ordinance. Over time, I stopped getting those calls. I do not know if those people moved on or what.

Sheriff Aukes responded maybe, I do not know. I went back to 2005 to research the number of calls the Sheriff's Office gets about this. It is less than one per year. We have had maybe five or six calls since 2005.

Krueger stated I can give one observation, the ordinance specifically says speed limit 15 miles per hour, right? I have often seen fishermen go out from their dock to their fishing spot in high power boats at much greater than 15 miles per hour.

Sheriff Aukes remarked if you look at what we had for boats and motors back in 1978, it is totally different than what is out there now. You look at some of these boats now, at 15 miles per hour, how they are plowing through the water and creating wake versus being up on plane creating far less of a wake. I do not know if it was the jet skis, or water skiers, or fisherman who really brought this ordinance around. The point is all watercraft are affected. It is not a fair ordinance. Yes, people who live on the lake who enjoy the peaceful water may be upset. I do not know if that is a fair way to act on public water. I think it is an inconsistent ordinance and that is why we are here.

Johannsen asked how do you enforce 15 miles per hour? Do you have radar units in the boats that can detect someone going 15 miles per hour?

Sheriff Aukes replied we do not. I have them in all of the squad cars for obvious reasons. But radar is not standard equipment in the boats because it is not a need. We have no wake areas in a lot of the county, but that has nothing to do with speed. That is another issue - how practical is it to enforce this ordinance?

Johannsen remarked it is pretty hard to enforce something if you cannot detect the speed.

VanKempen asked is there any signage at public accesses expressing the speed limit?

Sheriff Aukes answered I talked to my boat water officers about that and I got mixed answers. I know there is at least one, it might be a very old sign, but I believe so. I have not personally seen it, but it sounds like probably, but very limited.

VanKempen asked these five lakes have some type of surface water regulation on them, do you know of any others in the state that have anything like this?

Sheriff Aukes answered I am sure there are for various reasons. Just like the restrictions on Lester and LaSalle Lakes have specific reasons. I am assuming there are other circumstances like that in other parts of the state, but I do not know off the top of my head.

Johannsen stated the reason for the restrictions on LaSalle is because it is a narrow and deep lake, the side banks are very steep. Any wave action there would be somewhat detrimental to the shoreline.

Johnson asked do we know how many people on those lakes are full-time residents versus seasonal residents?

Sheriff Aukes replied I do not know.

Johnson asked in your first paragraph, you state that you took a little more notice when you found some justification to the complaints. Were the complaints you took more notice to about the legal aspects such as safety and welfare?

Sheriff Aukes answered from what I remember, when I first started hearing about this, several years ago, people were just kind of complaining about it. More recently people have started talking about public safety. I remember one conversation where somebody started asking questions about the creation of the ordinance and if public safety comes into play.

Johnson asked how many people do you think that was?

Sheriff Aukes replied I probably heard it a good couple of times a few years ago. More recently, I have heard it probably three or four more times.

Johnson commented to me it looks to be about 282 parcels between the two lakes. I am wondering, how do all of those people feel? How many did you talk to?

Sheriff Aukes responded not very many, but the way I look at it is, should the people that live on a particular public body of water get to dictate what the law is? It has kind of turned into "me, me, me" convenience kind of thing, and I do not know if that is right. It is public water so I do not know that you can just take into consideration those that live on the lake. They are not living on the water. They are living on the shore and the water is public to be used by everybody.

Johnson replied right. But I do not know how many residents, since this has been in place since 1978, may have bought their property because of the ordinance. How much has boat density been affected? Has safety increased because people have been discouraged from using that lake because of that speed limit?

Sheriff Aukes answered we will never know that.

Petersen asked how many calls have you received on speed violations in the last few years? Do you get many?

Sheriff Aukes answered I believe we have had five since 2005.

VanKempen asked between the lakes, on those channels, is that a no wake zone?

Sheriff Aukes replied I believe the rivers are no wake, yes.

Johnson asked you are looking at always remaining no wake?

Sheriff Aukes responded we post on any lakes or rivers in the county if we feel it is a no wake area. Whether it is a narrows on Belle Taine or whatever. Absolutely.

Johnson replied I live on a river and I noticed it is very rare that somebody breaks the law, once the sign is up.

Krueger asked for public comment.

Public comment was given by Floyd Frank, 3<sup>rd</sup> Crow Wing Lake, 23419 State 87, Nevis, MN. I have lived on 3<sup>rd</sup> Crow Wing Lake since 1980. From my perspective, the ordinance was primarily put in place the way Sheriff Aukes explained it. Back then the 14 foot boats, the 12 foot boats, the six horse motors were all out there rocking and rolling with every wave that moved. Things have changed, you hardly find a 14 foot boat on that lake anymore. We did do some speed tests back then. We had a portable radar unit. A 15 horse boat, wide open, 15 miles per hour, you were breaking the law. We had Sheriff's patrol, a volunteer group, out there for many years. The Sheriff's patrol mainly went out if somebody was not using a life preserver the way they should or they were being a little reckless. I never went out chasing people down for speeding because I knew the whole idea of that ordinance was to help out the fishermen. That has changed over the years, boats are so different. You hardly ever see a small fishing boat out there anymore. If you are in a larger boat, any wave action normally does not bother you. You can pull a tube at 15 miles per hour and not break the law. You would get calls for people tubing after hours. People would call in complaints of skiers or tubers who were still out there right at 6:00 p.m. when 15 – 20 minutes more probably would not have hurt anything, but they were breaking the law. Over the years, the ordinance has become archaic, it is outdated, and does not need to be on the books. I do not see the purpose of keeping it any longer. People have been very courteous and you are always available to give a call to the Sheriff's Department if you have somebody really reckless out there. I have no problem flagging someone down if they are interfering with others. Most people are really responsive to that, if not I write down their boat number and call the Sheriff's Office. Pontoons are huge, everyone has 50, 60, 70 horses on the back. Everyone who leaves my dock in the early morning or late in the evening speed right over to their spot. Technically the Sheriff's Department should be out there giving every one of them a ticket. When you tell most people about the ordinance, they say they would not have bought on this lake if they had known about it. I have talked to a lot of people on the lake throughout the summers. Most are not in favor of it. I support Sheriff Aukes. I do not think something like this is necessary anymore. If there are issues, the Sheriff's Department is more than willing to help you out. It is not an issue any longer.

Public comment was given by David Engels, 2<sup>nd</sup> Crow Wing Lake, 12041 Bayberry Dr, Menahga, MN. I have a slightly different perspective. I agree with the Sheriff that the document needs to be updated. The State of Minnesota, under the Department of Natural

Resources (DNR), requires that boats must travel slow, no wake speed, five miles an hour or less, within 150 feet of shore, docks, swimmers, swimming rafts, any moored anchored watercraft or non-motorized watercraft. With that understood, that is a 24 hours a day requirement. No wake when you are passing those fishing boats. That has not been followed. As an Aquatic Invasive Species (AIS) inspector for a number of years, I can tell you that a majority of people that operate boats in this county have never read our boating laws. Half of them have not read the fishing regulations. What really is my concern, we have several boats on the lake that are called wake board boats. Those boats have engines in them between 450 and 500 horsepower. The boats carry anywhere from 1000 – 2000 gallons of water to provide a very deep, steep wake. Those wakes can average anywhere from three to six feet. When those six foot waves slam into the side of your boat, your dock, your lift, or the shore, it makes them extremely dangerous out there. It is not a matter of speed limit, most of those boats rarely travel over 12 miles per hour when they are producing that wake. But that wake is extremely detrimental to anyone using smaller boats on the lake, including people in their sport fishing boats that have the 85 horsepower Mercury on the back. They have just as hard of a time handling those waves as I do with my little fourteen foot out on Second Crow Wing. What I am looking at is, 15 miles per hour does not have any bearing anymore. To me, it is a problem of being able to enforce existing laws. Additionally, I would like to talk about the rules to operate a watercraft so its wash or wake endangers or harasses or unnecessarily interferes with any person or property. Once again, this is not a time specific requirement, this is a DNR regulation. It specifically says if you are out there driving your wake board boat up and down the lake, whether it be 3<sup>rd</sup> Crow Wing or 2<sup>nd</sup> Crow Wing, you are violating the law.

Public comment was given by Dean Christofferson, 19706 119<sup>th</sup> Ave, Park Rapids, MN. I own two large boats and being limited to 15 miles per hour becomes a safety hazard. You cannot control the boat properly. They are not designed to operate at 15 miles per hour. It also creates a larger wake than anybody wants to see out there. If I increase the speed up to 25 miles per hour, it is a smaller wake and runs better. Minnesota State Statue says you cannot go over 50 miles per hour, so we do not need to worry about anyone going too fast. It is an old law. It does not make sense. I agree the big giant wakes from wake board boats is harder on things than going over 15 miles per hour. I do not believe operating your boat at 15 miles per hour, especially bigger boats, is safe.

Public comment was given by County Commissioner Ed Smith, 10099 130<sup>th</sup> St, Park Rapids, MN. I am the County Commissioner for District 3. I have received e-mails and calls from residents of the Crow Wing Lakes. All of those people were in favor of retaining the ordinance on the lakes. It has been that way since they have been there. A lot of those folks like to go out in the evening and enjoy fishing. Most people have been there for quite a period of time and did not see the reason why it should change.

Written correspondence was received from John St. Andrew, 13324 Blackberry Drive, Nevis, MN in support of the ordinance amendment.

Written correspondence was received from Kurt and Mary Vento, 12613 Beach Drive, Nevis, MN opposed to the ordinance amendment.

Krueger closed public comment.

VanKempen asked Johannsen do you have a sense of how the County Board feels on this?

Johannsen replied no, I do not. To me, it does not make sense because it is very difficult to enforce. I hear all these comments and do understand why some people still want the ordinance. But like we have heard, today's big boats throw a pretty good wake at 15 miles per hour and the wake is much less if you are driving faster. It is probably doing less damage and causing less strife for people that are out there on smaller boats. I also agree about the wake board boats, I cannot believe it is allowed, but I do not know how you stop that.

Sheriff Aukes remarked Engels cited the correct law that if you create something that is a hazard or inconvenience that is against the law. If they are making that big of wave, even in the vicinity of other boats or docks, that is technically a state law violation. If we get complaints on that, we can follow up on that.

Johannsen stated you can cite people for reckless driving, speeding, etc. There are laws that pertain to most everything this ordinance was designed to do. It is not fitting anymore.

Krueger commented at the end of Sheriff Aukes' letter it says a law should not be preferential to a specific group of people. That is what this ordinance does for 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Crow Wing Lakes. I definitely agree with that. If we are going to have a law like this, it should apply to all lakes in Hubbard County. It is an old, archaic law that needs to change.

Sheriff Aukes stated I am proposing to remove the speed limit from 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Crow Wing Lakes.

Krueger asked and leaving Ordinance 10 the same for LaSalle and Lester Lakes?

Sheriff Aukes replied correct. I have no issue with Lester and LaSalle Lakes. I would say leave that.

Johannsen commented it is even harder to enforce on those lakes, but Lester is non-motorized and the State has a handle on LaSalle.

Sheriff Aukes: I do not know if we had complaints about the speed on LaSalle.

Johnson remarked I understand what you are saying about the enforcement issue, but with only six complaints in 13 years, it was not an issue. With that few complaints, I am asking myself what am I trying to fix?

Johannsen stated you are trying to fix an ordinance that is not enforceable.

Sheriff Aukes commented and to allow safe fisherman to move at speeds above 15 miles per hour. I would not doubt some people simply choose not to fish those lakes because of the ordinance.

Johnson remarked it may not be about just fisherman, we are talking 300 people, the lake density could be affected because of this ordinance. People get to enjoy the evening with their kayak or canoe. They are out there because they do not want the problem of people going above 15 miles per hour. Maybe people bought property there to use the lake like that.

Sheriff Aukes responded but in the bulk of the day the 15 mile per hour is not in existence so you can go far faster than that.

Johnson stated that is spreading out the use. If somebody wants to go fast, they can use it during the day.

VanKempen commented I was not aware of the boating law that states you are not supposed to make wakes or come so close to shore. I appreciated the public comment that read the law. I think that law would cover any problems that the people have if someone is creating too much of a wake. They can call the Sheriff's Department if they have problems. It does seem to be a law that is tough to enforce. Also, if you are not there to witness someone creating too much wake, it is hard to prosecute that. I am always leaning towards a little less regulation.

Petersen remarked I concur if a law or regulation is not enforceable, I do not see the point of having it on the books. Also, if it is a preferential law, it is something we need to get rid of.

Krueger made a motion to remove the regulations on 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Crow Wing Lakes from Hubbard County Ordinance No. 10.

VanKempen seconded the motion.

The motion carried 3 – 1 with Johnson voting nay.

**Final Plat Application of Plantagenet Bay Estates by Bradley Anderson:** Gov. Lot 4, Section 18, Township 145, Range 33, Helga Township on Lake Plantagenet, a recreational development lake. Parcels 11.18.00700 and 11.18.00710. Applicant is requesting to plat 27.2 acres into 10 residential lots.

No applicant present.

Buitenwerf informed the Planning Commission of a contingent plat application withdrawal letter sent by the applicant, Bradley Anderson, on November 27. Buitenwerf stated there is no change in the plat layout from what was submitted in the preliminary plat this spring. The road was constructed and passed inspection by the Environmental Services Department as well as the township. All the big picture items are taken care of. There are just a few snags with the mortgages as mentioned in the letter. The Planning Commission can recommend approval of the final plat subject to those mortgage consents being received by December 12. If they are not received by then, the applicant would withdraw the application and resubmit it once those consents are in hand.

VanKempen stated I went out to the property two Sundays ago. I drove through the area. It looks nice. There is grass growing where dirt was removed. Everything looks to be in order.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

VanKempen made a motion to approve the final plat application subject to the mortgage consents being received by December 12 per the applicants November 27 letter and if not received by December 12, then the application will be withdrawn.

Petersen seconded the motion that carried unanimously 4 – 0.

### **Board of Adjustment:**

**Approval of Minutes:** October 23, 2017 meeting.

VanKempen made a motion to approve the October 23, 2017 Board of Adjustment meeting minutes as presented.

Petersen seconded the motion that carried unanimously 4 – 0.

**Old Business:** None.

### **New Business:**

**Variance Application 42-V-17 by Michael Koller:** Part of Government Lot 5, Section 25, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational development lake. Parcel 16.25.01940. Applicant is requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming residence located in the shore impact zone.

Michael Koller, 316 Oak St, Prescott, WI, presented the variance application. We are asking for a fireplace for the living room of the cabin. We live up there year around and it is nice to have a fire during the winter. We are not looking for the fireplace necessarily for heat. We have electric baseboard heat. But it is nice to have a decorative fire in the winter, plus it will add a little heat and save us some money that way. The reason I need a variance is because the foundation for the fireplace will be outside the cabin. The foundation will be about two feet by four feet along with a chimney and part of the hearth. Bob Lindow is our contractor for the project. Dick Larson from Bemidji has standard kits he uses to build these type of fireplaces instead of using an insert.

Krueger asked is that going to be a block fireplace and rock covering it?

Koller replied the outside will be a cement fireplace with ceramic blocks for the hearth. It is an Air and Fire Masonry Fireplaces kit.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

VanKempen commented it looks like you are not going to be encroaching on anybody else's property. It seems like a small thing you are asking for here and the main reason is because your cabin was pre-ordinance. I do not see any issues with it.

Krueger remarked I do not see any issues either. The fireplace is not lake front, it will be on the side.

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

Johnson seconded the motion.

#### Findings of Fact:

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

Why or why not? The request is only for a 2' x 4' exterior fireplace addition to the north side of the cabin. This fireplace will have a small immeasurable effect on the environment and aesthetic considerations as exterior fireplaces are a common feature on lake cabins.

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

Why or why not? Having a fireplace in a lake cabin for heat and enjoyment is a reasonable use as such is a commonly found feature on a lake cabin.

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

Why or why not? The cabin was constructed in the shore impact zone prior to the ordinance taking effect.

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 predates the SMO, was constructed by a party other than the landowner, and is located in the shore impact zone. The difficulty is caused by the SMO requiring a variance from Section 702.

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

Why or why not? The proposed exterior fireplace is only 2' x 4' in footprint and 19' in height – same as the cabin height. Exterior fireplaces are a common feature on lake cabins.

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

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty is caused by the cabin having been built prior to the ordinance in the shore impact zone.

The motion carried unanimously 4 – 0.

**Variance Application 43-V-17 by Gregory and Linda Bookey:** Part of Government Lots 5 and 6, Section 15, Township 141, Range 35, Arago Township on Eagle Lake, a recreational development lake. Parcel 02.15.00310. Applicants are requesting an after-the-fact variance from Section 703 of the Shoreland Management Ordinance for a lakeside deck on a dwelling unit that encroaches closer toward the ordinary high watermark than 30 feet.

Gregory and Linda Bookey, 2327 Hillview Rd, Mounds View, MN, presented the variance application. Our deck was deteriorating so we hired a contractor, Olson Brothers, to replace the deck. We belong to an association so before we could even build the deck, our association had to approve our deck design, which they did. We were under the impression that our contractor would get a permit to build the deck. It was built over the winter. We did not get up here to look at it until this spring. Then we received the violation notification from the Environmental Services Department. The north end of the deck got a little closer to the lake because the lakeshore goes in as you can see in the drawings. Otherwise the front of the deck does not come out any further than the old deck did. We also changed the entrance. We put an entrance on the north end and the south end. We took the original main entrance out that was in the middle. The new deck goes straight across, then cut the ends. The original deck was 12 feet across and went eight feet back on the north and south side. The new deck is 24 feet across and angled to the eight feet. We did gain a little bit of area, on both the north and south end by the steps.

Krueger asked were you under the belief your contractor was going to construct it according to what was allowed from what you had previously?

Bookey replied we told the contractor it has to stay within the footprint. My thought was he was going to do the same footprint and only change the entrances. We wanted the exact same size, just different entrances. He did stay, more or less, in the footprint. He just

made the front a little longer and he did not cut the angle back far enough, he left it out a little bit. That probably gave us three feet closer to the lake on the north end.

Krueger asked about how much did this cost you, materials and labor?

Bookey answered about \$11,000. A little bit more maybe.

Petersen asked you said at the start you went to the association for approval from them. What is their criteria for your design?

Bookey replied it is to stay within the footprint of your cabin. You cannot build any bigger onto your cabin, especially us because we are right against the shore. Some of the other cabins that are further back can go up and add more. We have always had to stay right within the footprint. I did submit the drawing the contractor had written up to our building committee. They looked it over and approved it. We were under the impression it was okay. Also, we were under the impression our contractor was going to pull a permit and we were very surprised that was not done.

Johnson asked did the contractor give you a written quote or bid?

Bookey answered yes.

Johnson asked did he include that permit on the bid?

Bookey replied I did not see it on there, that was my ignorance for not questioning that.

Johnson asked was your contractor state licensed, insured, and bonded?

Bookey answered yes, it was the Olson Brothers. He has done licensed work throughout the resort in the past. He came very highly recommended. He is a licensed contractor.

VanKempen commented so by state law he has to follow the state codes and the authority of local jurisdiction.

Bookey replied I know he did a deck for another cabin down on the end. He also did not pull a permit on their deck.

Krueger remarked it looks like quality work, he looks like a good contractor. I wonder if he was confused and thought you had already pulled the permit.

Bookey answered I guess we never really talked about the permit. This is the first time we ever did this. This is on us. We did not think to make the permit a top priority question. We were assuming, because of his work on the lodge and other people's cabin, that he would know about all the rules and regulations. I learned my lesson.

Petersen asked so no permits were pulled for this job?

Bookey replied no, not to my knowledge.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

VanKempen made a motion to approve the variance application and adopt the staff report findings of fact except for questions 7 - 11 for which the Board of Adjustment provided answers.

Petersen 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 new deck that replaced the previous deck is essentially the same size as what was there before. The only differences are the removal of the former angled prow and relocation of stairs from the middle of the prow to a set of stairs on each of the two corners. The previous deck could have been replaced by permit. Allowing the minor deck layout changes to be made is in harmony with the Ordinance's intent.

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

Yes (X) No ()

Why or why not? The cabin has an exterior door that exits onto this deck. Thus, some form of a deck is necessary for safe ingress/egress into the cabin. A lakeside deck on a cabin on a lake is a reasonable, common use of a riparian property.

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

Yes (X) No ()

Why or why not? The cabin was constructed prior to the ordinance in the shore impact zone. It is part of a nonconforming mixed commercial resort/residential use.

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 constructed prior to the ordinance in the shore impact zone by a party other than the applicants.

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

Yes (X) No ()

Why or why not? The basic size and footprint of the new deck is the same as the deck it replaced and that had been in place for years. There are lakeside decks on the other nearby cabins that share similar ordinary high water mark setbacks.

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

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty is the fact the cabin is located in the shore impact zone and it was constructed prior to the ordinance.

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

Why or Why not? The applicant got an okay from the lake association and was not aware they needed to get a permit themselves.

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

Why or Why not? Applicant got the lake association's approval and in a sense were ignorant, in their own words, to needing one.

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

No. They did not get a permit from somebody else but it seems they assumed they got the okay from the lake association.

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

Yes. It was \$11,000, or a little bit more. That seems to be a substantial investment.

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

Yes. The work was completed during the winter months when they were not here.

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

Yes. Most of the other cabins in this development including those adjacent to this cabin have lakeside decks on them.

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. The new deck is essentially the same size as the previous deck that it replaced which had been present for years. The cabin has an exterior door that exits onto the deck so some form of deck is required on the lakeside of the cabin in order to provide safe ingress/egress into the cabin.

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

No. The new deck is essentially the same size as the previous deck. No erosion or other environmental degradation was observed as a result of the deck during the lot viewal. The cabin has an exterior door that enters onto the deck so some form of deck is required in order to provide safe ingress/egress into the cabin.

The motion carried unanimously 4 – 0.

**Variance Application 44-V-17 by the Northern Lights Council of BSA; Camp Wilderness:** SE ¼ of the SE ¼, Section 23, Township 142, Range 34, Clay Township on Bad Axe Lake, a recreational development lake. Parcel 04.23.03001. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming use by the construction of a storm shelter/pavilion.

Andy Kietzman, 29984 Journey Trail, Park Rapids, MN, presented the variance application. I am the Camp Ranger for Camp Wilderness. The reason we are here is we are looking for a variance to allow us to build a storm shelter. We are looking to build within the required 1000 foot setback. The reason we would like to build within the 1000 foot setback is because we have concerns about needing to locate the shelter centrally within the camp so in case of an emergency we can get everybody to it as quickly as possible. We also have concerns with having emergency access in case an emergency occurs. We worked with the Environmental Services Department to look at possible locations for the shelter. We have not been able to identify another location that meets those criteria aside from this particular location. We are on the back slope, away from the lake, that causes the 1000 foot concern. We have at times several hundred people at the camp between scouts, leaders, and staff. We are 15 miles out from town, having a place to keep kids safe in an emergency situation is our number one priority. Currently, we use some other buildings on the camp, but those buildings are full of windows. In the case of a tornado or high winds, those windows are at risk of breaking and creating harm to scouts. This happened at a scout camp in Iowa a few years ago. A stone fireplace fell in and unfortunately, several scouts were killed. We have identified that as a concern. We are partnering with Hubbard County Emergency Management and FEMA to help fund the project. It will be open to the public. It is not just for the scouts. Anybody else in the area- the resorts that are close to us or local neighbors- will be able to utilize it in the event of a storm. Our goal is to receive approval to proceed with putting up the storm shelter. There is one contingency on that. We are still working through some of the finer details with the septic system. There is some uncertainty whether Minnesota Pollution Control (MPCA) will be the presiding jurisdiction or whether Hubbard County Environmental Services will be the presiding jurisdiction over the septic systems. Septic definitions were required for the application, but since we have not received clear direction from MPCA just yet, I

would request the variance be contingent upon this. We want to make sure your concerns are met when we do the septic system for this project.

Krueger asked what is the capacity of this going to be?

Kietzman replied approximately 500 people.

Krueger remarked definitely everyone that is in the scout camp.

Kietzman agreed correct. We will actually be doing two storm shelters, but the other one is not within the 1000 foot setback. It is at our cub scout facility, but that is a smaller shelter. The permit is needed just for the boy scout shelter which is where most of our campers would stay. The other aspect of this, we have talked about putting a pavilion on top at some point down the road. Instead of coming back and bothering you guys again later, we just rolled it all into one request. Since we are going to basically have a big concrete box in the ground, it seems like a pavilion is a smart way to utilize that. The pavilion can be used for a picnic area. Part of that request, as you can see in the picture, would be to have something along those lines in place when we have the finished product so that we can utilize the area without impeding on the use of the shelter. The shelter regulations are fairly specific on use. You cannot store things in there or use it as classroom space. In the event of an emergency, you would not have time to clear the room out. You need to have it vacant so people can go right in.

Krueger clarified your intent is to build the shelter and include the pavilion with the variance, but add the pavilion later?

Kietzman answered correct. The shelter itself is part of the FEMA process, but the pavilion is a separate project. After we get the shelter completed and FEMA signs off on the project, then we will come back in and add the pavilion on the top.

Krueger asked are you aware that there is the sunset clause on variances? You would have five years to complete the whole project.

Kietzman replied it will be within that. If the variance is approved, and we get everything squared away with MPCA, our hope is to have the project open for bids shortly after January 1, 2018. The target start date for the shelter would be right after summer camp is done and the kids are gone, so late August 2018. The intention would be to have it finished by the end of 2018. If FEMA does then sign off, we would put the pavilion on prior to summer camp, in the spring of 2019.

VanKempen asked you said it is a concrete building, will that be precast, poured walls, or concrete blocks?

Kietzman answered that will depend on how the bids come in. We have not ruled anything out yet. The FEMA storm shelter codes are very specific about their ability. No matter what we do it is going to be slabbed. Whether we do a precast, then bring it in and set in a location or we do block poured walls or concrete block walls, we are not certain yet. It will depend on cost.

Petersen asked plans are not finalized yet?

Kietzman responded they are not. We are waiting to make sure that the site is acceptable to the County so we can get the plans tuned up. The plans could change, but the shelter size will stay the same. Part of the official plans might change depending on location because we want to build into a hillside so we gain that extra earth protection. There is the excavation aspect that would be adjusted if we need to move it to a different location, if the County did not approve this particular location. We also have considerations like power feet and things like that. We would also need room to put in a septic system that could, theoretically, handle a large load if we had an emergency situation where we put a lot of kids in the shelter for a long period of time. We are being flexible, we are waiting to finalize the location so that we can finish the drawings.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

Buitenwerf commented as far as the septic part goes due to the uniqueness of this situation with the property being right on the threshold of MPCA possibly claiming jurisdiction on the septic systems, we accepted the variance application without having current compliance inspections submitted for all of the septic systems on the property, which is the normal ordinance requirement. We reviewed that with legal counsel and determined that would be reasonable in light of the situation. The department recommends, if the Board approves the application, you would place a condition on the approval that if the County continues to have septic jurisdiction, those compliance inspections would be submitted prior to issuing the permit. I believe this works well with the camp's timeline of beginning construction in August 2018. That would allow the camp time to get the septic inspections performed and submitted prior to that point. If the MPCA claims jurisdiction, the camp would just have to cooperate and comply with whatever MPCA would require. There would be a state wide septic permit that would be necessary for the entire camp facility. That would be the only condition that the department would recommend with any possible motion to approve.

Krueger asked any idea how long the MPCA is going to take?

Buitenwerf replied no, but they having been progressing through the process with Kietzman since he initiated contact in the last few weeks. There has been a fairly healthy, timely dialogue that I have observed so far.

Kietzman commented we are trying to keep Buitenwerf caught up on all of those conversations so that he is aware of what is going on. The last data the MPCA asked for I got to them shortly before the Thanksgiving holiday.

VanKempen made a motion to approve the variance application with the following condition and adopt the staff report findings of fact:

1. Once the Minnesota Pollution Control Agency (MPCA) renders a decision on whether it or the County has jurisdiction over the septic systems on the property, if the MPCA claims jurisdiction, then its septic permitting requirements must be followed. If the MPCA does not claim jurisdiction and jurisdiction instead continues to lie with the County, current compliance inspection reports on all the septic systems on the property must be submitted to the County before the permit for the storm shelter/pavilion can be issued.

Petersen 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 camp only needs a variance because it is a nonconforming use and it has not obtained a conditional use permit since the ordinance changed in 2015 to require a variance for expansion of a nonconforming use. The storm shelter will be ~675' from the OHW, not visible from the lake, and located in an area that slopes away from the lake. It will also provide critical protection for the hundreds of campers during severe weather events.

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

Yes (X) No ()

Why or why not? The camp currently does not have any official storm shelters for its hundreds of campers and staff. Having a proper storm shelter to protect people in the event of severe weather 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 proposed shelter could be constructed by a land use permit per Section 702 of the SMO if the camp had a conditional use permit. The camp does not have such a permit because its use commenced before the ordinance's July 12, 1971 enactment date and the ordinance content that now requires a variance to expand this legal nonconforming use was not added to the ordinance until 2015. The owners have not undertaken any structural expansion projects until this one since the ordinance language changed that made this unique circumstance that affects this property.

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 camp predates the SMO. The proposed shelter could be constructed by permit per Section 702 of the SMO except that Section 701. Nonconforming Uses of the SMO requires a variance to expand a nonconforming use such as this one. The difficulty is caused by the SMO requiring a variance from Section 701.

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

Why or why not? The camp consists of a few thousand acres of property and the nearest neighbor is roughly one-half mile across the lake. The shelter will not be visible from the lake as it will be ~675' from the OHW. It will only be visible to those on the camp property and then only to those within a few hundred feet of the structure due to the dense wooded vegetative cover throughout the camp.

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

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty is caused by the requirement of Section 701 of the SMO that a variance be required in order to expand a nonconforming use. The only reason the camp use is nonconforming is that it predates the SMO and has not gone through the process of obtaining a conditional use permit. If a CUP was in place, the shelter could be constructed by permit.

The motion carried unanimously 4 – 0.

### **Miscellaneous:**

### **Communications:**

Buitenwerf stated we will have a December meeting. There will not be any Board of Adjustment business, but there will be two Planning Commission agenda items. One is a minor subdivision application of 34.6 acres looking to create five lots.

Johnson asked will we have to do a lot viewal?

Buitenwerf replied it is up to the Board. Tracts 1A and 1B are already created. This application would create Tracts 1C, Tract 1 Remnant, 1D, 1E, and 1F. We are not exceeding the four tracts having frontage on a public road within a quarter mile.

Johnson asked why does this not get into the ordinance about the four tracts?

Buitenwerf replied this application is a quarter mile across and there will be four tracts that result from the subdivision. That is in compliance with the ordinance. You can have up to four, but cannot go over four. Most of this subdivision is open field. It is pretty flat.

Krueger asked the easement, is that already a driveway or is it flagged off?

Buitenwerf responded I will pull up the aerial photo for you to look at. There was nothing there as of May.

Krueger asked did surveyors at least flag off the easement?

Buitenwerf answered I do not know. I would be surprised if they did just because the minor subdivision process is not as involved as the plat process.

Johnson asked do they have all of their field evaluations submitted?

Buitenwerf answered yes.

Johnson asked if it is an agricultural field and previously been tilled 24 to 30 inches down, do you mark that as a septic site in an undisturbed area?

Buitenwerf replied I believe that is what the septic design shows. You would eliminate a good portion of the county from being able to have septic systems installed if you eliminated every formerly tilled area. So it is up to you all if you want to see any of that in person. That would be the only reason for having the lot viewal.

Johnson asked is there two agenda items or just one?

Buitenwerf answered there is the subdivision application and the other one is the new ordinance, the buffer law. The County Board opted to enforce the law which means we need to have an ordinance. I have a template that the Board of Water and Soil Resources put together that I hoping to get completed this week. The County Attorney needs to review it and then I am hoping to get it to you all in December for review. Hopefully, the Board can make a recommendation to the County Board and we would have something of a public hearing process. We hope to have it complete and in place by spring 2018. The biggest decisions would be things like what level of enforcement you want to have.

Johnson asked is there any chance of any other Board of Adjustment business being added to the agenda?

Buitenwerf responded no, the application deadline has passed.

VanKempen asked when would the lot viewal be and when would be the hearing?

Buitenwerf replied the meeting is on December 18 and the lot viewal would be on December 14.

Krueger commented it looks like consensus is to pass on the lot viewal.

### **Adjournment:**

VanKempen made the motion to adjourn.

Krueger seconded the motion.

The motion carried unanimously 4 – 0.

The meeting adjourned at 7:31p.m.

Respectfully submitted,

Paige Nulliner

Recording Secretary