

## **HUBBARD COUNTY**

### **April 23, 2018 Planning Commission/Board of Adjustment Meeting Minutes**

The meeting began at 6:00 p.m. on Monday, April 23, 2018.

Chairman Tom Krueger opened the meeting with the following additional members present: Ken Grob, Ted VanKempen, Tim Johnson and Mark Petersen. Also present was Environmental Services Director Eric Buitenwerf and ex-officio Planning Commission member and County Board Vice-Chair Dan Stacey.

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:**

#### **Sign Ordinance – proposed Amendment 4 review**

Buitenwerf stated the reason for the amendment came about because we were recently made aware by MnDOT that our Scenic Byway language is not able to have exceptions to its regulations. We historically have had, since the ordinance's inception in 2004, exception areas on the Scenic Byway overlay that allowed off-site or off-premise signs to be located in those exception areas. MnDOT recently informed us that those exception areas are not allowed meaning that off-premise signs are not allowed in a Byway overlay. I worked with MnDOT staff to make sure that our language aligned with state and federal regulations. In the course of working on that, we found that our overlay map had several errors in it that went back to 2004 when it was put together. I have no idea why, but I worked with MnDOT staff to get those clarified. The other two remaining items that are part of the proposed amendment would be housekeeping as far as updating titles of positions that have changed and then also getting the variances and appeals sections to coincide with the amendments we have made to the Shoreland, Septic, and Subdivision Ordinances recently. Those ordinances all point their variances and appeals sections to the Shoreland Management Ordinance's Variance and Appeals section so that if and when we have to make amendments to that section, we only have to open up one ordinance to do so as opposed to opening up all of those ordinances and having duplicative language in all of them. Those would be the main points of language change in this amendment that is before you.

Krueger asked who is responsible for enforcing the Sign Ordinance? The Environmental Services Office?

Buitenwerf responded that is correct.

Krueger commented I was wondering since off-site class B licenses are no longer allowed on Highway 34 it sounds like.

Buitenwerf stated there are some off-premise signs on the Byway, but those would be grandfathered in, that predated the ordinance and state and federal Scenic Byway regulations.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

Grob made a motion to recommend the Sign Ordinance – proposed Amendment 4 to the County Board as proposed.

VanKempen seconded the motion that carried unanimously 5 – 0.

**Conditional Use Application 1-CU-18 by Shady Lawn RV Park LLC:** Part of Government Lot 4, Section 30, Township 140, Range 33, Nevis Township on 5<sup>th</sup> Crow Wing Lake, a recreational development lake. Parcel 21.30.00300. Applicant is asking to amend condition #2 of Conditional Use Permit 10-CU-03 (as amended by 3-CU-07 and 3-CU-11) to allow the dock system to be reconfigured.

Dennis Thiel, 44818 215<sup>th</sup> Ave, Staples, MN, presented the conditional use application. We redid the beach we had out there, we got permits to redo the beach and put a retaining wall on the beach. We have a nice beach there and our dock goes 185 feet to the north. It goes out perpendicular 48 feet and then goes north 185 feet. We have slips on the east side of that. If boats come around the edge of the dock and park on the other side, they have to go into part of the swimming area. We had one close call happen about a year ago so we thought we would like to change that. If we could make the dock that goes to the north, we can make that instead of 185 feet we can make it 96 feet. Then we will go out a little deeper so the water is deep enough, maybe another 20 to 30 feet. Then we will put boat slips on both sides, the east side and the west side, where now it is just on the east side.

Krueger asked if they would still have one at the ramp too?

Thiel responded there will still be a deck that still extends perpendicular to the shore.

Krueger asked for questions from the Board.

Grob commented no, we need to specifically restate what Condition #2 is going to say. He has marked it out, under Environmental Services staff report, it should state, with the new drawing, as opposed to the one that was originally submitted, I would suggest the following wording: 13 boat slips may be used for rental by the residents. A single L

shaped dock to be installed located just north of the existing boat launch with the section that runs parallel to the shoreline extending northward (so it goes out and to the left), per site drawing dated April 15, 2018. Then we should add the fact that another straight dock will be located just south of the existing boat launch, no mooring of watercraft is allowed on the straight dock. All docks will be non-permanent and annually installed after April 1<sup>st</sup> and annually removed by October 31. So basically it retains the last two sentences of the original condition and changes the first one to reflect this drawing.

Thiel responded yes that is correct.

Grob commented that wasn't carried forward, we assumed that you wanted that straight dock for loading and unloading.

Thiel replied it is for unloading and loading.

Grob stated you had left that out, and with that not in there it gets confusing, so put that back in.

Thiel answered ok, we have the same amount of foot of dock, we're just putting boats on both sides so we can shorten it up, so if people come around, they are not into the swimming area.

Stacey commented that it makes sense.

Grob added that the DNR Fisheries and Waters representatives reviewed the layout and are in support of the particular layout that is proposed.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

Grob made a motion to recommend to the County Board of Commissioners that the amendment to condition #2 of Conditional Use Permit 10-CU-03 be approved with the new Condition No. 2 to state as follows:

Thirteen (13) boat slips may be used for rental owned by the resort. A total of two (2) docks are allowed – one "L" shaped dock with thirteen (13) mooring slips for watercraft will be located just north of existing boat launch with the section that runs parallel to the shoreline extending northward with seven (7) slips on the east side of said dock and "6" slips on west side of said dock.

Another straight dock will be located just south of the existing boat launch going east.

Krueger seconded the motion.

Findings of Fact:

1. The centralized dock is what is outlined in the Shoreland Management Ordinance. This is a centralized dock with 13 parking spaces, which is consistent with what is allowed in the first tier for this particular application.
2. The dock does not disrupt current emergent and submerged vegetation.
3. The amendment has been reviewed and approved by the DNR Fisheries Supervisor and Area Hydrologist.

The motion carried unanimously 5 – 0.

### **Board of Adjustment:**

**Approval of Minutes:** March 26, 2018

VanKempen made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 5 – 0.

**Old Business:** None.

### **New Business:**

**Variance Application 6-V-18 by Erik and Bridget Wiebold:** Part of Government Lot 1, Section 20, Township 139, Range 33, Crow Wing Township on 3<sup>rd</sup> Crow Wing Lake, a recreational development lake. Parcel 06.20.01800. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure located in the shore impact zone.

No applicant was present.

Krueger asked if there were any questions or discussion from the Board.

Grob asked Buitenwerf was a variance approved for an addition similar to this, but it ended because it was 5 years ago? The variance is no longer valid because it went beyond 5 years?

Buitenwerf responded that is correct. The previous variance was issued in February 2012 and it was void when it reached its 5 year sunset clause on February 2017 and had not yet been acted upon.

Krueger asked for public comment.

No public comment was given.

Krueger asked Buitenwerf do you have a concern about stormwater runoff? What kind of litigation would he like to see for that?

Buitenwerf responded that the main thing would be that you would want some way of diverting the water around the cabin and addition so that it doesn't run right in the back door and how to effectively address that. I am not sure if you would want to look at a series

of drains or catch basins, rain garden of sort, to kind of catch that rain water when it's running down along either side of the cabin would be my initial thoughts.

Krueger asked is there any problem legally with this Board imposing some conditions like that with the applicant not even being here?

Buitenwerf answered I do not believe so as long as the main thing with any condition would be to make sure that it is relevant and is germane to the proposed addition. So certainly the addition is going to cause additional stormwater consideration so considering conditions to that effect to address that issue would be appropriate.

Petersen asked Buitenwerf about the variance that was discussed a moment ago that they had originally applied for, was it for the same improvement that they are asking for now?

Buitenwerf replied essentially yes. I think the difference was that the accessory structure that is currently on the lot was proposed then to be removed. Otherwise the dimensions were a little different, but it was still an addition to the rear of the cabin.

Petersen asked Buitenwerf would the increased size of the roof still keep them below the impervious surface maximum? By doing this they would not be exceeding that.

Buitenwerf answered that would be correct.

Grob stated my only concern with what they wanted to do has to do with the water runoff. And you can see from the picture that the front and the back of the house have down spouts on the west side as you face the lake. There is about 26 feet of property until the property line, and you can see where the walkway is and remember where the retaining wall was, any water running into that area would end up being diverted to the left, and the point of it is that without the applicants here it's hard to determine what they can do there. Seems to him that there could be space on the left and have some kind of little holding area, water garden, whatever it may be, from the water running off of the down spout in the back of the house and the area where the wall is. The one that is down by the lake, there's not much that you can do about that, it's close enough to the lake and there are some trees and shrubs, but without them here, I don't know what to do in terms of proposing something that could be done or a condition that would help the run off. So I don't know what to do, approve it or deny it, or put it on hold until they can come.

VanKempen stated I would like to approve it with the condition that there would be a run off storm management of the water off the back of the house and it's hard to leave it open ended, with something like 'to be worked out with Environmental Services or something like that.

Grob added in the past Buitenwerf has been pretty adamant about the fact that we need to be pretty specific, otherwise it leaves him hanging and the owners hanging. There should be something very specific. Are the applicants not here tonight because they don't live in the area, but they would be here in another month or two?

Buitenwerf responds that he does not know, he did not take the call, they talked to his staff. The message that made it to him was that they would not be in attendance tonight, he did not get the “why”.

Grob added it is a classic example, because it's so close to the lake, where we should try to do some kind of water runoff abatement.

Petersen stated to me, when I look at this, I think that they are going to have to cut the retaining wall back into the hill further from where it is now, they will have a small yard area there, such as they currently do, and that run off, if it's done correctly with the grade, is going to run around either side. That goes without saying, that they are going to need to do that, I do not see any other way to do it, but in essence when they are done, they are going to have the same thing as they do right now, in his opinion. The taller retaining wall would be the difference because it would be cut deeper into that hill, as they move the house back. I do not feel they need to do anything else, but approve or deny it based on what they are asking for. Once they put the addition there, they will need to cut into the hill, to make their little yard back there, the grade will have to run there either way, regardless of the gutters, so that it runs around. We can't do anything to stop that, if everybody agrees to that, it hinges on that.

Grob asked Petersen is your assessment the amount of runoff after they make this change is going to be no different than the runoff that exists today?

Petersen responded they would have a larger roof area, but that is allowable, so I do not think that there is anything else that we need to do there, but let it happen.

Krueger added that maybe if we stated that they have to have gutters in the back, to have it flow away from the lake.

Grob added the drain is such that unless you put some kind of a pond or depression, the water is going to run down through the grass. It has to be on that side because on the other side, they are only 6 feet from the property line so the whole terrain, all the water is going to run just the way that it is today. The two gutters were off to the left and the retaining wall runoff to the left. The issue in front of us is if the amount of runoff is going to be no different. We let them go forward, or because they are in the shore impact zone, we could put a condition that they do something about it, but I am not sure what to recommend.

Petersen added I do not know what to do to reduce that runoff.

Krueger stated right now, the way the gutters are, they drain right next to the cabin. So it's going to go right from there to the lake. If it goes from further back, it will have more percolation time to the lake. If there is some way to direct it further back.

Grob added if they put in a cistern and pump it up the hill.

Krueger asked what about rain barrels?

Grob stated that is a good point. This would be an excellent application for rain barrels because it slowly dissipates from them.

Krueger added then they get their drain further back for more percolation time.

Grob stated the gutters aren't that big.

VanKempen commented I am concerned with the added roof and with a gutter on that side, there would be extra water going on the neighboring property. The statement should ensure that it doesn't flow right into the neighbor's property.

Krueger asked for public comment.

No public comment was given.

Written correspondence was received from Lee Walter, 403 West 2<sup>nd</sup> St, Cresco, IA, in support of the variance application.

Krueger closed public comment.

Krueger made a motion to approve the variance application and adopt the staff report findings of fact as presented with one condition:

1. Gutters must be added to the back (non-lakeside) of the house and rain barrels must be utilized on all gutters to direct the flow of water as far away from the house and lake as possible without disturbing neighboring properties.

VanKempen seconded the motion.

Findings of Fact:

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

Yes (X) No ( )

Why or why not? The lot is only ~94' - ~121' deep. The 100' OHW and 50' road ROW setbacks thus overlap. The lot topography is a steep slope down toward the lake. The lot is on a curve on Hwy 87 that makes room to safely maneuver vehicles in and out of the property at a premium. The proposed addition is reasonable in size relative to the size of the cabin, lot, and the lot's topography and will not be visible from the lake due to it being on the rear of the cabin and the cabin's roof ridge running parallel to the shoreline and the addition having a shed roof design that will not be visible 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 lot lacks depth. There is no place on the lot where the 100' OHW and 50' road ROW setbacks do not overlap. The cabin is 576 sq. ft. in size. Adding 192

sq. ft. to the cabin still makes for a very reasonably sized 768 sq. ft. cabin. The only other structure on the lot is a 8' x 10' shed.

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

Why or why not? The lot is ~70' wide x an average of 109' deep. There is a steep slope with 16' of rise over this 109' of run. The lot is on a curve of Hwy 87 that makes safety a concern for leaving enough room for vehicles to safely enter/exit the lot. There is no other place to make the addition and really no room to consider moving the structure further from the OHW. A few feet might be gained, but the downsides of such a move on storm water management and the cost of moving the structure back would greatly exceed the small gain.

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 area consists of year-round and seasonal single family homes on residential use lots – many of which have attached or detached garages. This cabin, with the addition, will still be smaller than the next-door cabins on either side of this lot as well as most of the other residences on the other lots further to the east in this development.

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

Why or why not? The area consists of year-round and seasonal single family homes on residential use lots – many of which have attached or detached garages. This cabin, with the addition, will still be smaller than the next-door cabins on either side of this lot as well as most of the other residences on the other lots further to the east in this development.

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 involves the lot's lack of depth coupled with the OHW and road ROW setbacks that overlap on much of the lot and the lot's steep topography and location on a difficult curve of Hwy 87.

The motion carried unanimously 5 – 0.

**Variance Application 7-V-18 by Eric and Barb Billing:** Part of Lot 1, Block B, Part of Lot 27, Block A, and Part of Block F, Plat of Hurd's Acres, Section 23, Township 141, Range 34, Lake Emma Township on Big Sand Lake, a recreational development lake.



Parcels 16.44.05900, 16.44.02700, and 16.44.02900. Applicants are requesting a modification of the condition placed on Variance 15-V-17 and a variance from Section 507.1 of the Shoreland Management Ordinance to allow the lowest floor of the residential structure authorized in Variance 15-V-17 to be placed at less than the required three feet vertical separation from the highest known water level.

Eric and Barb Billing, 4133 Countryview Dr, Eagan, MN, presented the variance application. Last summer we received a variance to rebuild an old home that my mom had for years. I misunderstood Section 507.1, the elevation above the water level. We have learned since then that the creek versus lake standard results in a 16 inch difference. We need that 16 inches in front elevation to allow a little bit of crawl space, the front elevation is going to be high enough that he would probably have to have a railing. It's an accessibility issue and esthetic issue, access to the lake. Back to the 3 foot elevation, with 20 inches above the standard, which is for the river, which was determined by the 1929 or 1933 elevation of Lake Emma. We are still 36 inches above the OHW of Big Sand.

Petersen asked have you currently had completed plans for this form?

Billing answered we do have completed plans. We have the envelope, the above grade structure; we know that we want to have a crawl space below it. We know where the rooms are, trying to figure out where the utilities are going to go. We are remodeling this with a modest amount of floor space. The current house has utilities in the basement. Buitenwerf had raised a question, after the visit that Billing was unable to attend, about them having a landscape elevation drawing. I don't have a landscape elevation drawing, but our intention is, we have grade elevation in the front of a modest deck, step off about one foot. In the rear, it is about 3 or 4 feet. To the extent possible their intention is to mimic that, so that the "to be" elevation surrounding this home is more or less the same that he has now. The question was, do we have a plan, and how much fill. In my opinion, I do not see the need for much fill to be brought in at all. Does that answer your question?

Petersen responded my question came from, typically, the architect or draftsman will show the foundation, if there is a step down. On the creek side, I am having trouble trying to visualize where their lowest floor is going to be, their proposed floor, in relation to that high water mark that you are having to be careful of. Depending on where that is, and sometimes an architect will show a step down if it is needed, and a footing and a block area and a grade level and if there is fill, they can even calculate the fill that would be needed to give frost protection, that is one thing that would get to the floor level. That is why I am asking about the plan.

Billing replied I do not have a plan to that detail. The closest thing that I have is a picture that shows the elevation view of the current house, the old vs. the new. Page 3 or page 8 of the application. That drawing does not show the footings at all. That hard line is to try to represent the elevation of the ground level. In the rear, towards the highway, the porch which is in the center is going to rise up 3 or 4 feet, as is the rear of the house. I do not have the footings drawing.

Johnson asked Billing do you have had a licensed contractor or engineer on the site with them to look at this?

Billing answered we have a licensed architect, people for excavation and cement, and the builder looked at it. They are all licensed contractors.

Johnson asked Billing have you had explained how they would do that foundation in the older part that drops down, the most exposed part?

Billing answered to my knowledge, the entire structure, front to back, is going to be the same and we are here to talk about that 36 inches from the Lake Emma creek standard, if I can get that 36 inches from the Big Sand standard. He has more than adequate elevation if that answers the question.

Johnson replied my question was about how the foundation would be installed to carry the house on the most exposed part, towards the highway. Is it going to be a dug in foundation or did someone explain to you how that foundation would carry the house?

Billing replied I am not an expert on foundations. We understand that it is going to be slightly below grade, but not very much because the bottom of the crawlspace is going to be just slightly below grade so that we are still above that 3 foot as much as they have to be. Most of their crawlspace will actually be above ground in the back of the house. Similar to what the house looks like right now, there is a 6 foot basement underneath there which is about half below grade and half above it.

Petersen added a lot of this stems from me asking questions and trying to visualize what the grade is going to be on that side, and I think they were asked that already and their anticipation is that it is going to be the same and that is why I was asking about the plan. Trying to visualize what they are going to have there, probably looking ahead, the questions in my mind, were you going to need more fill than perhaps what is allowable by ordinance. I was trying to anticipate that, if I could see a plan, then I could have that clarified.

Billing replied I do not have a plan. I have a vision of what the place will look like. Predominantly, in layman terms, it's external view, coming down the creek; you should see a singular amount of our house exposed above grade. Below grade, we will have at max 3 feet, where presently we have 6 feet. It is an overly simplification. Back to the fill question, I don't anticipate a lot of extra fill, to fill in some low spots. If you were there, and you noticed between the house and the roadside, it gets a little low. I didn't anticipate any additional fill there. I do not know if that is the basis of the landscape plan or not.

Petersen stated in some ways, if we are understanding them correctly, they are anticipating that the grade that we see on this picture, for instance, coming from the water out to the house, is approximately what you are going to be trying to achieve, and I am just struggling with "is that achievable" with the lowest floor that you are asking for in this variance. That is why he was asking, because if it isn't achievable, then we're into something that is not achievable.

Billing added if I take a look at this elevation, and I think everyone can see this, from the front I transition from the front house to the back house. I know enough, how thick my floor is, and that is the headroom for my crawlspace. I am looking at 24, maybe 30 inches of headroom for a crawlspace. It's very modest headroom. And at that elevation, at the

bottom of that, I think I documented it, I am right at that 20 inches above the record flood, or 36 inches above Big Sand. We have talked to the foundation guy; we just haven't gotten into that level of detail yet. He was part of my rationalization of, amongst other reasons, why I didn't want to do a slab on grade. I assumed that a slab on grade would bring in a lot more fill and transitioning the slope and creating headache with that and killing trees.

Krueger added that what Billing just said was one of the questions that he had for him because what he is currently approved for is a slab on grade, which should require quite a bit of fill in the back.

Billing agreed that was my issue last June, frankly it was two things, a lot of enthusiasm about raising the roof. Not being as far into the process at that time, we were going to reconfigure the size and shape of this house, we're going to move it, and we need to get that approved first. We didn't think far enough down the road. It was approved, with this condition. I didn't even think about that condition until this spring or last fall when the Environmental team came out and measured it. At that time he spent some time studying what 507.1 said and after several months pondering, procrastinating, why am I being measured by this 16 or 18 inch difference in the river. When the river rises 1 inch, the lake is going to rise one inch, so on and so forth. That is how we are here today, again, had I been smarter last year, we would have had this discussion last year.

Krueger added I was wondering if a slab on grade would be more of a detriment to the environment, maybe there is a better way to do it.

Billing responded that I am not going to argue against that. We would really prefer a crawl space for a couple of reasons, esthetics being the key one. I do not want big slabs and slopes coming off the side of this house. He doesn't want to deal with the fill, or need another variance if I bring in too much fill. We hope to do a crawl space, again, how much I have, my heating guys, they want 36 inches, I don't think I can afford that much, but I can probably get away with 20-30 inches and be above 36 plus Big Sand. And hopefully that is a good viable safe place to be. I don't want water or moisture problems in my basement.

Grob asked do you have a crawl space in the current house?

Billing answered it is a dirt basement.

Grob asked have you ever had water in it?

Billing responded we have. It's a damp floor with about 6 feet of headroom. Today if you went there, I could show you there is a little bit of water on the bottom. Coming up to the proposed elevation would be coming up 24 inches beyond that at least.

Grob asked do you get water then because of the water table, not because of the creek flowing into the basement?

Billing answered the creek has never breached that bank.

Grob said if they are getting water, then it has to come through underground water tables.

Billing responded I had it surveyed once, they came out and marked 'the magic spot'. With a transit, my builder measured the creek, and that creek was the 36 inches above the record flood, was a full 52 inches above the basement floor.

Grob continued what I am trying to get at is that if they are getting ground water pressure in high water times, coming up now, and you are going to have a porch crawl space, you're not going to have dirt this time around, you are going to have concrete, you don't think you are going to have water coming into that?

Billing responded that I am going to be in excess of 24-30 inches above the present. I had water in the basement, it is a damp floor today in the lowest of low spots. The late 90s hyper high water that was a record on the Mantrap chain, that was 6 feet higher.

Grob asked the new basement floor is going to be how much higher than the existing one?

Billing responded I do not have that number off the top of my head and it isn't clear enough, I would be at least 2 feet above the current floor. This is going off mental notes, since I do not have my notes with me. The logic I had, we're still socializing, my HVAC guy wants 36 inches and another guy says 24 is good enough. The proposed request is 20 inches above the record, or 36 above Big Sand. Now where is the basement floor in that plan? Is that what you are saying, the bottom of the crawl space?

Grob replied I am trying to figure out how much higher will your wood floor be, over what the existing floor is.

Petersen added I think what Billing is asking for is 32 inches above his existing floor. His understanding is that his existing floor is 12 inches below the record high water and you are asking for 20 inches above that.

Billing agreed it would be 32 above a standard which today is damp, but even in that high record, was never 6 inches deeper than that.

Grob clarified you are 12 inches below the record high right now.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

Billing commented I went back to the prior variance and studied the findings of fact. While the topic is slightly different, the envelope, moving 4 feet, etc., the findings of fact seem to parallel, almost identically, the situation that we're dealing with, a constraint because we're close to the water table. We're hoping to move just a smidge and we're doing so because of the issues that you found in your findings of facts to be true.

Grob asked the drawing shows that they possibly need a utility thing? Have you determined that you do? And how large?

Billing answered if we need one it will not be any larger than the present one which is about 5' x 8'. If we need one, it will be due to the fact that if the house has a 20 inch crawlspace or a 30 inch crawlspace, or a 36 inch crawlspace I may get more stuff down there. I might need that probably to bring his well into the house and service utility down there. I want to remove it.

Grob commented it is just a grade slab.

Billing said it would be whatever structurally is sound. And I would like to omit that if at all possible.

Krueger clarified the existing floor of the basement crawlspace is 12 inches below the record high water mark, and now he is proposing to be 20 inches above?

Billing responds that is correct.

Krueger said to me that is a move in the right direction.

Petersen added that the ordinance requires 36 inches, and that is why we are here.

Krueger asked if he could replace exactly what he has there with a new building?

Buitenwerf answered that he could replace the existing structure as is, which would include the nonconforming aspect of the basement.

Krueger asked if we approve this, right now, we will be making an improvement from what is there?

Buitenwerf replied yes.

Petersen added initially I was just concerned about the outside grade and the yard fill that might be needed, but could have been clarified if I had seen a plan.

Grob asked what would be the difficulty in just raising the whole structure, crawl space and everything up that additional 16 inches? Why couldn't you just raise everything up 16 inches and be in conformance? You are starting from scratch, you aren't using any existing foundation, you're not using anything at all, why wouldn't you just build the whole thing 16 inches higher?

Billing responded that a key feature is to try to be as consistent as is, including the current as is elevation off the ground level in the front. Accessibility, it's a nice deck to have with no railing obstructing my visual of the lake. Right now I am at 12-15 inches and I don't think that if I had 16 inches there, I might not need it by code, but I probably want it with youngsters, to have a rail in there and it's going to detract from a lot of the visual. It has a minor impact on accessibility as we age.

Grob asked is there no physical reason other than your desire to keep it the way it is?

Barb Billing replied it prevents her father from coming in the house, because he is in a cart, and with the current elevation, his ramps can go up, if we raise it up 16 inches he can't come in my house ever.

Johnson made a motion to approve the variance application and adopt the staff report findings of fact except for questions 1, 2, 3, and 4 for which the Board of Adjustment provided answers.

Krueger seconded the motion.

Findings of Fact:

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

Yes (X) No ( )

Why or why not? Raising the elevation from 12 inches below to 20 inches above is making better separation than what it was.

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

Yes (X) No ( )

Why or why not? Because it keeps that entry user-friendly, keeps it at the least amount of steps and at the closest to the original elevation.

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

Yes (X) No ( )

Why or why not? This building and site predate the ordinance.

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

Yes (X) No ( )

Why or why not? It was built and created by someone else long before the ordinances.

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

Yes (X) No ( )

Why or why not? The area consists of year-round and seasonal single family homes on residential use lots. Having a crawlspace that does not meet the required 3' vertical separation requirement of Section 507.1 of the Shoreland Ordinance would not create any noticeable change to the locality's residential character.

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

Yes (X) No ( )

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

The motion carried 3 – 2 with VanKempen and Grob voting nay.

## **Miscellaneous:**

Buitenwerf presented the new Finding of Facts changes. Copies were sent out to all Board members. They will be moving down to 5 questions.

Grob asked Buitenwerf if he was comfortable with the new questions, does he feel that, given their approach style, that the change is still going to let them cover the things that should be covered? And we should be able to address those Findings of Facts. Basically I am asking what your comfort level is with the new proposed facts.

Buitenwerf replied that they were fine by me, and they were invented by legal counsel. It was an adjustment that was made over time with court cases that have come along, after thinking about the Supreme Court decision that led to the after-the-fact Findings of Fact that we came out with originally and we didn't have a whole lot of guidance to go on with them, so it was the best practice at the time. Since then the attorneys have been able to refine that somewhat more with subsequent court cases for guidance.

Grob said that I understand, for an after-the-fact one, we would not have to address the second 6 if we answered yes to all of these.

Buitenwerf answered you would have to if you answered yes to the first 5. If you answered no to any of the first 5 then you do not have to go into the subsequent questions.

Krueger asked can a variance be denied even if they answer yes to the first 5 because of something in the after-the-fact part of it?

Buitenwerf answered that is correct.

Grob commented that it seems like 4 and 5 are about the same and they kind of combine the first 4 into 3.

Buitenwerf added this is just an informational item. These are the new findings that will take effect on Wednesday when the Amendment 18 is made effective to the Shoreland Ordinance, these are the findings that we will use beginning in the May meeting so I just wanted to give you exposure to it beforehand so if you had any questions, you would be comfortable with how to respond to the questions.

Grob continued my sense in how to reason and give the answers, there isn't any obvious big sore thumb that sticks out, so he's thinking that the only way they will know is when they start using it. "Did we miss something" in general it seems to cover the same issues.

Petersen asked in number 3, where it is going to be added "or prior property owners", I am wondering how that is going to affect this. I can remember some variances were granted when we entered that one, it was the previous owner who did it, we had to guess on that. So that is going to change how we have to word that one.

Buitenwerf responded the way that the current question ought to have been considered would be in the light as the new number 3 is written. It always has been that the ownership, whether current or prior, should have been considered in that question.

Krueger asked are there any other questions or communications?

Buitenwerf added I gave everyone copies of the new ordinance amendments that will take effect Wednesday, so please update your ordinance copies with those.

**Communications:**

Buitenwerf stated that next month's agenda has a final plat application potentially for Plantagenet Bay Estates, on the east side of Plantagenet by the access, that came in today. I have not had the chance to look at it fully.

Grob asked is that the one we went to before?.

Buitenwerf responded that was last year, about this time.

Grob asked what is it? So I can understand it.

Buitenwerf responded we processed the preliminary plat last year, now the final needs to come through. And then we have 2-3 variances that will be on the agenda as well, so it is a relatively decent agenda as far as number of applications.

**Adjournment:**

VanKempen made the motion to adjourn.

Grob seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 7:15 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary