

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, December 18, 2017

Chairman Ken Grob opened the meeting with the following members present: Tom Krueger, Ted VanKempen, and Mark Petersen. Also present was Environmental Services Officer Eric Buitenwerf.

Tim Johnson, member, and Cal Johannsen, ex-officio Planning Commission member, were absent.

Grob 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: November 27, 2017 meeting.

VanKempen made a motion to approve the minutes as presented.

Petersen seconded the motion that carried unanimously 4 – 0.

Old Business: None.

New Business:

Minor Subdivision Application by Robert Jackson: East Half of the NE ¼ of the NW ¼, Section 8, Township 145, Range 33, Helga Township, Parcel 11.08.00550. Applicant is requesting to subdivide a 34.6 acre property into five tracts.

No applicant present.

VanKempen commented since this is in my district, I took a drive out to the property yesterday morning. It appears to mostly be an open field. There does appear to be some survey flags out there. On the east side of the property, where it shows the easement, it currently looks like there is an approach on 510th Street, but there is no road in that easement.

Grob asked the easement is shown on the map with the dotted line and the green line in the middle of the page?

VanKempen answered it is on the east side of the tract. The other road, the one you mention, looks basically like a driveway. It does have signage that calls it Warren Drive.

Grob mentioned in the public comment letter we received, there was some concern for the current conditions of the water runoff from rain and snow. Were you able to determine at all what the contour is and if there is potential difficulty there?

VanKempen said it does look like the west side is lower than the east side, or the rest of the property. I was on this property a couple of years ago when there was an auction sale. Otherwise, I do not remember a whole lot. It seems like it is mostly an open field with a couple of houses.

Grob stated it is clear from the Environmental Services Office documentation that Helga Township has approved this. All of the lots meet the requirements, 5 acres, 300 feet minimum width, and there is an easement for access where there needs to be. Septics are all okay, service lines have all been met.

Grob asked for public comment.

Written correspondence was received from Derik Zigmund, 21907 510th St, Bemidji, MN.

Public comment was given by Leo & Ruth Soukup, 22082 510th St, Bemidji, MN. We live across the road from the proposed subdivision on 510th Street. We know that Robert Jackson is in compliance with everything, but we live on a very small township road. We do not know how the people who buy those lots, or build on those lots, are going to access 510th Street. If they go through Warren Drive, that is just a very small road that Jackson made himself. I understand there is nothing the County can do with a township road, but we have had issues with the township road for quite a while. This will just create more traffic on that road. The drainage had nothing to do with us because we are right across from Jackson. But they did put a huge culvert in and there is quite a bit of drainage that goes down towards the lake. The person who wrote the letter, I do not know if his driveway gets flooded with that or what. But if you put five more houses up there, then where do they drain?

Grob asked your concern is the access from 510th Street?

Soukup replied yes. Right now that is Jackson's driveway.

Grob asked Buitenwerf these three lots, on the east side of the property, is there an easement for those or where is the access?

VanKempen replied the easement is on the east side here where Buitenwerf is pointing to on the map.

Grob asked so that is for the 66 foot wide road, access path, that will be put in?

VanKempen responded yes.

Grob clarified it will be owned and maintained by those three property owners? It is not maintained by the township or anything like that?

Buitenwerf replied at the time of application it is simply an easement. There is the potential they could petition the township, at some point, for it to become a township road. But I do not know if that is in the works.

Soukup asked does Jackson own that?

Grob responded if you look on the map, on the right hand side where lots D, E, F are, there is a 66 foot wide easement that runs across those three lots. That must be his property.

Soukup commented it could be now. When he was divorced from his wife, she owned it. But it could be his now.

Grob stated the survey markers show it is his property.

Soukup asked is a township road required to be 66 feet wide?

Grob replied I do not know how wide 510th Street is.

Soukup answered it is very, very narrow.

VanKempen remarked I believe 510th Street is a 33 foot wide easement.

Soukup responded that is what I would think it is too. I know that you do not have anything to do with the township, but that has been an issue. It is a busy, busy road. We will have to talk to the township about that.

Grob asked where does the culvert drain?

Soukup answered the culvert goes under the township road.

Grob clarified it goes under 219th Avenue?

Soukup replied it goes under 510th Street. When we first moved there, in 1978, the road was flooded. We could not leave our property without going through a huge amount of water.

Grob asked which way does the culvert drain?

Soukup answered the water runs west right down 510th Street. It goes down towards the lake. Somewhere in that green box area on your map, a little bit toward our house, there is a culvert that runs the water underneath 510th. The water from all of this side run down to the south side of the lake, but the water from the north side of the road comes down past our place and goes underneath the road and joins the water on the south side. The flood area is down there near where it says 21907 on the map. That driveway is a continuation of 219th Avenue. The person who wrote the letter lives down at the 21907 address. Water comes down and comes across and floods a lot of the area by his house and his driveway.

VanKempen stated I understand his concern, but my thought is, it is an open field currently and I do not think adding homes will increase the water runoff.

Grob remarked any issues Zigmund currently has with the owner not fixing or doing things he promised, is his issue. It is not something we should deal with.

VanKempen commented Zigmund's letter here says his property is not part of this minor subdivision. It is just to the west of it. His issues do concern the owner of the minor subdivision, but I do not think it really has a bearing on the application.

Soukup asked the slope on the property does flow east to west toward the lake, if those five houses are eventually built with septic and all of that, does that just go underground? The runoff more borders 510th Street. Those houses would not really flow into that right?

VanKempen responded in order for the minor subdivision to be approved, they have to have two septic sites for each lot. The septic sites have to be approved and they cannot pollute. I see what you are saying, but I do not think it would spill and become a ground surface water problem.

Soukup commented I think that is fine. We also lease a boat landing down on Plantagenet and there is runoff. There are deep ravines down by the lake. But those five houses, with their sewage, that would be dealt with up there.

VanKempen replied I would think so yes.

Soukup remarked and our issue with the road, I think we will have to take that up with the township.

VanKempen answered yes. For the three houses on the east side, their easement is east of your place. There is an approach there for the field.

Soukup replied yes. Jackson used to use that approach for hauling gravel.

Grob closed public comment.

Krueger stated according to the Environmental Services Office, Helga Township has given approval for the application.

VanKempen made a motion to approve the minor subdivision application as presented.

Krueger seconded the motion.

The motion carried unanimously 4 – 0.

Buffer Ordinance draft review

Buitenwerf stated the State of Minnesota passed a buffer law which affects all of the public waters of the state, primarily focused on agricultural areas which have a lot of exemptions allowed in shoreland areas. The State wants there to be a vegetative buffer along those waterways to protect them from soil loss and also wildlife habitat management. The State of Minnesota gave counties the option of enforcing that law if they wanted to, they were not required to. Initially, the County Board declined. Then the State offered money if counties enforced the law themselves. The State is paying \$40,000 for 2017 and \$40,000 for 2018. The State decided given the scope of what the likely enforcement issues are that is a good deal. That led to Hubbard County changing our mind and deciding to opt-in for enforcing the buffer law. In order to do so, the statute

requires that counties adopt an ordinance for that purpose. That is why it is on the agenda tonight. Originally, the State wanted counties to have ordinances in place by November 2017, but that was not entirely realistic. Our goal would be to have something in place by Spring 2018 so landowners can take any action they need to once the snow melts and the ground thaws. This also allows the Soil and Water Conservation District (SWCD) time to check properties and see if they comply. The SWCD is tasked with administration duties, but if and when something reaches the level of needing enforcement, that baton gets passed to the counties to be the enforcing agent.

Grob remarked if this is a lot of agricultural area, the SWCD are a lot more involved in what goes on there than the Environmental Services Office. That is another way to think about it.

Buitenwerf commented you were provided copies of the pertinent statute, an example of Aitkin counties ordinance, and a draft I put together with the County Attorney's review based on a template the Board of Water and Soil Resources provided.

Grob asked it is pretty clear that about 98% of all the water stuff is covered by the Shoreland Management Ordinance, how do you see these two working together? Is SWCD going to be running around checking all kinds of shoreland homes for compliance? Or just because of the way things are, is it going to be a non-issue in Hubbard County?

Buitenwerf replied last I spoke with the SWCD, they had not completed all of their compliance checks. They had done what they could using aerial photography and there would be a few they may have to field check. They did not expect there to be a very high number, probably less than a dozen, that would be noncompliance issues. Then who knows if the landowners will cooperate or not. I do not see the SWCD viewing shoreland, running along the lakes and checking. I imagine they will leave that to us and focus on the agricultural areas.

Grob stated our shore impact zone is basically the same as this buffer zone. Does this put more teeth or responsibility for doing compliance for people who are not maintaining cover on their shorelines? In other words, if someone has either gotten rid of all their grass or mowed all their grass down, are they in noncompliance? Is this putting responsibility into them needing to be put into compliance? Do you see that being pushed at all?

Buitenwerf replied given all of the exceptions that are listed in the statute for shoreland properties, they except sidewalks, stairs, beach areas, existing structures, roads, other impervious improvements that already exist. I think the Governor realized it would be more problematic if he required all the lakeshore properties to be brought to a certain level of vegetation.

Grob clarified so it is status quo and just continue to follow the Shoreland Management Ordinance? Not force into compliance anything beyond what we may do according to the Shoreland Management Ordinance?

Buitenwerf replied right.

Krueger stated to me, when you were adding the word mowing, you were adding more language to it. This just says the words “perennial vegetation” which would include grass.

Grob replied but it uses the word natural. I think there could be an implication there.

Krueger responded I do not see natural.

Grob clarified in different places, “prevent the growth of perennial vegetation” in 4.3. To me, preventing the growth would be cutting it.

Buitenwerf commented as far as I know, from everything I have received from the State, they do not view mowing as being contrary to the law and what it requires.

Grob responded but in standard buffer zones they are, I mean farmers are not allowed to cut that grass down in buffer zones.

Buitenwerf answered I think with this they will be able to because if they can graze it without it becoming denuded or bare in spots, that is allowed. Same would go for mowing, as long as they are maintaining a cover, they can mow it if need be. I would imagine some would argue they need to mow it in order to keep the weeds from taking over.

Grob remarked I am not trying to read something into it, but from day one, there has been this elephant in the room on this whole thing and no one wants to raise an eye. I am just trying to sort out whether this is a big deal or not.

Krueger commented I thought it was a big deal until I started reading that and thought “oh, just perennial vegetation”. They did not use the word mowing so most places can keep the status quo.

Grob stated Hubbard County’s ordinance in 901 and 906 are very explicit about what you can and cannot do.

Buitenwerf remarked from the shoreland area stand point, I do not see much changing from what currently is the practice with the Shoreland Management Ordinance. The focus of the law is on agricultural areas.

Grob commented based on most of the wording in there, the Shoreland Management Ordinance rules on pretty much all cases if there is any conflict.

VanKempen stated from what I read, it sounds like mowing is allowed. I do not remember if that was in the Aitkin County Ordinance or the draft.

Grob replied when you read the definition of buffer it states: “an area consisting of perennial vegetation...adjacent to bodies of water within the state and that protects the water resources of the state from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors.” Anyway, let’s review the draft and go from there.

Grob stated on page four, 3.1 it reads “The provisions...apply to all waters, shown on the buffer protection map, excluding public drainage systems for which the County is not the drainage authority under Minn. Stat. chapter 103E.” I thought it was to the contrary, I

thought all those judicial districts that existed were in fact under the responsibility of counties.

Buitenwerf replied to clarify that jurisdiction, the Minnesota Board of Water and Soil Resources (BWSR) template had two options there. One was what is written in the draft, it says drainage systems that the counties are not the authority on are excluded. So all the ditches in Hubbard County, to the best of my knowledge, are County ditches. This is saying those are included in the jurisdiction of this ordinance. What it is saying is anything that would not be a County ditch would not be included in the ordinance. To my knowledge, there are no ditches meeting that.

Grob asked so then those judicial ditches are State things rather than a specific county?

Buitenwerf responded no, they are County, but this says that we are claiming jurisdiction on them.

Grob asked in our case we are not?

Buitenwerf replied we are. This is saying if there would happen to be a ditch that is not a County ditch, then we are not claiming jurisdiction on that. It is kind of written weird, but I think BWSR probably did that to make sure it aligned with how the statute was written.

Grob remarked looking at 4.1a, I noticed in the Aitkin County Ordinance they did not acknowledge the 30 foot minimum width with an average of 50. They just stuck with the 50 which is typical. Did you think about doing that? Most of our regulations are under the Shoreland Management Ordinance which has a 50 foot zone.

Buitenwerf replied the way we have it written in there is that it says, "unless a greater width is required in Sections 901 and 906 of the Hubbard County Shoreland Management Ordinance". In Section 906 of that ordinance, it says the minimum is 50 feet for a buffer for agricultural use. For natural environment classifications, it would be 75 feet. The Shoreland Management Ordinance is more restrictive so the first part that says 50 foot average, 30 foot minimum, there are not going to be many locations where that is going to come into play.

Grob commented I have just noticed that Aitkin County, which maybe has more issues than we have, did it different. That is all.

Buitenwerf stated 4.1a is one of the main places where the Planning Commission can decide how you want to see this done because that is a complexity with the Shoreland Management Ordinance. We have the option of going with the buffer law of the 50 foot average, 30 foot minimum or we can go with our Shoreland Management Ordinance requirements if they are more restrictive. That is why I produced the map that shows how the shoreland areas almost overlay all of the buffer areas. So for simplicity sake, I think it would be easiest to go with the shoreland language. Or the other option is you can amend the Shoreland Management Ordinance in Section 906 to reduce the agricultural buffer. That seemed like going backwards. I do not ever recall us having an issue with a buffer and agricultural use. I scrolled along the Straight River using aerial imagery and

from what I could see, there was 100% compliance. There were buffers that greatly exceeded what is being required.

Grob stated page five, 4.2a that wording sort of avoids using the phrase Ordinary High Watermark, which kind of dictates our setbacks. It reads the way you measure shall be, "from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level..."

Buitenwerf replied I think they are trying to use the language used in the statute.

Grob asked Buitenwerf you do not have a problem with the normal water level language?

Buitenwerf answered it does not bother me because the wording is meant to align with the way it is written in the statute. Why they use that versus ordinary high to match the shoreland language, I do not know.

Grob commented I was hoping this was not going to push SWCD into a mode where they are in conflict with the Environmental Services Officer's role of enforcing the Shoreland Management Ordinance. I wanted to make sure SWCD was not going to start trying to manage lake property.

Buitenwerf responded you never know what may be attempted, but I just do not see the County Board wanting to go there.

Grob remarked and they do get involved when there are major compliance issues. I assume the Board is okay with what the County Attorney suggested, that is we do enforcement option three on page eight.

Grob asked Buitenwerf are you pretty happy with the way this is playing out?

Buitenwerf replied most counties have taken the BWSR template and inserted their county name as appropriate and adopted that. So I did not want to have more in there than necessary. BWSR had a lot of wish list things that if counties do not scrutinize the template too hard, they can get things in there that I did not think were necessary, like they had a section on data practices for the Data Practices Act. We have to comply with that anyways so restating it in this ordinance did not make a whole lot of sense. That would be an example of some of that kind of stuff. All in all there is not a whole lot to it. So other than choosing what you would like for the width of a buffer, there is some appeals process you could decide to allow a local appeals process of decisions if someone disagrees with them. Currently the statute is set up to where landowners may only appeal administrative penalty order issuances. They could appeal that to the Board of Water and Soil Resources. Some counties have created their own local appeals entities, similar to the Wetland Conservation Act where they have a technical review panel that makes decisions. We could do that, you never know until something is in place if it is going to be used as intended or be abused.

Grob commented I do not think we want to set up a process where any kind of issues get dumped on the Board of Adjustment right away. To me, the other side of it is that just about any noncompliance is in some way going to intersect with the Shoreland

Management Ordinance when you look at this map. Does that mean we should ensure one of the first steps is to come to the Board of Adjustment if someone is in noncompliance? Or what would you prefer?

Buitenwerf replied I do not know, it is hard to say. This is new enough that we have not reached that point yet. I am guessing this coming year is going to be really interesting both at the legislative level and as people start to be told that they need to plant their buffers. I see potential for disagreement between landowners and SWCDs because of this. The language is meant to be flexible with the average width and no less than 30 feet, but I could see personalities causing the most issues. Same with the alternative practices that the statutes set out to allow, rather than a buffer you may have a retention basin that you create that your tile lines go into. That is meant to be able to substitute for a buffer, but then somebody has to subjectively determine how big of a retention basin, for example, equates to how much buffer. I could see disagreements over those types of things happening.

Krueger asked how do recreation areas fit into this? Are they allowed on resorts to have sandy beaches and even allow individuals some of that?

Buitenwerf replied any existing non-vegetative area that would be labeled a non-conformity would be allowed to continue. You would not be required to vegetate it.

Grob stated the way this is written basically any non-compliance contingent thing goes directly to BWSR. It does not cycle through the Planning Commission or Board of Adjustment. If SWCD identifies a property in non-compliance, and the people were notified, any appeals or disagreement goes to BWSR. It does not come to the Environmental Services Office or the Board of Adjustment, right?

Buitenwerf answered "partially" and I can flesh that out for you. The process would be the SWCD determines compliance or non-compliance. If there is non-compliance, they notify the County of the non-compliance issue. The County is then required by statute to send a corrective action notice to the landowner, which is a fancy way of saying you do not have the buffer you need, here is what to do to get it in to compliance, and here is a timeline for doing that. There are no appeal options at that point. The only time an appeal option exists is if a county has chosen to use administrative penalty orders (APOs). Those are the only thing able to be appealed and those appeals go straight to BWSR. If we chose not to use APOs or if we use option three, which allows for criminal prosecution or APOs, if the County Attorney would only pursue criminal prosecution, there would be no appeal mechanism for that. It would strictly be in instances where APOs would be used.

Grob clarified but appeals on those appeals go to BWSR not the Environmental Services Office?

Buitenwerf responded correct.

VanKempen remarked when you say SWCD would be the ones looking for non-compliance, then you say the County sends out the notice to notify the landowner they are not in compliance, who specifically in the County is sending that out? Does SWCD send them the notice or does the Environmental Services Office?

Buitenwerf answered the Environmental Services Office staff would. I think that makes the process more complicated and more prone to miscommunication. If there is non-compliance and the SWCD passes it to Environmental Services, we have to get up to speed. At that point the landowner has to keep three parties on the same page instead of two.

Grob asked why would it not go directly to the Attorney's office?

Buitenwerf responded it is similar to how we handle violations of the County ordinances. We start by sending a letter from our office, telling a landowner they are in violation, here is a timeline to bring it into compliance, and what their options to do so are. If that fails to bring compliance, then we bring it to the County Board to ask for authorization to give it to the County Attorney. If that happens, the County Attorney still has discretion on whether he or she wants to pursue enforcement. We are required to send that correction letter, which is the equivalent of my department's letters on shoreland violations. If a landowner says, "No, I am still not going to comply." after receiving that letter, the County has the discretion to say whether or not it wants to take further enforcement action. This action can be either in the form of the County Attorney sending a letter or a summons and complaint to someone and taking them to court.

Grob remarked if you were down in southwest Minnesota where these are some big issues, I could see that whole process being very, very unsavory. But it is probably unlikely to be a big issue for us here if SWCD has already done most of the compliance checks and there are very few. The one big area, the river that goes from Hart Lake, looks like it has a big drainage ditch. They must have made a ditch out of that at one time. It still is pretty much covered by the Shoreland Management Ordinance. Have we given you our take on all the things you were looking for help on?

Buitenwerf answered the main ones were the buffer width, if you wanted to use the Shoreland Management Ordinance width or go with the lesser amount in the buffer law. The second would be whether you wanted to create that local appeal option that the statute does not require. The third would be in terms of enforcement, which of the three options do you want to use? This is one of the first times APOs have been made available to counties. Their purpose is you get people in the pocket book. Somebody might say you are only going to charge me a couple of grand through a criminal prosecution misdemeanor charge while it would cost me more than to fence out my buffer area from my livestock so I will gladly pay that. With an APO it can get expensive; you can assess a penalty per day of the violation.

Grob commented I am okay with the way the 50/30 feet thing is because you have the line in the Shoreland Management Ordinance rules so you get the 50 foot thing anyways.

VanKempen asked what about the 16.5 foot buffer width mentioned in 4.1b?

Grob answered that is for the drainage ditches. If you look at the map, those green things. Unfortunately, they are non-existent and the only major one is Necktie River. If you look at what is here, basically it follows the river and so the Shoreland Management Ordinance is going to force it into the normal setback from a river. You basically cannot do a 16.5 foot

buffer there because it is a river which is controlled by our Shoreland Management Ordinance. These are the ones that would be the 16.5 feet, these side bars here.

VanKempen asked as far as drainage ditches, what exactly makes it a drainage ditch?

Grob replied it is a manmade ditch.

VanKempen remarked I question on County Road 4, where the County garage is, I believe on the south side of the road there is two manmade ditches, from the way they look. They run north and south, but are not listed on this map. Those are the only two that I know of that I question the enforced area. It looks like a ditch, it is quite deep.

Grob responded generally drainage ditches were made to drain a wetland so they can farm it. Beltrami has huge amounts of those. They are called judicial ditches and were made in 1900-1925. Just north of Bemidji there is a whole bunch of them. Now under this new buffer law Beltrami County has to pay attention to them.

Buitenwerf commented they were initially created in hopes of making tillable land, but it never worked.

VanKempen stated we are all pretty much in agreement on width requirement.

Krueger asked which enforcement option?

Grob responded option three. That is the one the County Attorney recommended.

Grob made a motion to approve the buffer ordinance draft and send it to the County Board for approval.

Petersen seconded the motion that carried unanimously 4 – 0.

Board of Adjustment:

Approval of Minutes: November 27, 2017 meeting.

Krueger made a motion to approve the minutes as presented.

VanKempen seconded the motion that carried unanimously 4 - 0.

Old Business: None.

New Business: None.

Miscellaneous:

Communications:

Buitenwerf stated I do not have anything as far as items received for the January agenda. The Plantagenet Bay Estates plat application, they did not get the mortgage consents in on time so they withdrew that and will resubmit it in the spring. I am working on some amendments to the findings of facts sections of our ordinances. As a result of the Sign Ordinance leading us to see some tweaks were needed there based on Scott's input. I am working on that in our other ordinances. They all have a findings of fact section. I am hoping to bring that to the County Board sometime in January for an okay to send to the Planning Commission/Board of Adjustment. Those will probably make it your way in the latter part of the winter, early spring. Otherwise I sent the Surface Water Use Ordinance to the Department of Natural Resources (DNR). We are waiting for them to sign off on that before it goes to a public hearing with the County Board. I will bring this buffer ordinance draft to the Board at the first meeting in January and see what they want to do with it. If they are okay with, we have to get BWSR's sign off so I will have to send it to them for initial review and probably final review before we would adopt it. That is what is in the works for the next few months.

Grob asked do I translate that to we probably will not have lot viewals or a meeting in January?

Buitenwerf responded potentially. The deadline for applications is Tuesday, December 26. Something could come in between now and then. So far those that have expressed interest in submitting an application are willing to wait until February or March when we have enough to justify a meeting.

Grob asked when are you going to send out the 2018 meeting dates?

Buitenwerf replied it is on the website now.

Adjournment:

VanKempen made the motion to adjourn.

Krueger seconded the motion.

The motion carried unanimously 4 – 0.

The meeting adjourned at 7:15 p.m.

Respectfully submitted,

Paige Nulliner

Recording Secretary