

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, February 22, 2021

The Hubbard County Planning Commission/Board of Adjustment (PC/BOA) held its regular public hearing and meeting on Monday, February 22, 2021 at 6:00 p.m. remotely by electronic means with one or more PC/BOA members present in the Hubbard County Government Center – County Board Room # 324.

Chairman Mike Kovacovich opened the meeting with the following additional members present: Ken Grob, Veronica Andres, Tim Johnson, and Mark Petersen. Also present were Environmental Services Director Eric Buitenwerf and ex-officio Planning Commission member and County Board Vice-Chair Ted VanKempen.

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

Board of Adjustment:

Approval of Minutes: January 25, 2021

Andres made a motion to approve the minutes as presented.

Grob seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

[Variance Application 1-V-21 by Betty Parsons and Jeff Weiss:](#) Part of Gov't Lots 1 & 2 and the SW ¼ of the NE ¼ and the SE ¼ of the NE 1/4, Section 15, Township 140, Range 35, Todd Township on Fish Hook Lake, a recreational development lake. Parcel ID 27.15.00700. Applicants are requesting a variance from Section 4 of the Subdivision Ordinance to subdivide a property by administrative subdivision within the required five year waiting period of a prior 2020 administrative subdivision of the property.

Jeff Weiss and Betty Parsons, 19694 Enterprise Drive, Park Rapids, MN, presented the application.

Parsons stated I am trying to get a variance so that Jeff Weiss can buy approximately 5 acres of land from me. I sold two acres to R&R Rental and it has not been five years since that. I couldn't separate it until five years are up.

Grob asked what is the purpose of the 32' finger that goes up parallel to the existing neighbor's property versus just the 5 acre area?

Weiss responded the purpose of that was to gain more property on the east side of the house. There is a spruce plantation there. We agreed that we would split that plantation. I was trying to gain distance around the house as a buffer. What we agreed on was just splitting the plantation half and half. That is the reason for the finger on that.

Grob clarified it is just for buffer purposes.

Weiss agreed.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Andres stated in my opinion it is a reasonable request. As stated in the staff report, the minor subdivision or platting process does not really apply to this situation. The variance is in line with the intent of the ordinance and appears to be the logical way to adjust to the boundary lines and adding to the adjacent parcel. The current subdivision request and the 2020 subdivision were boundary line adjustments that made adjacent parcels larger while keeping the remainder tract in compliance with the lot size requirement. I am in favor of the request at this time.

Andres made a motion to approve the variance as presented and adopt the staff report findings of fact.

Grob seconded the motion that carried unanimously 5 – 0.

Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? The 2020 administrative subdivision resulted in adjacent parcel 27.15.00710 being enlarged and made more conforming in lot size while the subject parcel remained healthily compliant with minimum lot size criteria at 27+ ac. The proposed administrative subdivision would result in a similar outcome by adding 5 ac. to adjacent parcel 27.15.00800 with the remainder tract still greatly exceeding minimum lot size requirements by being 22.8 ac. after the boundary line adjustment. The intent of the 5 year waiting period is to prevent someone from bypassing the platting process on larger subdivisions. It does not make sense in this case to require the property to be platted in order to accomplish the proposed boundary line adjustment.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()

Why or why not? Adjusting the boundary with adjacent parcel 27.15.00800 to provide more room around the existing structures on said parcel while keeping the parent tract well in excess of the minimum lot size requirements without having to do so through a plat is a reasonable use of the property.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes (X) No ()

Why or why not? The boundary line is being adjusted to provide more elbow room around the existing three structures on parcel 27.15.00800 that are currently squeezed up against the shared property line. Had this proposal been able to be submitted at the same time as the 2020 boundary line adjustment, both would have been able to be approved in the same application. The matter of a few months timing is the reason for the need for a variance.

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

Yes (X) No ()

Why or why not? The locality consists of a mixture of property sizes and types of use. The subject property and adjacent properties to the northwest and northeast are all year-round residential use on lots ranging from 11 - ~23 ac. There is a commercial equipment rental business on a 3.6 ac. tract on the south border of the subject property. The proposed boundary line adjustment will not result in any new tract being created and will retain the current locality's character.

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

Yes (X) No ()

Why or why not? Economics are not cited in the application as a difficulty. The difficulty is due to the Subdivision Ordinance's five year waiting period between administrative subdivision applications requirement.

Variance Application 2-V-21 by Shawn Gray: Lots 1-3, Block 2, Kola-Teepee-Park, Section 10, Township 141, Range 35, Arago Township on Hay Creek, a tributary. Parcels 02.38.01000 and 02.38.01200. Applicant is requesting a variance from: Part 1: Section 502.7 of the Shoreland Management Ordinance (SMO) for two proposed structures to be located within the ordinary high water mark structure setback; Part 2: Section 701 of the SMO to expand a nonconforming use; and Part 3: Section 904.6 of the SMO to increase the property's impervious surface area.

Kovacovich stated Mr. Gray has been contacted by the Environmental Services Office. This item will not be acted upon today. It will be tabled, as per the letter that went out, and at such time that we are finished with the conditional use application we will then revisit this item. Mr. Gray, is that your understanding also?

Gray replied yes that is my understanding and I am completely fine with that.

Planning Commission:

Approval of Minutes: January 25, 2021

Grob made a motion to approve the minutes as presented.

Andres seconded the motion that carried unanimously 5 – 0.

New Business:

Conditional Use Application 1-CU-21 by Shawn Gray: Lots 1-3, Block 2, Kola-Teepee-Park, Section 10, Township 141, Range 35, Arago Township on Hay Creek, a tributary. Parcels 02.38.01000 and 02.38.01200. Applicant is requesting a conditional use permit per Section 401, Table 1 of the Shoreland Management Ordinance to operate a restaurant use.

Shawn Gray, 15801 County 40, Park Rapids, MN, presented the application.

Gray stated the conditional use application that we are requesting for tonight is to take Foxy's Bar and Grill, which was established a long time ago and operates as a legal nonconforming use, and move that into a conditional use operation. We would like to receive a conditional use permit for that, and at the same time, we are trying to establish a plan to survive long-term. This last year has been crazy for everyone. It is our belief that social distant events are not going away. This is probably a long-term thinking change. We would very much like the opportunity to serve outside. I am very grateful that the County passed the temporary modified shoreland use regulations to allow outdoor consumption. I think that saved us last year. What we are trying to do is to set ourselves up

from a long-term perspective and not be under anything temporary. We would like a long-term change in how we operate that allows us to have a tent, a small stage, and some periodic outdoor events. That is the overall general request that I have.

Kovacovich stated I noticed in the application that you cite the current Covid epidemic as the reasoning why you want to move forward with this. The County passed a resolution last year, and they passed another for the current year as long as the state of emergency is in effect. Based on that, the current resolution, it sounds like you can do everything that you want, or what you did last year. If, in fact, you want to move forward with a conditional use permit, are you willing to amend your application to take out the Covid epidemic rationale from it since in my mind it is a moot point because you have relief from that now as you did last year? Moving forward it is not a relevant.

Gray replied I would have no problem amending the application and taking that out. We have had the discussion, my parents and I who are partners in Foxy's, about wanting to move into a conditional use. We have had some applications there in the past, and we have never been able to come to an understanding to bring it together in front of the Board. Covid might have pushed us there from a long-term thinking standpoint, but you are right, that is not the only reason. Certainly the outdoor tent and the outdoor service with the temporary resolution made a difference for us. We were never able to have any outside music events. Unless I misunderstood it, the temporary resolution did not allow for that because that is not part of our status right now. We are all aware of our past, and we want to try to get to that point where we are able to have periodic outside music events that are reasonable with start times, finish times, and volume levels. I would have no problem with taking that rationale out.

Kovacovich asked if you would work with the Environmental Services Office to do that we would appreciate it.

Grob stated we are heading down a path to possibly officially approve a conditional use permit. Part of that would be to establish what the current conditions are that we are approving. As much as I tried to read all of the materials that I had, it was hard for me to get some answers. Currently what is the approved seating capacity of the restaurant as it runs now?

Gray replied our most recent SSTS done by Girtz Excavation had us at 36 restaurant seats, 6 barstools, and 4 seats outside on the deck. Because we are at 50% capacity, and we have spaced out our seating, what we are proposing is reducing the indoor amount to 32 seats, 5 stools at the bar, and 3 on the deck. The trailer is still on our septic, so that accounts for a 300 gallon per day use. Our head chef is living there now. Starting last December, we did do daily monitoring from December through April. Eric's office has all of the numbers from that. It was actually very helpful for us to see usage. We had some days in January where we had 80% of the top sales amount ever, and our daily water usage was far below the 1,536 gallons that we are sized for.

Grob continued I am interested in what you believe your current situation is. You currently have 36 restaurant seats, 6 barstools, and 4 seats outside. 42 inside and 4 outside would be the current capacity. If we were to approve a conditional use permit as is, the capacity would be 46 people?

Gray replied correct.

Grob asked what do you believe your current approved car parking capacity is for the property?

Gray responded between the parking that faces east into the building, plus our new parking lot to the north, we believe we can fit 40 vehicles there.

Grob asked how many of those do you think are on the trailer side of the restaurant?

Gray replied 5, depending on how people park.

Grob asked does that include the trailer parking?

Gray answered I would say that we would include that in the total of 40 spaces.

Grob asked if I understand, the current variances require a 10' buffer along the river?

Gray replied correct.

Grob asked how do you handle the current Covid situation inside your restaurant?

Gray replied we have stations where people can come in and have hand sanitizer. Our tables are spaced out and we have a maximum of four people at each or six people if they are in the same family. Sanitation is part of a consistent daily routine. We are doing the best we can do to follow the current regulations. To add onto your previous statement, our proposal would be to move that from a 10' buffer to a 15' buffer.

Grob asked what is the current directive from the Governor in terms of restaurant capacity? Is it 50%? Restaurants are allowed to open, including bars, at 50%? Is that what the regulation is right now?

Gray replied my manager might have a better feel for it, but I believe that is the case.

Grob asked is it hard to manage that inside when people come?

Gray answered we do our best. To be honest with you, since we were able to open January 11th, it hasn't really been an issue because we just haven't been that busy. The times that I have been there, when I look at daily sales, we are still considerably low. Our manager is very aware of that. He does the best to manage that with seating. I was there over the weekend. Our seating capacity was there. We had some people for meat raffle who came and then left. It is not like the old days where you just pack people in. People don't want to do that and that is not our target either.

Grob continued you say you live over on County 40, but your mailing address is in Fargo. How do you get your mail?

Gray replied actually my kids go to school in Fargo, but I have a place on Potato Lake. I am from Park Rapids originally. I am self-employed so back and forth as much as I can be. I am around Park Rapids on the weekends.

Grob explained my line of questioning is because what you are proposing is a major expansion. I did a lot viewal on Friday at your restaurant. It was about 7:00 at night. There were 14 cars parked and 37 people inside. Not one of them wearing a mask and no social distancing. 11 people at the bar, and 11 people congregating at one big table. That reflected to me that, without you being there, your manager is not adequately managing the situation. I translate that into strong concern when we start talking about 90+ people coming there and being able to control parking, etc. With 14 cars parked, I could not see room for maybe 10 or 12 more cars in the residual space in the parking lot. It is a strong consideration on my part that the absentee management may not lead to controlling what are some of the major concerns with your restaurant expansion.

Petersen asked Grob when you were at the restaurant for you lot viewal, what did you observe for the number of cars, and where did you see them?

Grob answered there were 14. Four of them were parked on the right side facing the trailer, three on the north side, and seven in front. Basically, the entire front and both sides of the building were completely parked full. The 2 ½ people per car happened to be that math of that night. The only space left to park, if you want to stay off of 89, was on the north end of the parking lot, and I couldn't see parking more than 10 or 12 more cars.

Petersen asked what would you tell me, Gray, is the estimate of the number of cars that you could park in that additional parking space that Grob is talking about?

Gray replied it is more challenging in the winter because snow removal is what it is. Quite frankly, there isn't a need for a lot of people to park in there. What you saw Friday night, Grob, is as busy as we have been in months. If you look at the north side, where people park perpendicular off of County 89, we have a fence there. People can park facing east of that fence. They can also come into the lot and park off of 89 going perpendicular to the fence facing east, or they can come into the fence from the other side so they are facing west. In the summer we have a little bit of clarity, but it is not paved so we don't have stripe lines. We have tried to put some markers and flags in the summer to get people to park in the right spots. If they are parked in the proper areas they can park facing east all the way from the entrance down to where we have our garbage cans. If you figure 8' per car, and we have nearly 100' there. I see where you are coming from, Grob, it is hard to do in the winter with snow.

Grob responded when you say 40 vehicles, and I saw what 14 took up, I couldn't imagine another 26 vehicles being parked there. I don't know if we have to debate it. I personally am adamant about the fact that there should be no parking on 89. That has always been a safety issue. I have been frequenting that place for 15-18 years. Back before you did that parking lot, it was dangerous on 89 when you would come out of the restaurant and try to get into a car parked along that road. Anything that we would approve definitely has to consider the fact that you would manage, control, and not allow any parking on 89. It is dangerous, and that is why we allowed that variance for that parking lot expansion. It was pretty well plowed out. I have a hard time believing that you would get 26 more cars in there.

Petersen said I would echo Grob's comments there. That has always been my main concern, to try to keep the parking off 89. I too am a customer there. When I have been there, and it predates Covid, but to see cars parked up and down 89 and having to get in a car there myself, I worry about what could happen. One of my primary concerns is how you manage your parking on your property and keeping people off of 89 for parking.

Gray replied I understand that concern. Maybe just off the top of my head, one of the things that I could do is to work with the Environmental Services Office for a layout of how we would structure parking to try to keep everything there. I don't know the legality of us putting signs up on the west side of 89. I have noticed a lot less people parking on the west side of 89, which was the dangerous area. Sometimes you still get people who are lazy and don't go into the parking lot. If we would put signs up there saying that Foxy's requests you to park in our parking lot to the north, I would be open and willing to do anything that the Board would be agreeable with.

Andres added I thought about the parking as well and keeping everybody off of 89. As a possible condition, if this continues to go forward, customer and employee vehicle parking for the restaurant/bar use can only be located in the areas marked or labeled as parking on the application site plan. I do agree that we could have him figure out some kind of marking, whether it is stakes showing where the parking lines are, at least trying to structure that parking lot. That just might be a helpful solution.

Kovacovich opened for public comment.

Brad Butalla, 22976 185th Street, Big Lake, MN, stated if you want these restaurants to be in your area and be successful, you definitely need to work with them on things like this. I understand that you are looking at the danger of the parking, but I think there are definitely solutions. If you are going to be so strict that they can't have customers come in there and park, they are not going to make it.

Kovacovich closed public comment.

Kovacovich asked where are you currently at, as far as a percentage of impervious surface, and what will the additions that you are asking for do to the impervious surface?

Gray replied it is on the third paper that I submitted. I could go and try to physically measure it. Instead, I took the GIS mapping tool and did the best I could do with that and added on the things like the deck. If you took a look at it, we are requesting to add a tent that is 20' x 20' and a stage that is 10' x 12'. It is adding 520' of impervious surface that will put us at 33.6%. We were at 32%. From a percentage standpoint, it is not a large increase, but I also understand the concern of it. That was part of extending the no-mow zone in an effort to combat any possible runoff.

Kovacovich asked Buitenwerf 25% is what we allow, is that correct?

Buitenwerf replied yes.

Gray added we did take that Tiki Hut down which was about 112 sq. ft. of impervious surface. Our percentage was figured with that in there before. Now that has been taken down, that helps make a difference as well.

Kovacovich asked that Tiki Hut was never an approved legal structure, correct?

Gray replied that is correct. It was just there when we bought the place, it was not approved.

Grob asked you applied for approval with regards to the County's resolution to allow outdoor tables and seating so that you could meet the capacity constraints that the State issued. How many tables and how many people did you get approved that you could handle in the grass area outside?

Gray answered the State mandate seems to me that it has loosened over the time. Right now I want to say that it is 250 people as a maximum. Obviously, we do not have the capacity for that. The primary reason is that we believe we have a great space in back. People like being in the backyard, they like sitting by the river and having something to eat or drink.

Grob asked what did you do this last summer when you allowed outdoor seating? How many tables and how many people did you put out there?

Gray replied we had a 40' x 20' tent out there last summer. I believe there were eight tables underneath the tent this last summer. Our service came from inside, we did not have an outdoor bar or cooking facility. There were still a couple of tables that were not under the tent. We didn't see any limitations, it just said that we could seat outside and socially distance. I would say that we had between eight and ten total tables out there during the summer.

Grob commented in the document I have that comes from Environmental Services, you say a 40' x 20' tent and it shows five tables. Were there no restrictions on the number of people outside under that order?

Buitenwerf replied as Gray has mentioned, there have been so many changes over the last year or so as to what the thresholds have been, I can't recall what they were at the time that the authorization was granted.

Grob continued the document that I see shows table arrangements on the drawing including five picnic tables under the tent area, three tables on the deck, which was approved otherwise, and four tables on the lawn all appropriately spaced for State regulations. Three tables on the deck, and 4 tables on the lawn. I am trying to think about how we get back to approving under a conditional use permit an equivalent, reasonable number for outdoor seating, ignoring for the moment tents, stage, and music. What would be reasonable for lawn seating to enjoy the outdoors and increase your capacity? I couldn't figure it out from this. Where were those picnic tables? Were they under the tent?

Gray replied there were 5-6. Sometimes people move them around, and you try to put them back at the end of the day. There were 5-6 under the tent and 3-4 outside. Some people wanted shade and some people wanted sun. That is where I came up with the 8-10 tables in the backyard.

Grob stated the drawing that I have shows five tables under the tent, four on the side, and then another tent for service. Did you have that server's tent there this year?

Gray answered we did have that out there temporarily. It turned out to be a pain because the wind kept blowing it down. It was more designed to keep the servers, if it was raining out, from getting wet taking food to people. I think that it blew down and we never ended up putting it back up.

Grob clarified that tent was within 50' of the creek?

Gray replied the 20' x 40' was probably within 60' of the creek, and this proposed 20' x 20' will be 80' from the leading edge to Hay Creek.

Grob asked is that what you are proposing? Is there enough room?

Grob continued I am trying to get at what would make sense for a reasonable amount of seating on the lawn. If we were to issue a conditional use permit, during summer, what would be a reasonable amount of picnic tables out in the open and not exceed your parking capacity?

Gray answered that is the concern that we are trying to address. A 20' x 20' is obviously half of what we had last summer. We are asking for three tables under and three out. Some people bring their own chairs. We are doing our best. We want to pay attention to the parking, but we want to give people a chance to be outside. That is why we are requesting three tables under the tent and three tables out. Could we fit more? Yes. We are just trying to find a happy medium here.

Andres asked if we go back to the impervious surface conversation, Buitenwerf, can you please bring up the aerial footage on the screen to show what it looked like? If we could look behind the restaurant where you have a driveway, is that in use? Do you actually have deliveries back there, or would you be willing to turn that gravel area from the fence that goes all along the side of those picnic tables to grass to help with some of your impervious surface?

Gray answered the delivery trucks actually stop on the south side of the building, they don't go back there. They deliver in those back doors. I would not be against it at all if we tilled that up, threw some black dirt and grass seed on there, and try to get it to grow as best we can. Maybe we can even leave a more defined walking path in there to get more grass area up. I don't have a problem with that at all.

Grob asked the seven little structures on the back side of the restaurant, what are those? Are those tables?

Gray replied I pulled this off of the County website. Those are picnic tables. This was obviously not taken this summer, it was taken before that at some point. It is what was on the County website.

Grob clarified they are tables?

Gray replied yes.

Grob asked where is the 75' shore impact zone setback point in that picture?

Buitenwerf measured out the 75' shore impact zone.

Grob questioned only two of those tables would meet the shoreland ordinance with regards to the 75' setback from a tributary?

Buitenwerf replied yes, for a tributary the shore impact zone would be 75' from the ordinary high water mark.

Grob asked where is the 50' setback point there?

Buitenwerf measured out the 50' setback mark.

Grob continued if we were to maintain the 50' setback, you could fit 4-5 picnic tables with 4-5 people each, totaling 24-25 people. That would be a reasonable number to use for outdoor seating with picnic tables. You can't go any further north because there is a berm there that runs parallel with the north side of the building, isn't there?

Gray answered we can go further north now that the Tiki Hut is gone. We removed that and cleaned everything out. It is flat up until we get to the top of what you see in the picture here. The very far north piece is where our pressure mound is. We should be able to put our tent further north of that.

Grob stated my personal view is that the tent, stage, and music are all potential variances downstream as opposed to what we want to lock in as the baseline conditional use permit. Possibly some additional outdoor seating to go with your current capacity. You could put tables north of the top two that are on that picture?

Gray replied yes.

Grob said Buitenwerf, if we were to make a motion to approve a conditional use permit, how would we establish the baseline for structures on the property? Would the statement be that we approve a conditional use permit with the documented structures currently existing on the property? How would we do that, and then go into the other kinds of conditions that we would put on? How do you set the baseline for a conditional use permit under these circumstances?

Buitenwerf answered as you indicated, you can state that the approval is for the existing structures as documented in the site plan sketch in the application as well as in aerial imagery. The imagery that is on the screen is from mid-summer to fall of 2020. You could add to that any new structures that you are willing to allow.

Grob clarified it would include the current variances that exist with the conditions of those when we approved the deck on the south side and when we approved the parking lot. Would they just be

covered by that previous statement, or would they be in a statement that is said to include prior variances?

Buitenwerf stated the items that were authorized through the prior variances are all in place. They are existing elements. I would view them as falling under the existing structures as documented in the sketch and aerial photography.

Andres asked before we get any further, I would like to make sure that we go over all of the potential conditions where we can all comment or ask any questions that we have. That might be helpful going down the line.

Grob added I would like to separate the Covid resolution from the County because that allows a lot of things to happen until that expires. I am trying to come up with a baseline conditional use permit and set the stage for future variances for additional structures and music. I do believe that this is a popular place. Outside seating, being able to enjoy the outdoors and have a drink is a reasonable request short of any kinds of additional structures.

Kovacovich stated I would like to go through the recommended conditions and potential items to consider addressing the conditions so that we are all on the same page before a motion is made.

Kovacovich read the first recommended condition from the staff report.

This conditional use permit (CUP) is for the operation of the entire premises as one restaurant use venture. As such, any land, that through subdivision or addition to the property to which the CUP is granted, is added or subtracted, is/are not granted or allowed the right to operate in accordance with the CUP without first applying for and obtaining the necessary CUP from the County.

Andres said I suggest that we keep that condition.

The Commission agrees.

Kovacovich reads the second proposed condition.

Any structures on the subject property that are allowed under this Conditional Use Permit that deviate from or do not meet in any way the requirements of the Shoreland Management Ordinance cannot be constructed unless and until the necessary variance(s) from said standards is/are obtained.

Kovacovich stated I personally like that. I think we need that in place. This is for what is there now, it does not grant anything beyond what is there right now.

Andres stated I agree. Since we already have an impervious surface issue, they wouldn't be able to exceed that without a variance.

Kovacovich continued reading the potential items to consider.

1. *Months/days/hours of operation – may differ for indoor vs outdoor customer spaces*

Andres commented in one section of the application you do state that you would be finished by 9:30, and on the next page of your application your hours of operation are later than that. Would you still consider stopping any outdoor dining at 9:30?

Gray clarified you asked if I would consider shutting off the outdoor dining at 9:30?

Andres answered yes. Part of my question addresses lighting as well, but for outdoor dining, do you have a timeframe in mind for shutting off the outdoor?

Gray replied I am not against that. Typically the mosquitoes come out at 9:30 and you are pretty much done. We could say the outside is done by 9:30. I don't know if maybe just not serving, and encouraging the people to come inside if you think that would make sense to address it.

Kovacovich continued reading potential items to consider.

2. Potential for additional structures or structural alterations/additions, and improvements.

Kovacovich stated the second recommended condition pretty much covers that. We will strike this because it is repetitious.

Grob asked what did we decide on the months/days/hours of operation?

Kovacovich replied I think we only really talked about the outdoor music and outdoor dining.

Grob stated in the application Gray recommends hours of operation. As a basic conditional use permit, without considering events, why wouldn't we adopt his request? Off season would be closed Monday, Tuesday-Thursday 3:00 p.m.-10:00 p.m., Friday and Saturday 12:00 p.m.-1:00 a.m., and Sunday 12:00 p.m.-10:00 p.m. In summer season it would be 7 days a week from noon-1:00 a.m. As a basic conditional use for a restaurant, those are all reasonable hours. Why couldn't we adopt those?

Kovacovich said I am fine with the hours as listed. If your thoughts are that we are not going to approve the outdoor music, we need to state that. Then we can talk about restrictions on the time for music. This will allow outdoor dining. Do we want to set restrictions on the times for outdoor dining?

Andres commented 10:00 p.m. is fine for me as far as dining goes. My concern was definitely looking forward into the outdoor noise after that time.

Grob asked could we look at operating the basic restaurant? Any outdoor dining and music would be a separate condition under which we would put different restrictions. If none of those things are on the plate, he would like a conditional use permit for a restaurant. What are reasonable hours for a restaurant? What he has proposed are reasonable with the change that Friday and Saturday would be 12:00 p.m.-1:00 a.m. Any changes that we do to outside activities, we can put other constraints on in a separate condition.

Kovacovich clarifies what you are saying is that number one under potential items to consider would be for the existing restaurant operation.

Grob replied yes.

Gray added I have no problem coming up with conditions for the existing restaurant operation and discussing events and outdoor use separately. I do want to make a point that in here I just basically tried to state what our existing hours are currently. This is the first winter that we have been closed on Mondays. I don't want to state that we are closed every Monday. We closed Mondays this year because we are trying to manage some costs. Otherwise, we have been typically open on Monday. This is also the first year that we have opened at 3:00 p.m. during the week as opposed to noon. We have four years of numbers that show noon until 3:00 p.m. during the week has never paid for itself.

Grob stated as a basic conditional use permit on a restaurant it should state the basic operation of the restaurant as it currently exists. Would you rather that it said Monday-Thursday 3:00 p.m.-10:00 p.m.?

Gray answered I would rather have it start at noon to give us the option to be open for lunch. Then if we chose to not open until 3:00 p.m., then we don't.

Grob clarified basically you would say the boundary of the hours you would like to have. You have all kinds of flexibility inside of it. That is the idea of the conditional use permit. What would you like those boundaries to be?

Gray answered we operate different seasonally, we operate different hours. For the basic conditional use permit is there a problem for saying noon-1:00 a.m.? We don't operate that in the offseason at all except for weekends because it doesn't pay.

Grob said I have no problem with that. Restaurants do that all the time.

Kovacovich stated I would suggest that we just say that it is from noon-1:00 a.m. The business can decide within those parameters whether they open later or close earlier.

Grob asked including Sunday?

Kovacovich responded how about Monday-Saturday noon-1:00 a.m. and Sunday noon-10:00 p.m.?

Gray replied I think that is reasonable. If you want us to set up a baseline that allows us to open later or close earlier, I am good with that.

Grob added this neighborhood is largely residential. Do we feel that they are separated enough that being open until 1:00 a.m. inside with traffic is not an issue? I am okay with it.

Andres commented I am okay with that inside. Outside might be a little different.

Johnson and Petersen agree.

Kovacovich said let's skip the outdoor music for now and jump down to outdoor artificial lighting.

3. *Outdoor music – allowed time window(s), sound amplification and decibel level measurement, maximum attendance number, placement/orientation of the stage, if allowed*
4. *Outdoor artificial lighting*

Andres asked what do you propose to do for lighting in the lawn area outside?

Gray replied right now we have one that is at the southeast corner of the building, and one that is at the east side that is designed for staff. What we saw this last summer was, by the time it was dark, people weren't hanging out outside. If the outdoor dining is done at 9:30 or 10:00, what does the Board feel is necessary to keep people safe? I want to keep people safe. I wouldn't be against putting up something if we felt it was necessary. Right now it is not lit up for the back because we haven't served after dark out there in the summer.

Andres stated I drove by last night at 7:00. We are still in winter hours, so it is fairly dark by 7:30 or 8:00. There was no lighting in the back part of the building at all. There was one post of light that goes towards the parking lot that was adequate for the parking lot, not so much on the far end, but

it lit up most of the parking lot. I did not see any kind of lighting for the back. My question is how you were going to light the area? I know in the summer it is pretty bright later at night, but I just wasn't sure what you were going to do for those nights when it gets dark earlier.

Gray replied I am open to those things. We were not intending to have events or serve after dark in the summer time, so it wasn't part of our plan. If we feel like we are not getting enough light back there for times when it is dark earlier, then we certainly can put up even some temporary flood lights.

Kovacovich stated I am going to propose that any additional outdoor lighting that is added must be less than 20' in height and directed towards the ground. That is similar to what we have done in other areas. Is everyone okay with that or have other ideas?

Johnson answered I would agree with that as long as it didn't interfere with the neighbors.

Kovacovich said I think if it is in the back, the required height, and directed towards the ground, I think it would keep it from disturbing the neighbors.

Kovacovich continued with parking.

5. Parking – where allowed and required minimum and/or maximum vehicle spaces

Grob stated all parking will be in the designated venue lot or at off site locations.

Andres stated I agree. Customer and employee parking for the restaurant/bar use can only be located in the area marked parking on the site plan. No parking on County 89.

Gray asked what is the best way to police that? I am trying to figure out a way that we can create guidelines and rules. Does it come down to the fact that, if someone does park there, that my staff has to go find the person? What have you seen other establishments do?

Grob replied I think that is the only answer. It is your responsibility to note whether people have parked on the road. You announce to the people inside that whoever is parked on County 89 has to move their car. If your capacity is such that you have adequate parking space in your lot, you shouldn't have any problem. If you have room for 40 parking spaces at 2 ½ people per car, that means that you could have 100 people there without parking on County 89, well over your capacity. It will be your job to police it. At any kind of event, if people park where they are not supposed to, they come around and find the people and tell them to move their car.

Kovacovich continued reading.

6. Impervious surface area mitigation, stormwater management – e.g. require lawn to be maintained beneath outdoor customer space, vegetative stormwater buffer along creek

Kovacovich stated I would suggest as a condition that we go from the 10' buffer to the 15' buffer as suggested in the application, and also that the driveway on the east side behind the restaurant be removed, allowing for just a walkway, and the rest put back to grass surface.

Andres stated I agree with that. Gray was open to that request, is that correct?

Gray replied I am.

Kovacovich continued.

7. *Maximum indoor/outdoor/total occupancy – specify # of restaurant seats, bar seats, and outdoor seats*

Kovacovich asked are we going to address that indoor/outdoor/total occupancy or are we going to leave the outdoor for later and have that be part of a variance? My suggestion is that we leave the indoor capacity as proposed, and if we are going to deal with any of the outdoor stuff in the CUP then we can just wait on that and deal with it in the variance.

Grob said the maximum capacity is what is already in the plan. 36 people inside, 6 at the bar, and 4 outside, which is a capacity of 46 people. You could say maximum indoor and deck occupancy should be 46 people. That is what is currently approved based on septic.

8. *SSTS sizing and operation monitoring, portable toilets - acceptable solution? required #?*

Kovacovich continued currently, Buitenwerf, we are requiring the monitoring and reporting?

Buitenwerf answered we required that through the County Board's action on the liquor license. That expired mid-summer last year for Foxy's. There is another restaurant CUP that is required to submit periodic septic reports.

Kovacovich asked should we have something in there on the septic?

Buitenwerf answered I think that you would want to specify that whatever you are going to allow for occupancy is going to fall within what their system is capable of handling in addition to any potential outside space and what is proposed for accommodating that with portable toilets.

Grob stated I agree with that.

Andres agreed. Before we move forward can we go back up to number 6? I have one comment. On the impervious surface or stormwater management mitigation, I did notice during the lot viewal that there are no gutters on the restaurant or the mobile home. Is that correct?

Gray replied I would say that you are correct.

Andres continued if you had gutters on the restaurant, I am thinking it might help with the runoff. Putting gutters on the restaurant and having them exit towards the parking lot would be very helpful.

Petersen commented I guess I am not able to say by memory whether I think that we could really do anything to help the situation there or not. I didn't think of it when I was out there looking.

Grob stated I am not sure that guttering would change anything. I think the additional buffer by the creek is our main defense. It is not obvious that there is major erosion. I don't see any advantage to putting gutters on.

Kovacovich continued reading.

9. *Vehicle access points onto public road ROWs*

Grob added maybe saying vehicle access points shall remain as they are in existence on February 22, 2021. We have gone through that with a variance, and all we want to do is to have them remain the same. I suggest that vehicle assess points onto public roads ROWs shall remain in their current state.

Kovacovich continued reading.

10. Signage

11. Aesthetic/sound screening/buffering

Grob stated this place has been here a long time. I don't think we would have to address that unless we allow outside dining. As far as a basic conditional use permit, I don't see an issue with that.

Kovacovich continued reading.

12. Hay Creek – dock/watercraft slip location(s)/number(s)

Grob said I am trying to remember back when we did some of those variances. Didn't we say that there was one dock and spaces for four watercraft?

Gray responded it seems a couple years ago we were discussing something about that. If it is four, that would be a max. There really is never four. That would be a bit much. I would love the ability to leave it as-is.

Grob stated I would just say a maximum of four docking spaces is allowed.

Andres said I agree with four.

Johnson and Petersen agree.

Kovacovich continues.

13. One set of conditions for what is allowed during Covid restrictions and another set of conditions that apply if/when Covid restrictions are discontinued OR a time limit on the CUP

Kovacovich continued I don't think that we need to address anything as far as what is in place right now for Covid restrictions and the current orders that are in place. It is my thought that all of these conditions are basically regardless. The covid ones are actually more restrictive in some areas and less restrictive in others. These are being developed for non-covid use.

Grob stated I would scrub 13.

Kovacovich asked are we to the point where someone wants to make a motion.

Andres stated I have a comment. This picture shows your fence. I believe that fence is currently in violation of the Shoreland Management Ordinance due to its height and not following the 50% requirement. I understand that it is good for your neighbor as far as helping with the noise and outdoor activity, but are you aware that there is a possible violation there with the fence?

Gray asked you are talking about the fence that borders the neighbor's property, not the metal fence?

Andres clarified right, the privacy fence that lines your boundary line.

Gray replied it was put up at the request of the neighbor to provide some protection and some privacy. I was not aware that it was in violation.

Andres continued I just wanted to give the heads up if there is a possible violation there. I know we are also going through current amendments to the fencing requirements, but even the current

amendment that we have on the fencing definition would still leave this in violation. There are ways to address that screening with more vegetation, trees, shrubs, and bushes.

Grob added I seem to remember the neighbors wanted as much buffering as they could and were pushing for a fence. If that is the case, when we do the conditional use permit, we could say all structures that currently exist. That would allow it to remain. I don't think the neighbors have a problem with it at all.

Andres said I believe for the neighbors' happiness, they would prefer to have something. We just have to cover it so that it is legal.

Kovacovich replied I believe that condition would cover that fence as Grob mentioned.

Andres asked Buitenwerf will that cover it, or do we need to do something different in order to retain that fence?

Buitenwerf replied within the shore impact zone, the ordinance specifies that the fence needs to be 50% see through. The way to address that would be a variance. Gray could potentially amend the pending variance application to include that. We would have to give proper notice that it is a variance request being sought before the Board took action on it.

Kovacovich asked are you okay with that?

Gray clarified if I understand correctly, amend the variance that I already submitted and we are going to address next month?

Buitenwerf replied yes.

Gray said I am okay with that.

Grob asked do we want to address the possibility of outside dining? No structures, just outside dining. I am trying to make this as doable as possible without variances. I would be prepared to make a condition that outside dining during the summer season is allowed with the maximum of six picnic tables and a capacity of 24 people. The tables must be 50' setback from the ordinary high water mark.

Andres asked do you want to put a timeframe from May-September?

Grob replied yes, Memorial Day to Labor Day. The 24 people seems reasonable with additional parking and what is already allowed inside. I think that would make sense to me.

Johnson asked Buitenwerf if we were going to use the 46 people inside at 30 gallons per person, and then adding the trailer sizing in there, with my calculations I am coming up with about 10 people outside using the system that he has without any outdoor portables. I took the 46 people times 30 gives me 880 gallons. Then we have 300 gallons for the mobile home.

Buitenwerf explained 6 of those bar seats are at a 36gpd instead of a 30gpd.

Grob asked can I modify what I was proposing with the outdoor seat condition? Portable toilets must be supplied.

Johnson replied one would be plenty for the outdoor dining.

Gray answered that sounds very good.

Grob stated I would add that any additional lighting has to be down lighting and that outdoor portable toilets have to be provided for the 24 outside seats.

Grob made a motion to recommend this conditional use permit to the County Board of Commissioners for a restaurant at this location with all of the existing structures that are on the site as of February 22, 2021 and with the conditions as documented.

Kovacovich read the proposed conditions for the record.

1. This conditional use permit (CUP) is for the operation of the entire premises as one restaurant use venture. As such, any land, that through subdivision or addition to the property to which the CUP is granted, is added or subtracted, is/are not granted or allowed the right to operate in accordance with the CUP without first applying for and obtaining the necessary CUP from the County.
2. Any structures on the subject property that are allowed under this Conditional Use Permit that deviate from or do not meet in any way the requirements of the Shoreland Management Ordinance cannot be constructed unless and until the necessary variance(s) from said standards is/are obtained.
3. Operating hours are Monday-Saturday from noon-1:00 a.m. and Sunday from noon-10:00 p.m.
4. All outdoor artificial lighting can be no more than 20 feet in height and must be directed towards the ground.
5. No customer vehicle parking is allowed along County Highway 89. All parking must be in designated parking areas on the premises.
6. The impervious surface buffer will be increased from 10' to 15' in depth and the gravel driveway behind the restaurant will be removed and revegetated, allowing for a walkway through this revegetated area for access that is 4' maximum width.
7. The maximum occupancy indoors shall meet the SSTS sizing.

Buitenwerf explained when I do the math at 40 restaurant seats at 30gpd, 6 bar seats at 36gpd, and then the trailer at 300gpd, I am getting a bit over the design flow for the system.

Kovacovich stated we need to reduce the 46 seats.

Gray added the reality is that I understand why we have to come up with a number. We reduced the number of seats so that it fits inside of the SSTS requirements. At some point I would like to come back to the Board and ask to monitor it on a daily basis. We did that for four months with Environmental Services and it proved to me that we have zero issues with capacity. We did not have a day that we were even half of what it is tailored for. I understand what we need to put in for this, and I am in agreement with whatever the numbers say they need to be.

Grob asked what would be the seat allowance, instead of 46, to meet the SSTS requirements?

Buitenwerf answered you have to drop 44 gallons per day and that is two seats of some kind.

Kovacovich stated we are changing the maximum seating to 44.

8. The vehicle access points allowed on the property shall remain as they are in existence on February 22, 2021.
9. They are allowed one dock with a maximum of four boat slips.
10. The outside dining during the summer season, Memorial Day thru Labor Day, is allowed 6 picnic tables, up to 24 people. Tables must meet a 50' setback from the creek and a portable toilet must be supplied.

Kovacovich stated we have a motion with the conditions, do we want to give a second or do the findings-of-fact first?

Buitenwerf mentioned the last condition ties back into your second condition that states anything you are approving in the CUP that deviates from the ordinance also needs to get a variance in order for those items to be placed at less than the required setback. I just want to make sure the Commission understand that if you are open to something being okay and not meeting the setbacks, you want to include that in your conditions for the CUP. Doing so does not automatically guarantee that those things can occur, they would still need to be granted the accompanying variance that is required. If you don't include them in the CUP, he would have to circle back and apply to amend the CUP to include them. That is the uniqueness of the sequencing of the applications.

Grob questioned can we make that 75' instead? Then it wouldn't be in violation of the ordinance because it meets the shore impact zone setback?

Buitenwerf replied no.

Grob asked would it have to meet the 150' setback?

Buitenwerf replied correct.

Kovacovich asked we don't need to state that, it is just a point of clarification, right?

Buitenwerf explained it is a point of clarification. As it relates to the 50' setback that you are comfortable with for the tent that is proposed, you can include that in the CUP, but I want to make sure that everyone understands that the variance would also need to be granted to allow that tent to be at a 50' setback.

Kovacovich stated we are not at this time in the CUP adding the tent or the stage, we are only allowing outdoor dining with the six picnic tables and the 24 people, which still requires the variance application. We are not doing the stage or the tent.

Grob asked would placing picnic tables at a 50' setback be a violation of the ordinance?

Buitenwerf replied I don't think so. It gets into what we consider a structure, and a picnic table would fall under the miscellaneous things that we try not to term a structure. Requiring a land use permit for a picnic table doesn't make sense.

Grob clarified we can leave that condition in there if it is only picnic tables?

Buitenwerf stated what I am trying to explain is that if you are amenable to the tent, you want to make sure to address that in the CUP.

Grob replied we are not amenable to a tent at this point.

Kovacovich asked if we don't put it in there, what are the implications if we grant a variance then?

Buitenwerf answered with a variance then, in addition to considering granting a variance for the setback that is requested, you would then also be granting a variance to expand the nonconforming use. There are court cases that say if you have a CUP with conditions and at some point in time you reach a place where you need to consider revoking that CUP, if you do so, then the nonconforming use that predates the CUP is something that the operator can then revert to. If you don't include and address those things in the CUP and instead do so in the variance, that goes contrary to the objective of sequencing the CUP prior to the variance.

Kovacovich clarified we would be best to address the stage and the tent now. If we address it here, we could still require the variance. It is not granting permission to do it, it is just the first step.

Buitenwerf agreed. You are authorizing it as part of the CUP, but then he would still need the variances for setback to place the tent and the stage. You are addressing the use component through the CUP and then you aren't having to entertain granting a variance to expand the use because that would then be covered in the CUP.

Kovacovich read the additional condition as discussed to allow a 20' x 20' tent and a 10' x 12' stage.

Grob asked with that in there, it implies that the conditional use permit allows a tent and a stage? The variance would only be for the location.

Buitenwerf replied correct. If you authorize that in the CUP and the variance is not granted, then those items are not able to be placed because all zoning requirements need to be approved.

Kovacovich asked is everyone in agreement that this is our last condition?

Grob asked the music does not come into this CUP, that is a variance?

Buitenwerf answered no. That would also apply under the CUP.

Grob said I would like to say that no outdoor music is allowed. Then, with a variance, that could be allowed. A baseline operating conditional use permit, we could say no music. A tent and stage are allowed. It would take a variance to change those or place them appropriately.

Buitenwerf explained you could do it that way, but then that negates the point of processing the CUP application first because then you are allowing the nonconforming use to expand through a variance to allow outdoor music. If you do it through the CUP, then if the condition is not adhered to, it allows you to enforce that condition and potentially consider revocation of the CUP. If that goes away, they don't have that authorized through a variance that allows that expansion of the nonconforming use to allow outdoor music.

Kovacovich clarified what we want to say is that outdoor music would be allowed within the CUP, but because of the other clause they still require a variance. Until a variance is obtained, none of those things can happen. Did I get that right, Buitenwerf?

Buitenwerf replied yes, other than if he was able to place those things in locations that complied with setbacks, then he would be able to do so per the CUP if it is approved in that matter.

Grob stated the music isn't a setback issue, it is neighborhood noise issue. When we have done CUPs for other kinds of venues like this, we usually put constrictions on that. I am not understanding

why, if we are not in favor of music, why shouldn't there be a condition that no outdoor music is allowed?

Kovacovich explained if a later Board granted a variance for music, that would expand their nonconforming use and then would be there forever, even if the CUP is revoked at a later date.

Buitenwerf added if the Commission is so inclined, you could state that you are approving the CUP without the outdoor music aspect, but if you are open to the outdoor music then you want to make sure to include that in the CUP.

Andres said I would like to get your input, Gray, for your plans on outdoor music events. Can you give me some ideas of what you are planning and what you foresee for the outdoor music events? What is your proposal?

Gray answered we are trying to follow the process of approval in the right order. We would love the option to have some outdoor music events, like a Wednesday night from 6:00 p.m. to 9:00 p.m. We would have two or three people on the stage playing music and people can get out and dance a little bit. I would request once a week. It would not happen once a week. People love that. They love coming out to listen to music in the summer. Do you want some more specifics?

Andres replied that is helpful. I just wanted to get your idea on what you are proposing. We have some questions and concerns about how many people would be attending those events, how you would limit it to a different number, or if you would have to increase the portable toilets because it would be outside. Those are some of the things that we would have to think about. Obviously, your outdoor music events would be to draw in a crowd.

Gray responded I tried to roughly address that in the application. We would target a 50 person event. We felt that we could manage that with parking, and if it would become a problem we would try to contract with someone to shuttle in parking if it became a necessity. Same thing with the portable toilets. I couldn't find what the number was for outside people that each one could handle. We would target once a week. We would like to try the Wednesday night thing again, people liked that. But, if we wanted to do a Saturday afternoon from 2pm to 6pm, we would like the ability to be able to do that. I wanted to get your feedback. I am hopeful that you are open to a discussion of what you think is reasonable or not.

Grob asked Buitenwerf what would you recommend in regards to music? What should we say to enable that to eventually have to be dealt with by variance?

Buitenwerf explained the outdoor music component, if you aren't open to that, then you can say that you recommend approval of the CUP without any outdoor music. Or, if you are open to allowing that, then you can say that you allow the CUP with outdoor music and then specify what parameters you want to place on that to ensure that it is in keeping with the public health, safety and welfare considerations. If you allow it in the CUP, you are essentially allowing that to be a part of the conditional use. You can't, as a Planning Commission, grant relief from the requested setbacks for the proposed locations of the tent and the stage. So, if you specify that we allow the CUP with those items in the proposed locations, then your second proposed condition covers the setback consideration in that unless that variance is granted, those things are not allowed to occur because they would be tied to those proposed locations that need variance for setback.

Grob asked if we were open to some sort of music venues, how would we allow that in our conditions?

Kovacovich proposed outdoor music may take place between the hours of noon to 8:00 p.m. Would that cover?

Grob said no. I see that long-term we have to be really careful. We may want to allow some music, but not universal. I don't think that we are prepared to talk tonight about all the details of how we would control the noise, health, welfare, safety, and numbers. I would think that would come through a variance.

Kovacovich stated if we do not put something in the CUP that allows music, if we consider and approve it in a variance, it brings us problems down the road if ever the CUP is cancelled because then it becomes a preexisting use and it stays on even if the CUP is cancelled. That is why we need to put something in there and then in the variance address if we chose to allow it by variance. We put whatever parameters we want in the variance. In the CUP we are saying that it can take place between the hours of noon and 8:00 p.m. They would still need a variance in order to place the stage and the tent.

Andres added one of the ways that we could identify that is to state that outdoor music events would be limited to one day per week during May through September and must finish by whatever time we put in there. I think noon until 8:00 p.m. is a long time. I think a shorter timeframe from 6:00 p.m. to 9:00 p.m. or 3:00 p.m. to 7:00 p.m. You can limit it to one day a week, that way he is flexible on if it is a Wednesday one week and a Saturday a different week. Just giving one a week during May through September would give him a little bit of flexibility so that he can line up options.

Grob asked what if we said that they could have six music events a summer? That way you could do three days during the 4th of July if you wanted, or one day over the Memorial Day weekend, or two over Labor Day weekend. Would you rather have us approve some limited hours once a week and you pick the day, or would you rather us set a number of days in a summer and you could decide how you were going to shuffle those around? I could envision a 4th of July weekend where there is a four day weekend. People are partying and making noise anyway. You might want to do a few days in a row. What would you like us to specify in this for music events? Keep in mind that there is a strong resistance in the neighborhood for the noise that goes across the lake.

Gray answered I want to be flexible with it. All of it is subject to weather also. Early in June is actually a little bit cool in the evening, and July is a little bit better. I would love the ability to say we could do a Wednesday and a Saturday in July. If we would do an eight or ten event maximum between May 15th and September 15th, I could live with that. A maximum of once per week gives us the flexibility. I am really willing to work with the Board on whatever way you would lean. If you left it up to me, I would say that I love the ability to say once a week and have some parameters around it. If we were able to say a maximum of ten events per summer and they have to be approved by variance, I could live with that.

Grob stated we are trying to avoid a variance here. We are trying to say what you could do and you wouldn't need a variance.

Buitenwerf said address the use through the CUP and then the setbacks needed for those two items through the variance.

Grob asked if we were to say eight outside music events from Memorial Day to Labor Day, would you prefer evenings?

Gray agreed unless the 4th of July falls on a Thursday or something.

Grob suggested if the music is during the day it will be from 3:00 p.m. to 6:00 p.m., if it is at night it is from 6:00 p.m. to 9:00 p.m. We put three hours on the music. It is eight days during the summer maximum and during those time slots.

Kovacovich stated I would suggest that we say up to eight events per summer between Memorial Day and Labor Day. No event can last longer than three hours between the hours of 3:00 p.m. and 9:00 p.m. It doesn't really matter on the day of the week if we say three hours between 3:00 p.m. and 9:00 p.m.

Grob clarified eight days, three hour maximum, and it should be between 3:00 p.m. and 9:00 p.m.

Gray added if I look at the number of possible events during that time frame, I would respectfully request that we consider putting it to ten. We may not even use that many, but at least it gives us the option. Buitenwerf, how does it work with other establishments? What I hope is that it would be something around the same lines, as a fighting chance to do what some of the other places do.

Grob clarified we are talking outside music events.

Gray stated there are places that do it. We have a smaller space, having a backyard is certainly helpful for us. I would ask if you would consider ten?

Grob stated I am very concerned about the neighborhood. There was a lot of pushback in the past, and music travels a long distance. We are trying to help you out, but not get a really strong pushback from the neighborhood.

Kovacovich asked how does everyone else feel about it?

Andres stated I agree with the eight events at this point in time. What you can consider in the future is, if you don't have complaints from the neighbors and you get a lot of good feedback that you are following your conditions, in the future you can come back and amend the condition to be bumped up to ten. You can amend conditions in the future.

Gray replied I am grateful that the Board is willing to consider. I think it is going to be very helpful to Foxy's. That would be a good next step in the process if we got to that.

Johnson added would it be appropriate at this time to talk about some sound boards on the side of the stage to direct the sound down, or would we wait for the variance to talk about things like that.

Kovacovich stated we could include that the stage would have side barriers and music directed towards the front.

Johnson added I have been to outdoor events, and stages with side barriers direct the sound towards where they are playing. It stops side sound. I don't know enough about music to know what the parameters should be, but I think there should be something.

Grob said I think that could be addressed when we come back to do the variance. What you would do for sound control would depend where you place the stage and how you might buffer it. You might have some other way of controlling sound. I am no expert in that either.

Johnson said we could leave that up to Gray to percolate.

Gray agreed. I am no expert on that either, but I am certainly willing to talk to people that are.

Grob asked Kovacovich to read back the condition for the music.

Kovacovich repeated up to eight outside music events may happen per year between Memorial Day and Labor Day, no longer than three hours per music event between 3:00 p.m. and 9:00 p.m.

Grob asked are we okay with that, Buitenwerf. Does that meet what you are recommending we do?

Buitenwerf replied yes, in terms of saying that the outdoor music use would be allowed. Then that eliminates the need for the variance application to grant an expansion of the nonconforming use. It then leaves the variance application to take up the matter of the requested setback relief from the ordinary high water mark setback to those two items.

Petersen seconded the motion.

Kovacovich asked Buitenwerf to read the list of proposed conditions to the Commission.

Buitenwerf read the proposed conditions.

1. This conditional use permit (CUP) is for the operation of the entire premises as one restaurant use venture. As such, any land, that through subdivision or addition to the property to which the CUP is granted, is added or subtracted, is/are not granted or allowed the right to operate in accordance with the CUP without first applying for and obtaining the necessary CUP from the County.
2. Any structures on the subject property that are allowed under this Conditional Use Permit that deviate from or do not meet in any way the requirements of the Shoreland Management Ordinance cannot be constructed unless and until the necessary variance(s) from said standards is/are obtained.
3. Operating hours are Monday-Saturday from noon-1:00 a.m. and Sunday from noon-1:00 a.m.
4. All outdoor artificial lighting can be no more than 20 feet in height and must be directed towards the ground.
5. No customer vehicle parking is allowed along County Highway 89. All parking must be in designated parking areas on the premises.
6. The impervious surface buffer along Hay Creek will be increased from 10' to 15' in depth and the gravel driveway behind the restaurant will be removed and revegetated, allowing for a walkway for access through said revegetated area that is 4' maximum width.
7. The maximum occupancy of the indoor and the deck existing space would be 44 seats total.
8. The vehicle access points onto the property for parking shall remain as they are in existence on February 22, 2021.
9. One dock is allowed on Hay Creek with a maximum of four boat slips.

10. The outside dining area is allowed six picnic tables, four occupants per table, complying with a 50' ordinary high water mark setback along with one portable toilet must be provided to service those customers.
11. Outdoor music is allowed up to a maximum of eight music events occurring between May 15th and September 15th annually, with a three hour maximum duration per event. The event is allowed between the hours of 3:00 p.m. and 9:00 p.m.
12. One tent will be allowed that is up to 20' x 20' in footprint and one stage of 10' x 12' maximum footprint.

The Board provided answers for the findings of fact questions 1, 2, 3, 5, 6, 7, 10, and 12 while adopting the staff report answers for questions 4, 8, 9 (changing the number of existing seats to 44), and 11.

Findings of Fact

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

YES (X) NO ()

Why or why not? The use is a fairly normal condition within the restaurant/bar industry.

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

YES (X) NO ()

Why or why not? The buffer zone has been increased and the impervious surface has been decreased.

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

YES (X) NO ()

Why or why not? It will not affect those things.

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

YES (X) NO ()

Why or why not? While the property does abut the portion of Hay Creek that runs between Island and Eagle Lakes, there is no historic evidence of flooding on the property and there are no Federal Emergency Management Agency designated floodplains in Hubbard County.

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

YES (X) NO ()

Why or why not? Increasing the buffer and decreasing the impervious surface will cover that.

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

YES (X) NO ()

Why or why not? Current parking and access is not going to change.

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

YES (X) NO ()

Why or why not? Foxy's has existed for a number of years and it has been in operation so it is compatible as it exists.

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

YES (X) NO ()

Why or why not? Restaurants are allowed as a conditional use in shoreland areas. It is not uncommon to find restaurants in shoreland areas as proximity to the higher density residential lakeshore areas makes sense from a business standpoint as well as a convenience standpoint for nearby residents seeking restaurant dining opportunities. Having restaurants in shoreland areas is part of the area's lake-dominated culture.

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

YES (X) NO ()

Why or why not? The SSTS is compliant and properly sized for the restaurant and mobile home structures it services. The proposed additional outdoor customer space can be satisfactorily accommodated by the proposed complement of outdoor portable toilets. The restaurant's existing 44 seat and proposed 24 seat customer occupancy is a modest size and smaller than that of another restaurant located less than one-quarter mile to the north.

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

YES (X) NO ()

Why or why not? Nothing is changing as far as structures that exist now.

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

YES (X) NO ()

Why or why not? The property has a well that is able to supply its water needs. The SSTS servicing the property is at its maximum design flow, compliant, and relatively new (2017 install.) The qualifiers are that the proposed additional outdoor customer numbers can only be accommodated from a system sizing standpoint by the proposed portable toilets and if/when the existing SSTS must be replaced, there is not sufficient room for a complete new alternate drainfield site so some or all of the existing drainfield site will need to be reused in an experimental system design.

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

YES (X) NO ()

Why or why not? The site is limited to one dock and four slips.

The motion carried unanimously 5 – 0.

Old Business:

Shoreland Management Ordinance – short-term rental content development

Kovacovich stated I think what we are going to do is to open this for public comment. We are going to restrict the total time for public comment tonight to an hour and 25 minutes, which would bring us to 10pm. We will enforce the three minute limit per speaker. We ask that if the issue has already been covered, do not repeat the same comments. Is the Commission okay with going ahead under those conditions?

The Commission agrees.

Kovacovich opened for public comment.

Susan Williams, 5879 Crooked Stick Drive, Windsor, Colorado, stated I have the same question that I had last meeting and I didn't get an answer. I was wondering about the requirement to retain the address and driver's license information for all guests. I was curious as to why you had that requirement?

Kovacovich stated the reason is that the Minnesota Statute requires that very information for all lodging units, whether it is a hotel, campground, or motel. The only difference with what we are requiring is the retention time. In the Statute it says one year, we are saying that it has to be kept for the previous operating year. So, if we are in 2022, the 2021 records would still have to be available to the County upon request. That is the rationale as far as I can see. Even if it wasn't in there you would be required to keep that information, but not for as long.

Williams asked are you asking for that information for all of the guests, or just for the person that rented it?

Kovacovich repeated for all of the guests. That is the exact same wording as the Minnesota Statute. It is Minnesota Statute 327.10 Lodging Establishment Operator, Duties. You can look that up and you will find that the language is identical, the difference is the length of time that we are requiring that it be made available.

Williams asked I have never had a hotel ask me for the address information for everybody in my party.

Kovacovich said that is what the Statute says. I don't think that anyone on this Commission is going to say that we are going to propose something other than the Statute. That information is required, we need the availability for a little bit longer than the Statute requires retention of the records.

Chris Bolton, 18080 Emerald Island Circle, Park Rapids, MN, stated we are all aware that the main reason the short-term rental ordinance is being created is because resorts were complaining that

STRs have an unfair advantage over resorts because of paying the lodging taxes. Resort owners also thought that they were paying higher real-estate taxes, but this is no longer true. Airbnb began charging a lodging tax in 2019, and in 2020 Airbnb and VRBO were charging all guests a lodging tax of 6.875% for the State of Minnesota and also an additional .5% that goes directly to Hubbard County. I have been working with the Secretary Treasurer for the State of Minnesota and learned that Hubbard County received nearly \$50,000 in lodging taxes just from STRs in 2020. That is new money that is generated by STRs and goes directly to us right here in Hubbard County. Hubbard County does not have an actual lodging tax account. They appropriate these funds to our transit dollars and all of it goes to fixing our highways and roads. Hubbard County decided to tax many STRs at a commercial real-estate tax rate. This is way higher than the ma and pa property tax rate that resorts pay. Tell me who has got the competitive advantage. Issues that resort owners have complained about have been addressed. STR hating people, and especially people hiding behind their coalitions and lakeshore associations, are fabricating issues with STRs that are simply not true. They are stating false claims as facts, creating controversy, and adding drama by demanding the County put ridiculously strict rules on STRs. They are saying things such as STRs are interfering with people's peaceful enjoyment of the lakes, STR clients disregard the rules of the lake, and they have loud parties or campfires. I recently spoke with Hubbard County Sheriff Cory Aukes and he said the claims that law enforcement have had so many trouble calls from the STRs are absolutely not true. Nearly all trouble and noise complaint calls are on properties that are not STRs. These people need to stop pointing fingers at STRs as being the troublemakers.

Kovacovich stated the reason the Planning Commission/Board of Adjustment is addressing this is because we are asked to by the County Commissioners.

Brad Butalla, 22976 185th Street NW, Big Lake, MN, stated as far as the STR rules and regulations they are supposed to follow and noise complaints, I would say there are lots of complaints about them. We happen to have a place right next to one. They do not follow the rules and regulations as far as the rules and regulations that we found online.

Kim Butalla, 22976 185th Street NW, Big Lake, MN, added the STR that we are right next door to is a small three-bedroom place that is allowing 16 people to stay at it. The noise and commotion that has transpired with 16 people has been very disruptive to our lake life and living. With 16 people come many cars and overflow parking blocks our area. They have a big dumpster out to house all of the garbage that comes with that many people and bears are attracted to them. You were talking about bright lights that are not turned downward, they have bright lights. Basically, everything that you were talking about with Foxy's disrupting the neighborhood is happening in our neighborhood at our lake right now.

Michelle Koch, 22608 Acorn Drive, Menahga, MN, stated I am speaking tonight in favor of the short-term rentals that I have had experienced or had association with here and with other lakes in the area. They have done so much to better the property and the use of the lake. I want you to know there are many of us that appreciate the tax impact that these short-term rentals are bringing to our County and to our area.

Donna Melby, 22488 Duck Lake Road, Menahga, MN, stated we have had our cabin for over 40 years. We have had the same experience that the Butallas have because they are our neighbors. One issue is garbage on the other side of the lake. People were putting plastic bags of garbage out and the bears got into it. Our neighbor's VRBO has up to six cars at a time, one time I counted 5-6 pickups with boats. We are trying to preserve our lake from invasive species. We would hope that there would be much stricter regulations.

Matt Skadberg, 824 N Sedona Drive, West Fargo, North Dakota, stated I was reading the Statute 827.10, and it looks like they request that the person who is checking in would provide the names of all the guests, but I don't see anything in here about driver's license numbers or addresses besides for the person who rented the unit. For the other guests it is just asking to provide the name, which seems a little more possible to do than trying to get copies of everyone's driver's license. It also asks for the registration numbers of all the vehicles, which does make sense. I don't see anything in that Statute that requires driver's licenses for each and every person that stays there.

Skyler Akason, 4498 Woodhaven Drive, Fargo, ND, asked I was just curious for the people who spoke saying that they had problems with their neighbor, if they have had any communication with the neighbor? I feel like most of the short-term rental owners try to keep good communication with the neighbors. If there are any issues, I take care of them right away. I have had a couple issues at a property that I own. I have had very good communication with the neighbors and have always taken care of the issues right away. They have been happy about that. If you communicate with the neighbor, you can alleviate a lot of the problems.

Brad Butalla, 22976 185th Street NW, Big Lake, MN, asked who monitors these regulations? If they are not abiding by them, who do you notify on that?

Kovacovich replied if it were a violation of the Shoreland Ordinance, that is enforced through the Environmental Services Office. Other issues may not be covered by the ordinance and would be referred to law enforcement. There are Statutes on noise and nuisances. The Sheriff's Office is the one that enforces those rules. The Environmental Services is strictly to the points within the Shoreland Management Ordinance.

Brad Butalla asked so basically, for noise or indecent exposure, you would go to the Sheriff? How about for the amount of people that are allowed at one rental?

Kovacovich answered currently there is no ordinance covering that. If, in fact, there is an ordinance adopted, it would be through the Environmental Services Office. With what we are proposing in the ordinance, at least as of now, there are contact persons required. So, there is some enforcement to contact regarding violations.

Donna Melby 22488 Duck Lake Road, Menahga, MN, stated I do want to share one experience that we had with a party that came in. The ladies went out on the pontoon boat, they were drinking and they were loud. Evidently they burned a hole in the seat of the boat. The guys were up on the shore and they were drinking. The language was horrible and our grandchildren were down there. It went late into the evening. If there were regulations, that would control some of these things. We have spoken to the owner. He was very open, but things haven't changed. We are concerned about those things.

Matt Skadberg, 824 N Sedona Drive, West Fargo, ND, stated I understand that we have some people who create problems, but in your process of going through this I would like to ask that you don't punish the people who have been maintaining nice place and making sure that their guests are being good neighbors. You guys will have to figure out the best way to not punish the people that do it right, but control the people that have done it wrong.

Jim Johnson, 8433 Quail Hill Road, Maple Grove, MN, stated I have a property on Eagle Lake, and I am concerned about a new unit that is being proposed there. This is a very quiet area. We bought a cabin 20 years ago. It is a very family oriented bay. I am concerned about the extra traffic in the area, the noise, and the possible disruptions that will come to the area. I believe it will be a degradation to our property values and our lake environment. So, I oppose.

Dan Wiederholt, 22556 Duck Lake Road, Menahga, MN, stated I realize that we won't do much about stopping this process, and I have talked to quite a few people about it, including Commissioners. I do have some concerns and issues that we have had on this lake. My biggest concern is how we are going to enforce any ordinances that you guys pass. I have spoken to law enforcement in Hubbard County recently with issues of speeding on our road. They have told me that they are shorthanded and have been for a long time. They don't have manpower enough to address speeding and pedestrian safety on township roads. I don't think that we can really rely on them to come out to an issue of foul language or noise at night because they are already stretched to the maximum. I do have concerns about how we are going to address problems as they arise.

Charmaine Munt, 22601 Acorn Drive, Menahga, MN, stated I am commenting on the cost for our lake monitoring for invasion of aquatic species. I think that there should be some type of regulation regarding the people owning the rental properties. They should be part of the lake associations and contribute to the monetary cost for our lake association to hire inspectors at our public landings. If people are going to bring renters in that have the potential of infecting our lakes, they should be responsible for paying part of the fees for the monitoring to keep our lakes clean.

Paul Swenson, 24608 200th Street, Nevis, MN, stated I think one of the things that your group needs to face is if you are going to regulate or not regulate. I would be totally in favor of spending the money to staff the Environmental Services Office to fully implement and enforce whatever ordinance you do come up with. I have been communicating with the Department of Health. Since our last meeting there has been one inquiry by a person with multiple properties in Hubbard County asking for a plan review and an application. There have been some inquiries, but as of this morning there are zero plan reviews in the log. These owners need to communicate. The current State law says that you are a motel. You will be licensed as a motel. I am concerned about our County writing another law that is just not going to be followed. You have another alternative. Bemidji banned STRs. They went down a very similar path, looking at all these details, and in the end they banned them. I don't think that they are trying to chase their tourists away. There must be a reason. I encourage you to regulate, and give Buitenwerf's department the staff that they need. These owners know that they need to be licensed as a motel and they are not stepping up and looking for applications. I encourage you to regulate and perhaps look at the plus and minus of banning them all together.

Jason Hunter, 19221 219th Ave., Nevis, MN, stated a number of short-term rental owners are not necessarily renting to try to be a business. They are renting to preserve family properties that they have had for long periods of time. They are only renting enough to cover their basic costs. I would like to request that you consider those people who are also renting on Airbnb and VRBO. We want to be the best neighbors that we can possibly be, we have spoken with our neighbors, and we have tried to limit capacity to deal with noise issues. We are in favor of reasonable regulations. We hope that we are still allowed to generate enough revenue to maintain a property that our family has had up there for 48 years. We really don't want to lose it. I want to make sure that people understand there is another side to this. VRBO owners are not just trying to maximize profit, a lot of us are just trying to cover costs.

Kovacovich closed public comment.

Kovacovich stated I would like to propose a couple of things at this time to my colleagues. If we look at Item D, the SSTS must be properly sized to accommodate the rented structure's maximum occupancy made available to the public. I would like to insert after that another clause that would read an SSTS certificate of compliance servicing a short-term rental must be conducted annually. The compliance inspection report must accompany the annual STR registration and have been conducted during the prior calendar year for which the annual registration is being applied for. The

reason that I propose this is, the more I think about the Shoreland Management Ordinance and what is most critical in my mind to protect the environment itself, so much of that is hinged around the septic systems and how they operate. Absentee owners are not able to be there every day to see how many people are in that unit and how much water they use. A yearly compliance report would ensure us that the system is operating, at least at that time, and we would be in much better shape as far as protecting the health of the lake from being damaged by a failing septic system that is being overloaded. I open with that and ask my colleagues to comment on what their thoughts would be.

Johnson added I agree with you, Kovacovich. Having absent owners and managers without someone there, I think these STRs are at a high risk of being neglected in water conservation and abuse of what goes down the drain. Keeping an eye on the systems makes sense.

Grob asked how does the inspection certify it? Are you going to monitor water usage, or just inspect it to make sure that it's not failing?

Kovacovich said I am suggesting that the State inspection form that is covered in Statue is used. That means a certified inspector would inspect to make sure the system is functioning correctly and hasn't been overloaded. Those things would be evident if it has been. I thought about including a requirement for metering, but I am thinking at this time just the inspection would be better off than going through the logistics of monitoring daily logs on water usage. I just think this is an easier way to go to ensure compliance and the health of the lake.

Andres asked would that replace the Number 2 that we had previously on Item E?

Kovacovich said that would be the next thing if we adopt this, Number 2 under Item E, we can strike it or leave it. Since it has to be provided in the registration, what I am proposing is we could very well strike Number 2.

Grob asked if you add this in as Item E, then the current Item E would become Item F, and you would strike Number 2?

Kovacovich agreed.

Andres stated I am okay with that addition.

Petersen added as you stated it, Kovacovich, I have no problem with it.

Kovacovich stated I will read 2020 Minnesota Statute 327.10 under Lodging Establishments Operator, duties.

Kovacovich read the Statute.

Every person operating within this state a recreational camping, lodging house, hotel or motel, or resort furnishing sleeping or overnight stopping accommodations for transient guests shall provide and keep a suitable guest register for the registration of all guests provided within sleeping accommodations or other overnight stopping accommodations thereat; and every such guest shall be registered therein. Upon the arrival of every such guest, the operator of the establishment shall require the guest to enter for the guests therein, in separate columns provided for such register, the name and home address of the guest and every person...

Kovacovich continued that is what the Statute says. Since that is a requirement, all we need to say is that guest registration reports must be maintained for the current year of operation and the

proceeding calendar year. If we are going to cite the registration report, we should either adhere to the exact language of the Statute, or just accept the Statute as what needs to be done, and then what we are changing is the retention of the registration records because the Statute says just for a year. Would we be better to state the whole Statute, or just reference the Statute and then add that the registration must be kept for the time period that we are looking for?

Grob added I think that referencing a Statute makes it difficult for people. You can use it as a reference, but actually spell this out in our ordinance. If you just reference a State Statute, it is not going to be as easy to comply. The key information that we want are names, address, vehicles, and total guests. We should spell that out in the language of the ordinance.

Kovacovich stated I have asked Buitenwerf to look at the language of the Statute and make our language as close to that as possible other than the retention period, which is what I believe we are really after. The next area that I would like to address would be Item J.

Kovacovich reads Item J.

Rooms used for sleeping shall be provided with egress windows that comply with the Minnesota State Building Code and with smoke detectors in locations that comply with MN Statute, Chapter 299F. Carbon monoxide detectors shall be installed in locations that comply with MN Statute, Chapter 299F.51. Every room occupied for sleeping purposes by one person shall contain at least 70 square feet of usable floor space, and every room occupied for sleeping purposes by more than one person shall contain not less than 60 square feet of usable floor space for each occupant thereof.

Kovacovich explains I think that we should drop the regulations on the square footage of the bedrooms. It seems to me that it is just an enforcement that we will not be able to do. The septic system has got to be sized to the maximum occupancy, and the maximum occupancy and the systems are built based on number of bedrooms. Where we state that we are allowing two people per bedroom, and if we want to increase that by a couple, that really covers it without us getting into room size. It seems that we just don't need it there.

Andres added we did edit it back at the December meeting. I think that it just got missed. I agree with you in deleting.

Grob added we should put some kind of constraint on how big the sleeping spaces have to be. Let's suppose that I have a two-bedroom house and for some reason or another I have a septic that can handle six bedrooms. A lot of the complaints that I have heard were situations where there seemed to be an excessive number of people that are staying at a short-term rental. If you don't put some kind of constraint on the sleeping area you could have more people than a piece of property or one unit should really have available just because the SSTS is so large that it can accommodate more people.

Kovacovich added I understand what you are saying but Item D limits the occupancy to the size of the system. I don't believe there are many septic systems out there for a two-bedroom house that are capable of handling a four or five-bedroom house. I just don't think that there are many systems that are designed much larger than the available bedrooms. My other concern is enforcement. We are not going inside these units, and we are certainly not sending Environmental Services staff to go alone inside a private residence to measure rooms.

Grob stated I understand the work load and liability risk. Could we say demonstration of compliance with these requirements are the responsibility and self-certified by the owner? Basically, make the owners state that they are in compliance.

Kovacovich replied Item D covers the maximum occupancy. A system is designed for a certain number of bedrooms, within the building code those square footages are listed, and you have to have those square footages to be declared a bedroom with the proper egress window. It seems like it is duplication when our real concern is the occupancy based on what the septic system allows.

Grob asked you are basically proposing scrubbing out that last sentence?

Kovacovich said yes, and Andres said that is what we agreed to at a prior meeting.

Andres added I just noticed on my last document that I had it was already scratched off once. I am okay with removing it, but I am open to hearing any other comments.

Johnson stated I like what Grob said about only being able to advertise for what your septic system is sized for. It takes the pressure off from the enforcement end.

Kovacovich clarified are you saying to keep it or that it can be deleted?

Johnson answered it could be deleted. That is what we agreed to before.

Petersen said I agree. It can be deleted. It seemed like Grob was suggesting that a statement be put in there where the owner is self-certifying that they have met the requirements. You also then are removing the need of anyone having to go in there. I agree with that.

Kovacovich stated as we discussed last time, we will delete that. The occupancy is really covered in Item D.

Grob added I am okay, but the conclusion in the last meeting, as far as the minutes, was for it to stay.

Andres asked Grob would you like to see a statement on the application that the applicant is certifying that their septic is sized properly for the number of guests?

Grob responded however we do it, the key issue here is how we define to an STR owner how they establish the number of people who can occupy the residence. A lot of the people who have expressed opposition to STRs comes back to them having too many people. However we write these things, we need to make sure that people know how to establish what their rental capacity is and to make sure that is what they advertise for. That is why we are asking for names and addresses of all the people there, so that we can avoid these major conflict party situations where there are two or three times more people in a facility than should be. If the Commission feels that we don't need that in there and that what we have written about the SSTS does establish what the capacity limit it, then I am okay with that.

Kovacovich stated Environmental Services has the records for what that septic system will handle, what it was built to. When you apply you will be required to say how many bedrooms you have and what you will advertise for. If it is 2-bedroom, the limit is 4 people. If it is 3-bedroom, the limit is 6 people. On their application, if they exceed that, Environmental Services is going to see in the application that what they are saying for the occupancy does not match the septic system, and they will reject it and you won't be able to get registered. That is built in to the existing records that the County already has, so by applying for that license you need to match your occupancy to your existing system.

Discussion ensued about septic sizing and determining maximum capacity for STRs.

Andres added I understand where you could see people advertising with bunk beds and pull out couches and I think this will help us remove that situation. They won't have that option. You can't turn your living room into a bedroom.

Kovacovich said we will have to develop a registration process. The actual form with the questions. That will be critical to make sure that the information we require on that application matches up with what we are trying to do here in the ordinance. Don't lose sight of all your comments. Just make sure that we cover those concerns with the actual registration form.

Kovacovich continued we need to talk about those things that we need to work on at our next meeting. As Buitenwerf suggested, we should reserve the following night for additional time because we are getting down to where we need to have this developed to pass onto the County Commissioners. There are a number of things that we need to discuss. Certainly the registration form. I would ask that at the next meeting we would dig into that fairly in depth for what information we are requiring. The other thing to decide is if we going to recommend to the County Board of Commissioners that they enter into a contract with an outside source. As I understand it, there are two for us to look at and only one that works within the financial parameters that the Hubbard County Auditor needs. It just so happens that vendor or company is the cheaper of the two also. We need to discuss, if we are going to an outside vendor, what we would have them do. I think we need to get that down in detail. Then the proposed fees for the registration in Hubbard County. Those fees need to cover the outside vendor and staffing for the Environmental Services because even with an outside vendor it is going to increase the workload.

Grob added one more thing about the bedrooms, would that include those that are in a guest cabin? When you size the septic system, it would include full use of the guest cabin and full use of the house, right?

Kovacovich replied I would assume so if they are all on the same system. If it is sized for three bedrooms, it is three between the two units.

Discussion ensued about March meeting dates.

Grob added Buitenwerf was very thorough in laying out the outsourcing options, being pretty clear about the resources for his department. Part of that lead to when we should start this process. Are we at a point to say to the Commissioners what we propose as language, that we are recommending it be outsourced, and that the Environmental Services be budgeted and resourced at the level requested by Buitenwerf, which is about a half-time person? We would leave it up to them to decide what fees would make sense. Are we at a point to just say this is what we are recommending and then it is up to the Commissioners?

Kovacovich stated I am not there yet, Grob. I would hope that we will be after the March meetings. I would hope that we would have it to the point where we would be in the position to make a recommendation. I don't believe that we are there right now. I guess we would have to ask the County Commissioners. I don't know if Van Kempen can answer that, he can only speak for himself. I don't feel, other than a recommendation on a vendor, we don't do the contracting. I think that we should make a recommendation on the fees though.

Grob asked Buitenwerf what direction do you need from us to proceed towards the March meeting?

Buitenwerf replied nothing necessarily. We have the draft with the edits that you made this evening. I have got a note of what Kovacovich asked in regard to Item F.4 with getting our language to align with the statutory language other than the retention period. That is the only note that I have from

tonight other than the edits that I have made live to the document as you were discussing. So there is nothing specific that I am looking for or outstanding items that I have for you to consider.

Grob asked how big of an agenda are you anticipating in March?

Buitenwerf replied we have the application deadline today. We got three or four variance applications that came in. We tentatively have the Green Pine Villas CUP amendment that was to be taken up again, possibly in March. I have reached out to the applicant to see if that was their intention and I haven't heard back from them. That would be a time-consuming item if it is included. We have Mr. Gray's variance application that likely will take some time.

Johnson asked do we have to consider the fees and costs of things that would be charged to the STRs? Are we going to need to be the ones that figure that out?

Buitenwerf replied I am just guessing at what the Board would like to receive from you, and Commissioner Van Kempen can certainly comment if he wants. I would think that would be more of a County Board decision of what they would want to set for a fee. I think that what has been discussed as to setting a fee at the annual average rental rate, or somewhere between that and double that figure, which is in the \$200-\$400 range, that would cover our outsourcing costs. It would not fully cover staff time, but it would still be in line with other permit fees that we charge.

Johnson asked what about people who don't live on the lake and are long-term residents? They think that this could turn into a lot of money to protect all of the lakeshore property owners from their discomfort. We have about 8,000 residents that don't live on the lake that don't want to pay for any of this. Would we have to make the fees big enough that the lakeshore property owners pay for this, or do the STRs pay for this? We have a large part of our voting members that are residents, not in favor of spending any money on this.

Grob stated we could make the recommendation that the County set fees to cover the cost of outsourcing and any additional manpower costs that Environmental Services would experience. That could change, that could increase over a period of time. Make it revenue neutral then. Buitenwerf has done a good job estimating what that might be. If we look at the number of registrations per year that could come in, do the calculation, and add that to it. We don't have to come up with the numbers, we just say we want the cost covered and not take it out of the general funds.

Van Kempen added I cannot speak for the entire Board, but I can speak for myself. I would like to see a price range, or at least an estimate for what this may cost, so that the Board could have an idea of what we should be charging. I agree that I would like to see the short-term rental owners paying for this versus people who are not on the lakeshore. I am sure there are a lot of people who don't want to be subsidizing the costs, and I don't think that the neighbors of short-term rentals want to be subsidizing the costs. I know that we looked at the third-party vendor. I definitely lean that way, but I still think that we are going to have to add at least a half-time employee in Environmental Services to help do some of the paperwork.

Grob said I know that budgets are fixed already. If this got approved in April, and Buitenwerf's staff had to already start spending time on this, would the Commissioners have the freedom to increase the Environmental Services budget for the year to cover the additional short-term rental work? Or, are we locked in and Buitenwerf cannot add staff or anything to his budget until 2022, which delays the program? Would you be able to authorize additional staffing and the increased budget, which could be revenue from STRs?

Van Kempen replied as far as Environmental Services budget goes, I think Buitenwerf would know more about that. I personally would like to get this going this year, even if it didn't start until June or July, to see if there are any bugs to work out before 2022. As far as when we would start doing this, I can't speak for the whole Board whether we want to have it start right away, or have it start in 2022.

Shoreland Management, SSTS, Sign, and Subdivision Ordinance Amendments

Miscellaneous:

Communications: Buitenwerf stated for next month we have a couple variance applications and I have looked at a couple others. There is the possibility of the Green Pine Villas CUP application for March. Plan on two nights, which is something that I will include in the notice so that we have the login information for two nights worth of meetings so that the public is able to have that information.

Grob asked could we schedule things such that any variance or CUP applications are on the second night to make sure that we get these ordinance items squared away the first night. Then any of the people who are associated with variance applications would not have to show up until the second night.

Buitenwerf stated we can put the other agenda items on the second night. We can go either way.

Kovacovich added I think that tradition has it that the Monday is always the application night. Tuesday will be held specifically to get through the ordinance amendments. If we have time on Monday we can start into them. If not, then it is Tuesday.

Buitenwerf replied that is a good point. A lot of people are accustomed to the meetings falling on the 4th Monday and may have planned already accordingly for the March meeting.

Adjournment:

Andres made the motion to adjourn.

Petersen seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 9:59 p.m.

Respectfully submitted,

Staci Lee

Recording Secretary