

## **HUBBARD COUNTY**

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

6:00 p.m. on Monday, February 26, 2018

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

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

#### **Planning Commission:**

**Approval of Minutes:** None.

**Old Business:** None.

#### **New Business:**

##### **Animal Control Ordinance draft review**

Sheriff Aukes presented the Animal Control Ordinance draft. I went to the County Board after the County Attorney and I finished the proposed Animal Ordinance. The County Board then sent it to you to look at tonight. This is something that is long overdue; we had 272 animal complaints in 2016 and over 200 in 2017. I see no reason it will be less than that going forward. The state law is a general public nuisance law, which means you have to have a considerable number of the public complaining about a situation. If you have a neighbor that has dogs that are pestering you, and only you, that does not count and there is no law being broken. That gets to be very frustrating. Sometimes we will get multiple people calling on a situation and we can enforce it. Otherwise, in the past we would make a courtesy call to whoever owns the animal and tell them "we have had a complaint, you need to hold your dog at home". That is about all we can do. This ordinance puts a little meat to it. I am only looking to change somebody's behavior. You cannot quite blame the animal. You have to blame the owner if they are allowing their animal to raise discontent with their neighbors. As you see what the proposed fine schedule is, the first offense is only \$50.00. Then obviously it goes up from there if we are not getting people's attention and would eventually go to a criminal misdemeanor offense. If you have any questions, I would be more than happy to answer them for you. The goal here is to simply change some behavior so we do not have to deal with this issue. It is the people in your districts, the taxpayers, that have to put up with this stuff. I do not want a leash law. I do not want people to have to register their animals like the Cities. I just want to fix that pain in the butt animal. We went away from more than just a dog ordinance because we have this issue with more than just dogs. Cattle are a big thing, you may have some concerned farmers out there, but to be honest with you, the responsible cattle farmer is absolutely going to have nothing to worry about here. If you are the responsible one, if you fix your fence, if you retrieve your animal, this does not apply to you. We have

some people in this county that have run down fences. They do not care. If you have one person complaining, that is not a public nuisance, so what do you do?

Krueger commented the penalty section is in stages. It starts at a \$50.00 penalty and progresses all the way to a potential 90 days in jail. It seems to me like ten years is a pretty long time. What if you have neighbors that just are not getting along with each other? One neighbor could be like I know you have a dog; I can get you in jail with three complaints over your annoying dog. Is that not a little harsh?

Sheriff Aukes replied just because you have that one neighbor that has that beef against you, there still has to be some type of evidence. It will still be a matter of us investigating something. The neighbor that is complaining is technically a witness, but it still needs to be substantiated. That was something the County Attorney put in there not to keep it open ended.

Krueger remarked ten years is a long time, one year maybe would be good?

Sheriff Aukes responded one year would not be good. The problem with one year is all of a sudden you are starting over from scratch. I do not think that would serve us well.

Krueger asked without the County Attorney's adding ten years, what would you have put in?

Sheriff Aukes replied I did not put anything in. My intent was not to keep it open ended. It was probably something I never thought of. Five years would maybe be realistic, but I certainly hear what you are saying. I assume what you are getting at is maybe somebody lying?

Krueger responded you have human issues here, neighbors not getting along and getting emotionally involved in it. Someone could use this ordinance as a way to get them in jail or get them up to a \$1,000 fine pretty quick.

Sheriff Aukes commented I hear what you are saying and I do not know. I do not know if there is a legal purpose for it from the County Attorney to have ten years. What rationale he used for that, I really do not know. I am open to discussing that, certainly.

Grob asked did the County Attorney benchmark some other counties with regards to this ordinance? Is there some source for the ten years or any of the other things? Did he draft this from ground zero?

Sheriff Aukes answered I drafted this and the County Attorney added some stuff to it. When I made the draft, I made it how it suited Hubbard County based on our issues not based on Beltrami issues, or Becker, or Wadena. I created this for the purpose of what our needs are. In the past we have used someone else's policies, looked at it and saw that it fit our needs and gone with it. In this case, I did not do that. If the County Attorney did on some of the stuff, I do not know. He could have, but I think this was designed for our needs and not necessarily our neighbors.

Grob asked of the large number of complaints in the last few years, what percent of those are nuisance versus some real serious danger situations?

Sheriff Aukes answered I would say the vast majority. We have plenty of dog bites, absolutely. I would say 80 percent of them are nuisance ones versus bites and attacks.

Johnson asked how many would you guess are the same violators over and over?

Sheriff Aukes replied quite a few. Out of 200 complaints, I would not doubt if half of them are the same people. We have multiple, multiple people that are in violation. That is truly what triggers this. If you have that random person here that is a one time offender that really does not get on our radar. Since this was proposed, we had a gal in our county that multiple times a week her five dogs are raising discontent around a certain area. Whether it is chasing deer, being in people's yards, to being on the highway and cars having to drive around them, it is multiple times a week for this one person.

Krueger commented in my neighborhood, a person has a Saint Bernard and a smaller dog that he lets outside when he goes to work. They have come into our yard a few times. To me that is an annoying dog.

Sheriff Aukes replied again I do not know what they are doing at your place, but the way we have wrote this is that just because a dog comes over it is not a violation. That would be more a leash law type of deal and I did not really want that. We are still rural Minnesota. So that dog has to be doing something, some kind of nuisance before it is a violation.

Krueger asked what about someone who had trauma like I did when I was twelve years from a Saint Bernard? From then on you are not going to trust a Saint Bernard, to me that is an annoying dog.

Sheriff Aukes responded I hear you, I would not argue that point. But again, we did not write it just for the presence of an animal in your yard. It is all about a nuisance. I think people should keep their dogs at home. If it is your animal, you are responsible for it, keep it at your own place. Other people do not need it at their house. When a dog is off your property, you do not know what it is doing and that is your responsibility.

VanKempen commented I personally do not have a problem with the ten year limit. I think with what Krueger said about having trouble with a neighbor, the neighbor probably would not wait ten years to call you three times about a dog or whatever the situation may be. Let's say you have a situation where you have a lake lot and you go there to work on your lake lot. The neighbor's German Shepherd comes over and barks and growls at you until the neighbor comes and retrieves his dog. Would that be a nuisance animal?

Sheriff Aukes answered yes. If whatever the animal is doing would be considered a nuisance, barking for an excessive period of time is one, absolutely. If it is coming up to you, barking at you, that means it is an aggressive type of animal.

VanKempen remarked I notice you have three categories, a nuisance animal, a dangerous animal, and a potentially dangerous animal. But I noticed under the penalty fees you only have violations for nuisance animals.

Sheriff Aukes replied some of the dangerous animals can be considered nuisance animals as well. The potentially and the dangerous animals are already in state statute. We had to put them in our ordinance as well because we have to allow an appeal process. State statute does not allow that. What happens is you get bit by a dog and that makes it a potentially dangerous animal. If we have a dog bite, or even if it does not bite, but you are chased or a dog comes at you aggressively, that is considered an attack even if you do not get bit. That dog is considered a potentially dangerous animal and that is a strike against that dog and that owner. That particular dog is now deemed a potentially dangerous animal. That means the officer serves the owner with the paper and basically it is on probation, forever. If that dog ever attacks again, it is automatically moved up to a dangerous animal which is a pretty major thing. By state law, you now have to quarantine that animal and it can never be running loose again. If it is on a leash, you have to be in control, it has to have a muzzle, and you have to have \$300,000 insurance on it. That dog has proven it is a multiple attacker. We had to include that in the ordinance as well, according to the County Attorney. That is probably why you are not seeing a separate penalty for that, it is all included in one.

VanKempen remarked my thought was maybe there should be something there for a potentially dangerous animal?

Sheriff Aukes answered that would either fall under a nuisance animal. The agreement with the County Attorney would be it is already covered.

VanKempen responded maybe some wording then on the penalty part of it. It does say the violation for Subdivision 1(b)(i)-(vi) and the potentially dangerous animals are Subdivision 1(d). I guess that is probably the only stuff I came across. Otherwise, I thought it was well written.

Johnson stated under definitions, a nuisance animal is pretty specifically defined in Subdivision 1(b)(i)-(vi). If there is something outside of that definition, would it be hard for you to do your job if something happened that was not defined?

Sheriff Aukes replied it depends. We tried to write it to encompass everything we could think of. Now are you saying the definition or the act?

Johnson commented for instance if I am not home and the neighbor's dog comes over to the sliding glass window and my cat sprays because it sees that, is that nuisance dog?

Sheriff Aukes answered yes because it is annoying. The word annoying is pretty broad. The threshold would be what would a reasonable person consider annoying or a nuisance? So a lot of that activity is going to be covered. It is like on any law, you get into it a ways then all of a sudden something pops up so you amend it and change it to cover it. We tried to be as specific and vague as you can to encompass as many things as possible.

Johnson asked in the first paragraph under purpose, "in order to provide for the regulation and protection", would I want from dangerous animal or of dangerous animals?

Sheriff Aukes replied that might be a poor choice of words there. We will talk to the County Attorney. We did not catch that one.

Petersen commented on Subdivision 4 (c) a. you talk about the owner maintaining a proper enclosure. Do you have a standardized definition of what that is or is that going to be for you and the owner to sort out?

Sheriff Aukes responded yes, that would be something we would have to inspect and approve. That is under state statute and basically it has to be a secure place. If they put a dog in a three foot high chain link fence, we are going to say that is probably not good enough. An eight foot one? Or a six foot one? That would probably be proper. When you register your dangerous dog, the officer goes out and inspects it making sure the sign is up and they have their insurance bond, all of that.

Petersen asked in Subdivision 4 (c) b you refer to a warning sign or symbol, is that a standardized symbol?

Sheriff Aukes answered yes that we provide.

Petersen remarked on Subdivision 4 (c) e you talk about a standardized tag?

Sheriff Aukes replied yes, we also provide that.

Johnson commented I would be in favor of the ten year provision. It would maybe make a farmer fix a fence after a period of time after his cows get out.

Krueger remarked it also applies and annoying is a pretty broad statement. Is there anyone you can kind of balance that a little more?

Sheriff Aukes responded our whole purpose is we are truly going to filter all of that. That neighbor that has a motive maybe, overall we can smell that out. Just because a pesky crybaby neighbor is going to squeal on you, does not mean that is all we go off of. We really do not. It is no different than an officer stopping a vehicle or investigating something themselves with no complaint. We have to prove the case. I want to try to put you at ease a little bit that it is probably not going to be as easy as just an ornery neighbor that moved into the area that does not like you. Keep in mind from the public safety, enforcement end of it, longer is better for us. It gives us a bigger window to hold people accountable in. Obviously the less time we are talking about, the accountability goes away. It is kind of like being off probation; if I am on probation for one year then all of a sudden it's a clean slate, I can start over. You know what I am saying.

VanKempen stated to address the ten year window, if it is a nuisance dog after so many years maybe the owner has finally figured it out with that dog. But then that dog dies and the owner gets a new dog and the problems start all over again. It is really not the dog's problem, it is the owner of the dog that is not being responsible.

Sheriff Aukes agreed yes, absolutely.

Krueger asked so it is written there that when there is a new dog, the ten years starts over again?

Sheriff Aukes replied no, I do not think that is specifically written in there. Other than the dangerous animals, the rest of it is not single animal exclusive. You as a dog owner might have three dogs, one of them is creating hate and discontent on Monday and you get a ticket for it. Well a different dog could go to a different neighbor and totally raise hay. Even though it is a different dog, it is still another violation because you are not controlling your animal. Maybe another day the third dog gets it so it is not necessarily animal specific, unless we are talking a bite.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

Grob made a motion to recommend the Animal Control Ordinance draft to the County Board as discussed.

VanKempen seconded the motion that carried unanimously 5 – 0.

### **Board of Adjustment:**

**Approval of Minutes:** January 22, 2018.

Krueger stated on page 8, in the first paragraph, it should say mitigation, not litigation.

Krueger made a motion to approve the minutes as discussed.

VanKempen seconded the motion that carried unanimously 5 – 0.

**Old Business:** None.

### **New Business:**

**Variance Application 2-V-18 by John Yanta:** NW ¼ of the NW ¼, Section 32, Township 140, Range 33, Nevis Township on Crow Wing River, a forested river. Parcel 21.32.00300. Applicant is requesting a variance from Section 502.6 of the Shoreland Management Ordinance for a proposed accessory structure to be located at less than the required 150 feet ordinary high watermark setback.

John Yanta, 16824 Crown Point Rd, Nevis, MN, presented the variance application. When I originally built the structure, I intended to put up a garage. Shortly after I built, they changed the setback rules from 75 feet to 100 feet. Even when I built the original structure, I did not go to the original 75 feet because I was wanted more of a buffer between myself and the river. I actually pulled it back further than the 75 feet they were allowing me. After

the ordinance went into effect, I waited to see what would happen. I was hoping it would change again for the better. I waited to put the garage in until now. I need a garage or structure I can put some vehicles in. That is why I am requesting this location. This is where I initially intended to put it when I built the structure.

Grob stated I think I understand the issue with your property and location. You are building a two story building, but there is not much description in your application as to what will actually be in the building. What do you intend to do with your first floor? What do you intend to do with your second floor?

Yanta replied the first floor will be for equipment, including mechanical work on smaller equipment and cars. Upstairs I plan on putting in a wood working shop, I like working with wood. That will be my shop in the winter months to hone my skills in wood working.

Grob asked you indicated you are planning to heat the building so it will be a year round structure?

Yanta responded the bottom floor will be heated, yes. The concrete will be in floor heat.

Grob asked you intend to put a bathroom in?

Yanta answered yes.

Grob asked full bathroom or just stool and sink? What is your intent?

Yanta clarified what is considered a full bathroom?

Grob replied shower, bathtub and stuff.

Yanta answered yes. I want to have that so if I get dirty while working, I would like to shower so I do not have to track it inside the home.

Grob asked do you intend to put the bathroom upstairs or downstairs?

Yanta answered it all depends on where I am going to have the room. When I put all the equipment in, then I will know what I want to do. I am looking at putting a hoist in there so I can lift a car up. Depending on where that and the hydraulic press are located, plus all my tools. That will determine where the bathroom will be once I get it laid out.

Krueger asked what prevents you from making an attached garage?

Yanta replied just the basic structure itself. I would have to take the wall down on the building in order to do any kind of addition. I would like to go south If I go any further west that is right where the drive is. That does not leave me much room. I am very restricted on space there. I am very limited to what I can actually do.

Krueger commented the two buildings are fairly close with the roof sloping into that same small enclosure. Do you have some kind of idea for erosion control?

Yanta answered I have the gutters on it. It will be controlled by gutters and then on the existing building I have a bunch of rocks where it dumps. It hits the rocks and disperses so there is never an erosion problem.

VanKempen clarified it looks like you have a 40 acre piece of property?

Yanta replied yes.

VanKempen asked and it looks like the majority of it is on the other side of the river?

Yanta replied yes, everything. This is the only building spot on the entire property I have road access to.

VanKempen stated based on the last picture that was up, because of the bend of the river, no matter where you put it you will be so close to the river. There would be no bedrooms, no beds, no cots?

Yanta answered no that is not my intent. I inquired with the Environmental Services Department about what I could build there so I talked to Buitenwerf about several different things. In order to build a guest cottage I would have to maintain a 26 by 26 structure, that is the maximum you can do. That is nothing. I need shop space more than I need another living area. I have plenty of living area in the cabin there.

VanKempen asked do you ever get to the other side of the river to use your property over there?

Yanta replied I have a boat so I can get across.

Krueger commented it looks land locked, like there is no way to get there.

Yanta responded it is but in a way it is nice because it is very private with great wildlife.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

Grob commented the applicant's assertion that the location of the proposed garage is probably the most reasonable. Even though it does not meet the 150 foot setback, I think the topography of the land protects the river well enough. On the basis that the applicant has definitely stated he has no intent to use the second floor as any kind of guest cabin or living area, I would be in support of the application.

Krueger asked Buitenwerf I think in your staff report you stated you needed to see the property before taking a more firm position? Have you formed a position or recommendation?



Buitenwerf responded looking at the site, I do think the garage could be potentially moved back a hair more into that turn around area. But what additional gain in setback you could achieve? I do not know. We did not measure. It would appear there would be more space physically, but it is a matter of whether or not, with the functionality of how he is using the property, that would work.

Yanta replied I bring equipment in there and to make that turn with a pick up alone is kind of tough. If I was going to run a dump truck or something else, that would be really tight. Right now it is comfortable to do it. I have some trees I would like to keep.

Buitenwerf stated another point I should make is the ordinance would allow the garage, or any type of addition, to be made to the existing structure so long as the non-conforming aspect of that structure was not increased. In this case, the non-conforming element is the ordinary high water mark setback. If he had attached the proposed garage to the house, that could be done with permit.

Yanta clarified what constitutes an attached garage? Is it just a walkway between the two? Do both structures have to make contact all the way?

Buitenwerf answered it would be continuous enclosed space so that you can walk from one to the other, totally inside with enclosed walls and an enclosed roof.

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

Petersen seconded the motion.

#### Findings of Fact:

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

Why or why not? The lot is unique in that the river bisects it and separates the existing building site from the bulk of the property. The house was constructed by permit in 1988 at a 100' OHW setback when the ordinance then only required a 75' OHW setback. The ordinance now requires a 150' OHW setback, but there is little room in the corner of the property where the building site is located where the proposed detached garage can be placed due to the existing driveway and drainfield locations and the reserved alternate drainfield site. The proposed garage site maximizes the OHW setback given available room.

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

Why or why not? The portion of the property where the building site is located is only ~150' x 200' in dimension excluding the OHW setback. There is no other place to put the garage other than where the landowner has proposed. Having a garage for one's vehicles and a woodworking shop space are both reasonable accessory

use requests to the primary single family residential use of the property. A garage must be in close proximity to the existing residence in order to provide a reasonable use. Asking the garage/shop to be built on the other side of the river from the house where more land exists would not be reasonable.

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

Why or why not? The house was built in a ~150' x 200' corner of the property that is separated from the rest of the property by the river. The house was constructed in 1988 at a 100' OHW setback when the OHW setback was 75'. The OHW setback changed to 150' in 1991. The lot was largely improved by 1991. Thus, the driveway and SSTS locations limit where a garage can be placed. The lot is also unique in that the building site sits inside a bend in the river which makes it difficult to meet the OHW setback from all points of the river.

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

Why or why not? The difficulty was caused by the lot being developed in 1988 when the OHW setback was 75' instead of the current 150'. The house was built at a 100' OHW setback. The ordinance was amended in 1991 to require a 150' OHW setback that is not feasible for this building site due to it being located in a small ~150' x 200' corner of the property that lies inside a river bend. Because of where previous improvements were placed on the lot under the former 75' setback, the landowner is now limited on where the garage can be placed.

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

Why or why not? There is one residence ~250' SW of this house on a nonriparian tract. Otherwise, the area is undeveloped. The neighboring residence also has a large detached storage building. Thus the proposed garage will not alter the locality's character, but rather fit in with how the neighboring property has been developed.

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

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty involves the unique nature of the building site on the lot being in the river bend, there being ~150' x 200' of land on the side of the river where the building site is located, and the fact that the house and accessory features of the building site were installed when the ordinance had half the required OHW structure setback (75') as is required today (150').

The motion carried unanimously 5 – 0.

### **Planning Commission:**

Krueger reopened the Planning Commission meeting.

### **New Business:**

#### **Shoreland Management Ordinance – proposed Amendment 18 review**

Krueger suggested we read through the proposed changes to the Shoreland Management Ordinance draft and discuss changes where members have comments or concerns.

The Planning Commission read through the draft and made edits to the following pages:

Pg. 2 – Section 401, Table 1, change “Church Youth Camp” to “Youth Camp”

Pg. 4 – Section 402, Number 10, remove item “J”

Pg. 5 – Section 601, Number 3, remove item “A” and “H”

Pg. 5 – Section 601, Number 3, item C, change setback from ten feet to 20 feet

Pg. 5 – Section 601, Number 4, leave wording as is in ordinance

Krueger made a motion to recommend the draft of the Shoreland Management Ordinance – proposed Amendment 18 to County Board with agreed upon changes.

VanKempen seconded the motion that carried unanimously 5 – 0.

#### **Subdivision Ordinance – proposed Amendment 5 review**

The Planning Commission read through the draft and discussed whether to make any changes.

Grob made a motion to recommend the draft of the Subdivision Ordinance – proposed Amendment 5 to the County Board as proposed.

VanKempen seconded the motion that carried unanimously 5 – 0.

#### **SSTS Ordinance – proposed Amendment 1 review**

The Planning Commission read through the draft and discussed whether to make any changes.

Grob made a motion to recommend the draft of the SSTS Ordinance – proposed Amendment 1 to the County Board as proposed.

VanKempen seconded the motion that carried unanimously 5 – 0.

**Miscellaneous:**

**Communications:**

Buitenwerf stated we will have a Board of Adjustment meeting in March. It will be three variances for the Board of Adjustment, no Planning Commission business.

Grob commented I will not be at the March meeting.

**Adjournment:**

VanKempen made the motion to adjourn.

Grob seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 8:30p.m.

Respectfully submitted,

Paige Nulliner

Recording Secretary