

## HUBBARD COUNTY

### Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, February 25, 2019

Chairman Mark Petersen opened the meeting with the following additional members present: Ken Grob, Tim Johnson, and Veronica Andres. Also present were Environmental Services Director Eric Buitenwerf and County Board Commissioner David DeLaHunt.

Petersen 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: January 28, 2019

Andres stated I did find a correction needs to be added by inserting on the conditional use permit 2-CU-14 to "recommend approval" to the Hubbard County Board of Commissioners on number seven and number ten.

Andres made a motion to approve the minutes with the two corrections.

Petersen seconded the motion that carried unanimously 4 – 0.

**Old Business:** None.

#### New Business:

**Conditional Use Application 1-CU-19 by Brent Nicklason:** Part of the Northeast Quarter of the Southwest Quarter of Section 10, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel 21.10.00410. Applicant is requesting a conditional use permit to operate a restaurant/bar use.

Brent Nicklason, 25275 State Hwy 34, Nevis, MN, presented app.

Nicklason stated currently we have our event center and we would like to have an additional use for a bar/restaurant for summer months. We have the capital, we have a liquor license and all the pieces are there. We are needing to use it more than one or two days a week so the bar/restaurant use is the best use of the property and the assets that we have to continue and grow our business.

Grob said I would like to get clarification on what exactly you are proposing in your application. It is important that we be clear about it so that if we put conditions on, it is consistent with what you are asking for and not put you back here in six months to redo it. I wanted to start with item three in your application, where you talked about typical days and hours of use. It says Wednesday through Sunday with an option for seven days a week. Then it talks about Wednesday, Thursday, Friday, and gives some hours for Sunday. Do you want the application to be for potentially seven days a week for the

restaurant/bar use or do you want it for the number of days that you put in the application?

Nicklason replied I think I want it seven days a week. To back up just a minute, I didn't probably understand when I filled out the application and Buitenwerf helped me get through it. I tried to get through it to the best of my ability. A number of my answers are of current operation; that is what I put down and that is the way I answered them. I didn't understand that it is what I would limit myself to by answering the question that way. I was trying to provide information as to how we are operating. I would like to have the capability to operate seven days a week if possible.

Grob asked what hours would you propose? You have mentioned Wednesday, Thursday, Friday; 4-10 p.m. Would Monday, Tuesday, Wednesday, Thursday, Friday be then appropriately 4-10? Are those the hours you would like to put on it? You say Wednesday, Thursday, and Friday 4-10. Sunday 10-8.

Nicklason said if I have to come back here to change my hours, I would say let's put it at 11 a.m. or noon. Is there a problem that you see with broadening it a bit?

Grob responded we would have to consider noise and what hours you are allowed to have any outdoor activity. If you say 4-10 and we know you are going to be done at 10, then we might not have to do anything about noise.

Nicklason added what I would like, and I was thinking about it after our site visit, is there some way to reference the conditional use 2-CU-14 that has all the conditions for our event center? To date, we followed all of those stipulations with all of our operations.

Grob stated for your event center, your hours are 7 a.m. to 1 a.m. Buitenwerf, the current event center CUP, does it allow him to operate the bar and the tap room while he has an event going on? They were not part of the thinking when we did the conditional use permit for the event center, but is there anything that constrains him from using those during an actual event now?

Buitenwerf replied there is nothing in that permit that prohibits the use of the space that is proposed to be used as the restaurant/bar. I would have to give it some thought, but I think that having people eat in that area or consume beverages at the bar wouldn't be prohibited. I don't recall a condition in the event center CUP speaking to those items. What wouldn't be allowed would be to have the restaurant and the bar, or one or the other, operate with standing hours that are available for the public. They would have to be part of an event.

Grob clarified they could operate, but they would have to be part of the event center? It couldn't be open to the public to use those facilities. The people attending a wedding could use the bar and taproom area under his current conditions?

Buitenwerf answered I believe so, yes, without looking through all this.

Grob asked is it appropriate for us to put a condition on the hours that he can operate the bar/restaurant? Is it important that we lock down on that as part of the conditions for this?

Buitenwerf replied I would just say, as it would be with any possible item that you would make a condition with, if you feel that it would be appropriate to ensure the public health, safety and welfare, and then also that the surrounding residential property uses, that their ability to enjoy their property is not harmed by the operation of the business. If that is able to be more assured with a condition that would limit hours of operation, then it would be appropriate. If that isn't an issue, then it wouldn't necessarily be required. It is kind of a case by case basis.

Nicklason said I am just looking at it black and white. Your job is to be the voice of reason and make sure that things aren't getting out of hand. I have an approved use to operate that event center from 7 a.m. to 1 a.m., seven days a week and I understand the bar/restaurant issue. We are really just talking about how they got there. I don't see how that is a big problem. If they had an invitation to come, then it is ok. But if they didn't, then it is a problem. I am just trying to understand.

Grob explained that is the complication. If you got approval to have an event center seven days a week from 7 a.m. to 1 a.m. and you can use that bar/restaurant, you can say you are open for an event every day.

Nicklason replied I can right now basically. It is interpretation of what is an event center. We need to use our business more than we currently are. One way or the other we are going to be using that building. If it is going to be more events, because we are not allowed to have a bar/restaurant, then we are going to have to change our business model a little bit.

Petersen asked Buitenwerf it seems to me that you have got two business models going on here, your event center and now your bar/restaurant. To me, I would wonder what parameters there are for other restaurants? If you are operating as a bar/restaurant, I don't know that I would want to be necessarily more restrictive than any other bar/restaurants operating in the general area. Can you give me any guidelines? I am not familiar with any restriction they might have that we might be thinking about putting on him just so that he is in the same boat as everybody else for the bar/restaurant aspect of his business.

Nicklason added you are saying I have two separate business models; I have had to retrain my brain to think about it that way. In my mind I have one business and business model. I have an event center. As we have navigated this process, in my mind I was operating an event center, because that is my interpretation and I was operating in my allowed use to have people coming and going. I guess I do have two separate business models and I am trying to put them together.

Petersen asked Buitenwerf we do have some distinctions here between an event center and a bar/restaurant. Does my question make sense? I am struggling on what to restrict him on; maybe I use the model of other bar/restaurants in the area? Are there hours of operation that other bar/restaurants in the area are held to? Do we want to use that as an example?

Buitenwerf answered it certainly is helpful to look at and ask the question of what ways others are regulated. It is also case specific from a zoning law standpoint. Because of how past practice has been, does not mean that you have to do the same in this case, if you feel that there are unique circumstances here that warrant certain attention. That said; time of year, in terms of months of operation as well as days and hours, are certainly reasonable things that are not atypical to see on a conditional use permit for this type of a business or any other business. Similar to scope of how many people can be there, a small restaurant that serves 100 people is much different than a large buffet that serves 500 people as far as its impact on the surrounding area with vehicle traffic for example.

Grob commented it seems to me that this has been evolving into he wants to run a bar/taproom/restaurant. He has made an application, 75 people maximum. That is the normal operation of business. When he books an event, he will fall under the requirements of the event center, which is 300 people and different hours. Under normal operation, we are assuming you are running a bar/restaurant with a limit of 75 people. We should put conditions as to what a bar/restaurant should be to go with it. When you declare an event, someone books an event, and then the conditions of the conditional use permit for the event center come into play. I am saying you can't leave it open. If you are running a bar/restaurant that is the normal, for you to exceed 75 capacity, you have to declare or somehow record that it is an event.

Nicklason asked how do I do that?

Grob said I assume someone calls you up and you write down that it is an event center. I would say there is a certain amount of trust put on you, it is a formal booked event and then it comes under the event center. What we are trying to guard against, is that your bar/restaurant becomes a 300 person dance hall. The conditions for a bar/restaurant are different.

Johnson added I think that is exactly what we are talking about is that it could be that 300 person dance hall. It is going to be a bar/restaurant, which is what he is asking for a conditional use on. We talk about what is going to be allowed for outside activity. What did we allow for the events?

Nicklason replied 11 p.m. outdoor activities cease.

Grob agreed no outdoor activity after 11 p.m.

Nicklason added outdoor music ending is what it was.

Grob clarified it says any outdoor event center activity must cease at 11 p.m.

Johnson added that is our template for the bar/restaurant because anytime I go there it is going to be an event.

Grob commented why isn't there one conditional use permit that could be used for the whole thing? It's because they are two different uses in the Ordinance?

Petersen asked Johnson since the occupancy is 300 on the event center; we might as well go with that on the bar/restaurant?

Johnson answered I am proposing we go with what the building can legally have by fire code.

Andres added I am the same because as we were there during the lot viewal, you are going to have spill over. The event center can use the whole building and you are not going to want to turn away patrons and ask them to come back in an hour because you are at capacity. He is going to want to keep generating business and his patrons to come, so they are probably going to have some spill over into that room. So we basically have to look at the whole building.

Grob said if you look at 300, how does that influence the septic system requirements?

Johnson answered that is going to be taken care of under the operating permit that has been proposed by Environmental Services. It will be monitored and if it exceeds what is existing, then he will have to update.

Grob continued the bar/restaurant calculation is close to what they currently have. If you combine, it is going to immediately put a much higher requirement on his septic system.

Johnson added as he grows, the State gives us numbers to go by when designing septic. I wouldn't want him to go in and spend another \$15,000 - \$20,000 on a septic that may never hit that, when I can use information that is going to be gathered over time to tell me what I need to do.

Grob stated the actual septic size that is going to be required is going to be based on the data that is collected. You are assuming he is going to be running events that year that in fact will give you a good measure. If he is running smaller events and getting less output, you determine the size, and then his business grows and he exceeds that; how do you handle that?

Johnson replied he is the owner and will be responsible. He might have to get savvy about using satellites during a big event so his numbers don't show overuse of his system.

Nicklason added this is our fifth year and we have a full slate of events booked. I am not going to turn away business to make the numbers look better. I am trying to grow a business and if the numbers show that I need a bigger system, I will put in a bigger system. I just personally know what my size of my system is and the amount of water that is going into it. We aren't even using 25% of that system currently. And we are going to be operating the same way we were operating last year. There is no additional water going into that system that is any larger than last year's number. It will be a good snap shot.

Johnson stated numbers are going to change according to how you use it and those numbers are going to show that.

Grob said with your proposal, we are not going to try to distinguish how he is operating any day of the week. He can have 300 people there seven days a week. The septic system is an issue; we will do the measurement and figure out what size it has to be. Then, looking at the proposed conditions that the staff put together, the only thing that it would come down to is we need to be sensitive to noise and probably the only additional condition should be that certain days of the week there should be no outdoor activity.

Johnson added the lighting would be a big issue for me. I wouldn't want that shining across to people.

Grob mentioned people can put street lights all the way around the lake and we don't have any control over that.

Johnson said they can only shine down; we can make a condition of that.

Grob continued the thing that we should be the most sensitive to then is, what things we should limit on the outside; noise, lighting, etc., that would be offensive to the neighbors. Those are the conditions that we should be looking at.

Petersen added what about hours of operation? Stick with what he has got for the event center; is that what you asked for?

Nicklason replied yes.

Grob stated the only thing is that, in the summer, the neighbors across the road on the lake are going to have windows open or be outside; is maybe 10:00 p.m. for outside noise a better thing, during the week at least?

Johnson asked Nicklason do you have any ideas about making the neighbors happy?

Nicklason answered I think that outdoor activities, we have the patio space. Is 10 p.m. okay or would you rather say 11 p.m.

Andres asked are you talking a.m. or p.m.?

Nicklason replied p.m. You are saying the outdoor patio would need to be cleared off by a certain time or are we talking maybe just no music out there; what are we talking about for activities?

Grob added as long as we are trying to play one to one with the event center, all outdoor activity must cease after 11 p.m. which would mean activity and music at 11 p.m. I am trying to make it consistent. If we have said in there previously that outdoor activity has to cease at 11, then why don't we put the condition on this one too that under the bar/restaurant that all outdoor activity and music must cease at 11 p.m. daily. That is consistent.

Buitenwerf stated in light of the fact that we don't have anyone in the audience; I would suggest asking for public comment, knowing that there isn't any, since the conversation is migrating towards discussions of what a recommendation might look like. Then we have made sure that we have gotten the public comment component taken care of.

Petersen asked for public comment.

No oral public comment was given.

**Written public comment received:**

- Karen Dregseth, 922 N University Drive, Fargo, ND 58102, letter

Petersen said if we are discussing these hours, are we going to keep uniform then with the event conditions starting time?

Grob asked Buitenwerf how is the 300 capacity controlled?

Buitenwerf replied 300 is the maximum occupancy allowed in the building for the event center CUP. I believe the Fire Marshal has a slightly lower number that they would allow based on the square footage and I believe Nicklason may have that number at the ready that he could share with you.

Nicklason responded that is a dynamic number, right now we are working with the Fire Marshal. You guys were there on Thursday, they came afterwards, and based on certain requirements we are looking at certain spaces and the occupant load of each space and we are trying to lower that slightly by different means to eliminate certain requirements; fire sprinkler system specifically. That is all being handled with the State Fire Marshal and conversations are going. What the final number ends up being, I am not sure exactly where it is going to end up at.

Andres asked isn't it close to 300?

Nicklason responded I don't know the number so I am not going to just say a number.

Grob added so basically, the number would come under the requirement that he has to meet for the Fire Marshal, Department of Public safety, etc, codes. We wouldn't have to worry about that.

Buitenwerf stated yes, any condition entertained toward max occupancy; I would just say that you are requiring it to comply with the State Fire Marshal's requirements, whatever they end up being.

Andres asked have you made any corrections to the current violations from the letter dated September 28, 2018? Have you corrected any of those violations?

Nicklason asked which letter are you referencing? I never received a violation letter. They did a consultation walk through, there were no "violations". I have contracted with an electrician. Travis and Ryan Whiting were both out there again on Thursday and rather than doing a consultation this time, they did an inspection. They are in the process of writing the violation, but they said it is easily remedied with a few things we talked about doing. I have got the plan to remedy those.

Petersen said this notice that is up on the screen right now, you have replied to it and it is either being updated or has been?

Nicklason replied yes.

Grob asked Buitenwerf can you go back to the conditions? I would propose we add a fifth condition that any outdoor bar/restaurant/music and activity must cease by 11 p.m. daily.

Petersen asked is that in addition to this list?

Grob answered yes, I am calling it condition five because there are four of them here that have been proposed and are all reasonable and consistent with the event center ones.

Petersen clarified these were in the staff report.

Johnson asked which four are you talking about?

Grob said on the screen. These are the proposed conditions. The first one is standard, the second has to do with the septic system, and the third has to do with the closeness to the highway, which is typical. The next one deals with public safety, State Fire Marshal and fire codes. As for five, we would add the condition that all outdoor bar/restaurant music and activity would cease at 11 p.m.

Johnson added he has got five up there, so it has to be six.

Grob explained five is just suggested things. It says we need to consider other possible conditions that might come up in our discussion. So that would be five. For six, the lighting one, you need to come up with something for lighting.

Andres added what about expansion? Expanding the business itself, do we need to put limitations on that? If he wanted to build on or add any additions? That is going to change occupancy.

Grob asked what would you suggest Andres?

Andres said my suggestion was that I didn't know if we needed to put any type of condition on the expanding of the building itself or any accessory structures. That is going to change the occupancy. If you decide to grow, that is great. But right now, it just covers the current structure.

Petersen asked do you understand where we are going with that?

Nicklason clarified so if I wanted to add on, I would have to come and amend my use.

Grob answered yes.



Andres stated because right now, everything that you are building up to has occupancy maximums already, so it is going to change everything again.

Grob added all the issues of parking and septic come up. What words would you suggest?

Andres replied I didn't get that far, I just thought of expansion.

Nicklason asked would the normal building permit address the septic issue and the Fire Marshal's office would regulate the occupancy?

Petersen answered I don't know if that would be covered under a conditional use, would it Buitenwerf? If she is trying to take into account for instance, if you were planning in the future, to expand the building; we would need to take that into account by an amended CUP.

Buitenwerf responded that is up to the Commission and the County Board how you want to look at things. For example, a gravel pit, if a gravel pit is 10 acres that is an entirely different thing than a 100 acre gravel pit. If you feel a 10 acre pit would be okay in the area it is located, but 100 acres wouldn't be, that would be a case that you would want to restrict it to 10 acres and require an amendment process if/when they wanted to expand. If you are out in the middle of North Dakota and there is not a neighbor for 100 miles in any direction, then a 100 acre pit isn't going to be a big deal either, so you wouldn't necessarily limit it in size. It all depends on the location and you would have to think to yourself, if the sizing is appropriate or too much for what the surrounding property uses can accommodate.

Petersen added my question is, for instance, right now we are looking at a 300 person occupancy rating for his existing building. For me it would make sense that if you added on, you would naturally want the occupancy to go up. That would not be able to be done under a building permit; it would have to be done under this process if he wants to increase the occupancy?

Buitenwerf replied in terms of the existing CUP for the event center, yes it would require an amendment application to be approved to allow that to be enlarged beyond the 300.

Petersen said ok, that is what I was getting at.

Nicklason clarified an expansion of the building that would increase the occupancy, it would be required. But if I wanted to add on a kitchen, my kitchen is quite limited, do I need to go through this process if I am not expanding my occupancy?

Johnson added or to cover a patio?

Buitenwerf answered again, that is entirely up to the Commission and the County Board.

Grob said my attitude is creeping elegance is a bad thing and I would propose that this conditional use permit is for operating a bar/restaurant in the current building facility. Any expansion of the current building facility would require applying for the necessary conditional use permit. If you are going to do something, you have something else in mind and all of the factors: noise, visibility, parking, septic, road access, all those kinds of things should be readdressed. If you are going to build a whole new kitchen, that means something else is happening.

Petersen commented my view is we are trying to accommodate you, but we can't anticipate every change you might make in the future. That is the difficulty. The one you just asked about, a kitchen, I don't know if the County Commissioners would have to address that. I don't personally know if that is something that would require an amendment to the CUP or not.

Buitenwerf stated that is entirely dependent on whether or not you would make a condition that would address that in some way, along the line of what Andres was indicating. Whether or not you want to address expansion and how that is allowed or not allowed.

Andres added what Grob has proposed, the verbiage that he used, nothing really can be expanded without coming back. If you are going to build a 15'x20' kitchen, you are going to have all the water appliances and everything. That makes a big difference with the septic that you would possibly have to change anyhow.

Petersen said it is just hard for us to answer those because we don't really know, unless you do have specific plans, it is really hard to give you an answer to something that is abstract at this point.

Nicklason clarified if we are talking about a condition and we have an operating permit for the septic, it seems like we keep coming back to the septic thing, those changes that we would propose in the future would mostly impact the septic system. We already have 300 people there potentially any day of the week. We are really concerned about the load on the septic. My sentiment, I don't have a problem coming back to amend this if I am adding occupancy to my building and adding to that load. If I have those people there already and we are monitoring the septic system, I would prefer to see that I don't need to amend this use to add a kitchen. But that is obviously your decision to make.

Andres commented the only other thing that I would see also, is if you are going to add a kitchen, it is going to change a little bit of your parking too that we have already just amended for the additional parking spaces. I could see it changing that, changing your fire lanes, that sort of thing. Again, it just depends on what you are going to expand. The occupancy is the main thing. You might find the tap room needs more seating, you need a larger space, or you want to cover the patio; we are trying to cover those bases as well.

DeLaHunt asked would you be talking about adding a kitchen inside the existing footprint of the building? If you expand outside of the footprint, it could impact more than just the septic.

Nicklason agreed. I had a plan for a kitchen and we eliminated it because it was far too complicated. I can say that plan was not impacting any of the parking or the existing septic system. It is not that relevant because it is not what we are talking about right now. To facilitate this process, I am not going to worry about it too much. You know how I feel about it, I am trying not to have to keep coming back here doing this as my business changes, but if you feel it is necessary.

Petersen added my feeling is, since your plans aren't definitive there as to what you would do, I think it is really hard to address that. For expediting this process, maybe we should continue with what we do know here and get the conditions put on and get you going, unless you feel differently. It sounds to me like those plans are a bit up in the air yet and from my stand point up here, I think it would be hard to address a 'what if'; hard to contain that in the conditions. If you are good with that, I think we should try to proceed with getting this process done here with what we know. If you have to come back, I don't know any other way to do it without something concrete in front of me that I am looking at to put conditions on and decide things.

Johnson said you are not talking about any restrictions on changing things inside though, of the existing footprint? So if he did have a design to do a new kitchen in that existing footprint, there wouldn't be a problem?

Petersen stated we are already going to be monitoring the flow, to me that takes care of that. So if that were the case, that would be different and we wouldn't have to deal with that.

Grob added we could say "footprint" rather than "changes to the current facility".

Petersen said Buitenwerf it sounds to me like we are leaning towards using your staff proposed conditions here and adding to them, would the way to do that be to make a motion and just bring these into the record with the additions? Is that the process if that is what we want to do?

Buitenwerf agreed. There is nothing saying you can't continue to brainstorm and refine your conditions that you are looking at, and then when you make the motion, recite those additional conditions.

Discussion ensued about creating the Commission's recommended conditions to the conditional use permit.

Grob asked Johnson do you want to address the lighting?

Johnson asked do you have an idea about that Nicklason? Flood lighting to not be intrusive to the neighbors?

Nicklason responded to my knowledge I have not received any complaints about my current lighting, unless you guys know of some. I don't have any plans to add any additional lighting. I have two coach lights that hang off the side of the building and I have a flood light that points down and illuminates my sign on the gable end of my building that faces the highway. I have string lights on the top of the patio. That is the extent of our lighting.

Johnson asked is it dark in your parking lot at night?

Nicklason said my parking lot is illuminated by two parking lot lights that automatically come on, one on my building facing the parking lot and then on my detached garage that faces the field parking, I have another flood light there. Those are all flood lights that are angled toward the ground.

Grob asked there have been no complaints about those?

Nicklason replied not to my knowledge. Unless the Board has heard some.

Johnson said that is fine with me if it is not included.

Andres asked Nicklason do you plan on installing any signs for your taproom?

Nicklason answered currently we have the FireFly sign on the highway and we have the lighted arrow sign and when we are open to the public, not a private event, that sign in lit up to indicate that we are open for business. That is the extent of our signage. I don't have any plans to add any signage.

Grob asked Buitenwerf on the property, he is allowed two signs? There are certain area requirements. So he can't add any more signs than he has? Maybe a little more area, but what he has got is what he can have?

Buitenwerf responded right, he could potentially modify to have two different signs, but the current round sign and the portable sign beneath it, technically called a temporary sign, in this case if it is used on a more permanent basis, I am willing to allow that; I just wouldn't allow an additional portable sign to be placed without it complying with the time duration criteria that apply to them.

Grob said we shouldn't have to make a condition that he has to meet the County Ordinance on signs; that is just overkill.

Johnson asked Nicklason did you read and understand the operating permit conditions for the septic?

Nicklason replied I did. And I am up to the challenge.

Petersen asked Buitenwerf if we were to make a motion now, we would need to read into the record all of these conditions in addition to the two or three that were just added as part of that motion?

Buitenwerf answered since you have not altered the four that were proposed in the staff report, in your motion you can then say as far as conditions, we adopt the four conditions listed in the staff report and then we add an additional two, and then read proposed conditions five and six into the record.

Nicklason asked item four, in speaking with the Fire Marshal's office, I have been given a timeline to get these items remedied and most of them are not a problem. The way that they operate, if you are making progress towards compliance, then we are fine with you operating and at some point they may require a fire watch if we are not in full compliance during operating hours. My only question is, item four, Hubbard County is going to withhold their approval until the Fire Marshals have finalized theirs?

Grob stated that is Buitenwerf's department's call. He issues the permit. If the Fire Marshal does an inspection and asks that before you can operate that you have to do certain things, he is going to look for validation of that, right Buitenwerf? What is your view of what he has to provide?

Buitenwerf replied I understand what Nicklason is getting at, in light of his indicating the Fire Marshal is willing to let him progressively implement the necessary things to meet code, he is wanting to be able to be open during that time. It sounds like the Fire Marshal is ok with that and he is concerned that this condition could be interpreted and applied in a way that would say he has to completely implement all of the code requirements before he can open. I think that is what his question was.

Andres added it is also concerning about the timeline.

Grob asked how would you change it, if you are ok with it from your office's standpoint, how would you change it to read differently? Or is it just in how you would implement it?

Buitenwerf replied that is what I am looking at.

DeLaHunt suggested must comply with the directives of the Minnesota Department of Public Safety?

Andres asked Nicklason what timeline did they give you?

Nicklason answered they didn't come up with a date, and we are still working on what exactly the steps are going to be required. That is my concern; it was a topic of discussion on Thursday with them. We have got events coming in May and he said this comes up all the time and they are not going to shut a business down because of a violation that they

didn't know about or that they are trying to work on. I am on their radar at this point and they have been to my place twice now. They are directly working with me and we are going to get this whole thing resolved.

Discussion ensued about changes in wording to condition four from the staff report.

Petersen asked Buitenwerf if the changes would suffice?

Buitenwerf responded I am comfortable with how it is worded. The only question then would be, for clarification as to the Commission's intent, would it be that you would want something in writing from the Fire Marshal saying that he is allowed to progressively be working on this prior to the operating permit being issued, or not make that a requirement before the operating permit can be granted? Basically, do you want proof that where he is at prior to opening for business is okay with the Fire Marshal's office? If so, requiring that documentation before the operating permit can be issued would be appropriate.

Grob stated if I were you and you had a permit, you would want documentation that he is or has satisfied all of the requirements, right?

Buitenwerf replied it depends. Sometimes conditions need to be satisfied before an operating permit, other times they are just conditions of how the use is allowed to operate once the operating permit is in place. I just want to make sure I would administrate the way that you would want it to be done.

Grob said this gives you no teeth whatsoever to not issue him a permit, the way this is written.

Buitenwerf answered correct. I just want clarity either way as to what your intent is and we can make sure that it is worded accordingly.

Discussion continued about the correct wording for the conditions of the conditional use permit.

Grob commented the issue with the Commissioners as well as with us is, do we only want to be half there and risk safety issues as opposed to being fully compliant? I don't know where you are in that process. It is a Fire Code issue, right? It is not a health issue; the Fire Code is the open issue?

Buitenwerf added I am not aware of any Department of Health issues.

Grob continued what are the current code deficiencies?

Nicklason stated the simple remedies are panic hardware on the doors, which is no big deal. The second gets quite complicated in the fire suppression system, whether it is needed or not. There is no good way to install a fire sprinkler system in that building, but by code it is required. There are allowances in the code for fire separation, fire walls that

could be built, and you can eliminate the need for a fire sprinkler system by fire separation walls. The complexity of putting in a fire sprinkler system in our location, there is no water supply and it is a seasonal use.

Grob said it is a five foot, one inch pipe that is required to feed all of the water you need.

Nicklason responded yes and we have considered trying to connect to city water because the amount of water that is required is quite large.

Johnson replied thousands of gallons of storage tank.

Nicklason added that needs to be drained every year.

Johnson added that can't be dependent on the power of the structure.

Nicklason said so there is a pump and a generator. The city water supply is inadequate and there are not enough gallons because I am on the city limits and Nevis is not going to be improving or expanding their water distribution system anytime soon. So right now it is already lacking in its pressures and volumes where I am at. That is not a good option. The Fire Marshals came and they understand that is not an ideal situation and it is almost counterproductive to put a sprinkler system in the building, however the code is written for structures that are in municipalities and we get what we get where we are at. To answer your question, there is an alarm system that goes along with that, but if I have a sprinkler system, the alarm system isn't needed. We are trying to navigate and try to come up with a solution. We think that we have a solution in that the sprinklers have been eliminated if we can build the separation wall. We are still looking at what that partition looks like and we need fire doors and a fire alarm system that will automatically close doors in the event of a fire. It is complicated and it is not just going to happen in a month or two.

Petersen asked this is a back and forth between you and the Fire Marshal to come up with an alternative solution to the sprinkler system?

Nicklason agreed.

Petersen clarified they are fine with you going ahead and operating. They are not stopping you as you try to come up with the solution.

Nicklason replied correct. They want the alarm system installed as soon as we can. That will be a very large improvement from the basic smoke detectors. Perhaps the easiest way to write that is just that the written documentation from the Fire Marshal must be submitted prior to issuing a permit.

Johnson asked what is the intent of condition number five? Are we going to say that he can't have a conditional use permit if he doesn't get that done, or do we leave it in the State's hands to deal with the fire problem?

Grob stated they will reach some compromise situation, and if they can't, you shouldn't probably be operating.

Nicklason responded if I am reading it correctly, you would want a document from the Fire Marshal's office stating that they are satisfied with the current status of the structure and that there is a plan to bring it into full compliance. I would certainly think that the Fire Marshal would issue a document stating such, based on my conversation with him on Thursday.

Buitenwerf added I have been in frequent contact with the Fire Marshal's staff and I would anticipate that they wouldn't have any reluctance in giving us something along this line.

Petersen asked does anyone else have any other conditions to look at? Are we ready to make a motion on this?

Discussion ensued about the proper wording to make a motion with the conditions.

Grob made a motion to recommend to the County Board of Commissioners that the conditional use application be approved using staff conditions 1, 2, and 3 and the Planning Commission providing conditions 4, 5, and 6 and adopting the staff report findings of fact as presented.

Andres seconded the motion that carried unanimously 4-0.

### **Conditions**

1. This conditional use permit (CUP) is for the operation of the entire premises as one restaurant/bar 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. As the existing septic system servicing the structure in which the existing event center use and this proposed restaurant/bar use is undersized according to the standard SSTS Rules design standards, a second system design option allowed by said Rules will be utilized to determine the system's required design/sizing by requiring an operating permit (OP) on the system. The OP will have the following minimum conditions with any additional conditions determined by the Environmental Services Director (ESD):
  - a. The initial permit will be valid for one year. Permit length thereafter will be determined by the ESD based on system performance and other factors.
  - b. A grease trap must be installed in the event center/restaurant/bar structure or a grease tank must be installed and plumbed in between the structure and first septic tank.
  - c. Biochemical oxygen demand (BOD) and total suspended solids (TSS) samples will be collected during the second weekend in the months of June, July, August, and September by a licensed service provider and lab results sent to the ESD as soon as they are available.
  - d. A water meter must be installed in the event center/restaurant/bar structure (if not already present) so that all water usage entering the septic system servicing the



- structure runs through the meter with daily photos taken of the meter reading and submitted weekly by email to the ESD.
- e. The effluent filters placed in the existing septic tanks during installation must remain in effective use.
  - f. If the measured flow data from the initial year of the restaurant/bar use's operation exceeds the system's 2000 gpd sizing, the system will need to be upgraded to appropriate sizing. Also, if the BOD/TSS reports show high strength waste, system component (e.g. pretreatment) and or sizing adjustments must be implemented to lower waste strength to proper levels.
3. The existing driveway approaches on State Highway 34 located just north of the event center/Taproom structure and County 13 located east of said structure as shown on the application site plan sketch are the only two means by which vehicles related to this use (i.e. customers, vendors, etc.) may enter/exit the property.
  4. The use must be brought into compliance with the State Fire Code according to directives/timelines from the Minnesota Department of Public Safety, State Fire Marshal's Division. Written documentation from the State Fire Marshal's Division that it is satisfied with the current status of the structure and plan for bringing it into full compliance with the Code must be submitted to the Hubbard County Environmental Services Department prior to the operating permit being issued.
  5. Any outdoor bar/restaurant/music/or other activity must cease by 11:00 p.m. daily.
  6. This CUP is for operating the restaurant/bar use in the current facility. Any footprint expansion of the facility will require applying for the appropriate CUP amendment.

### **Findings of Fact**

1. Is the requested use consistent with public health, safety, and welfare?  
YES ( X ) NO ( )

Why or why not? The property is located along a highly traveled State highway and abuts the City of Nevis. It is located in an area of mixed property uses ranging from lakeshore residential on Lake Belletaine to commercial business property along Highway 34 to agricultural properties/uses on the east side of this property. An event center use has been occurring on this property since 2014 without incident regarding compatibility with the area or safety issues and it generates a higher-intensity use of the property than what is proposed with the restaurant/bar use. The property's location is well suited to the proposed use.

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 use will occur within the existing event center structure and the immediately surrounding outdoor area, and utilize the existing driveways/parking areas. No grading or vegetative alteration work is proposed as part of the use. The soil on the property is sandy and thus precipitation infiltrates the ground readily. The property lies ~425' from Lake Belletaine and is separated from it by the Highway 34 corridor which

acts as a berm between the property and the lake. There is no evidence that the property has any stormwater-related pollution issues currently. No issues are anticipated as the existing event center use generates much greater traffic in a smaller time window than the proposed restaurant/bar use.

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? The use will occur in the existing event center structure and utilize existing access roads and parking areas. No changes to the property's terrain or vegetative cover are proposed. The soil on the property is sandy and thus allows precipitation to infiltrate the ground readily. The existing roads/parking areas are not paved. The area surrounding the structure and parking area is well vegetated in perennial grass cover with a small amount of evergreen trees.

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? Hubbard County does not have any FEMA designated floodplains.

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? The proposed use does not involve any grading or vegetative cover disturbance as it will utilize and largely occur within the existing event center structure and the immediately surrounding outdoor area. Permanent vegetation covers the ground around the structure and driveways/parking areas. The soil on the property is sandy and thus precipitation infiltrates the ground readily which reduces any erosion potential.

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

YES ( X ) NO ( )

Why or why not? The property fronts State Highway 34 which is a heavily traveled corridor and also has an access on County 13 which is a two-lane paved road. The Minnesota Department of Transportation has reviewed the use and found the existing approach on Highway 34 to be satisfactory and sufficient for providing safe ingress/egress to the property without need of a turn lane. These two accesses have been in use since 2014 for the event center use of this property which generates a greater volume of traffic in a given amount of time than the proposed restaurant/bar use.

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

YES ( X ) NO ( )

Why or why not? The use will occur in an existing structure located in the northwest corner of this ~23 ac. property. State Highway 34, a heavily traveled corridor, is nearest

the structure and runs along the northwest side of the property. Small riparian and nonriparian residential lots lie on the other side of Highway 34 between this property and Lake Belletaine. The north side of the property is bordered by a ~6 ac. residential tract. County 13 runs along the property's east boundary. Two residences and an agricultural field lie across County 13 to the northeast and east of the property. A 70 ac. residential /agricultural property is located southeast of the property. A 15+ ac. residential property lies south of the property. To the west of the property is a ~1.8 ac. residential property whose residence is closest to the proposed use structure at ~240'. Southwest of the property is a large ~39 ac. tract on which is located a commercial structure construction business of which the applicant is a part. The feel of the area is thus one of a mixture of uses ranging from agriculture to commercial to lakeshore residential with a main highway corridor running through it next to a small municipality. The proposed use thus fits into this mixed use area.

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

YES ( X ) NO ( )

Why or why not? The property adjoins the Nevis city limits and fronts State Highway 34 and is less than a ¼ mile from the Lake Belletaine public access. Much of Hubbard County's land area is located in shoreland due to the number, location, and size of lakes and rivers within it. This property is located along a heavily traveled state highway right next to a small community of around 400 residents. There are other commercial businesses scattered along Highway 34 on either side of this property. Given this character of the area, it is reasonable to have a restaurant/bar on this backlot located ~430' from the lake to service the residents in Nevis and residing on the nearby lake lots.

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 existing septic system was installed in 2014 and sized appropriately to handle the existing event center use. This system will be placed under an operating permit to allow it to also service the proposed restaurant/bar use as the two uses are said to not occur at the same time in the structure. If the monitoring data required to be provided per the operating permit shows the existing system must be modified to meet State Rule and County Ordinance requirements, the necessary upgrades will be required to be installed.

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? The structure in which the restaurant/bar use will occur is ~430' from the nearest lake (Belletaine) and separated from the lake by State Highway 34, a row of residential, riparian lots, and a row of residential, nonriparian backlots. The structure also sits ~25' higher in elevation than the referenced lake and there is ample evergreen and deciduous mature tree cover separating the two along with multiple residences and their related outbuildings. The structure thus is not visible from the lake. No portion

of the property lies within the shore impact zone of Lake Belletaine and thus it is not possible for the property to violate Section 901.

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

YES ( X ) NO ( )

Why or why not? The structure in which the use will occur is serviced by an existing well capable of supporting the existing event center use as well as the proposed restaurant/bar use. There is an existing septic system installed in 2014 that services the event center use and that will service the proposed restaurant/bar use under an operating permit. If more space is needed for septic system purposes in the future, there is ample room possessing suitable soil on the ~23 ac. property for such.

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 use is located on a non-riparian lot that is separated from the nearest lake (Belletaine) by State Highway 34 and other properties. This restaurant/bar use will not generate or involve any watercraft as it does not abut a waterbody nor does it have legal access to a waterbody.

#### **Board of Adjustment:**

**Approval of Minutes:** January 28, 2019

Andres made a motion to approve the minutes as presented.

Petersen seconded the motion that carried unanimously 4 – 0.

**Old Business:** None.

**New Business:** None.

#### **Miscellaneous:**

##### **Communications:**

Grob stated I won't be here in March, but what is on the agenda?

Buitenwerf said that remains to be seen. Today was the application deadline day. We have a handful of applications that were submitted. Only one of them was complete so it is a matter of, in the next few days before the agenda has to be set, if they can get what is outstanding in their applications submitted. There are a few applications I have not had a chance to look at yet. One would be Foxy's outdoor use. That would potentially be on the agenda. We have a conditional use permit that was accepted for taking the Budget Exteriors Business on 34, midway between Nevis and Park Rapids, and converting that to an outdoor trailers and other licensable items retail shop use. Another CUP for the ropes

course issue that we have been dealing with, with the Ordinance Amendment, but that application has some missing pieces to it yet so we will see if we can get those from the applicant and then two or three other variance applications. It will be potentially a larger agenda. It will be somewhere in between one and a half dozen.

Johnson asked what is the meeting date for March?

Buitenwerf replied the same as today, the 25<sup>th</sup>.

Grob asked what about replacement, has VanKempen made any progress?

Buitenwerf answered I met with Commissioner VanKempen last week and he said he is continuing to reach out to people that he thinks of but so far he is coming up zeros. He still had some other names that he was going to be contacting to see if they would be interested and be able to serve.

Buitenwerf continued I think we touched on it at the lot viewal, but as far as the Ordinance Amendment, the Board is scheduled on their next work session in March to visit with Scott Anderson by phone to talk through the two options that they are looking at as far as a set of standards for how existing uses can incorporate an outdoor rec use and then another set of standards for a standalone new bare piece of land proposal for that type of use. So that is where that issue is at.

**Adjournment:**

Grob made the motion to adjourn.

Andres seconded the motion.

The motion carried unanimously 4 – 0.

The meeting adjourned at 7:42 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary