

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, January 28, 2019

Vice Chair 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 ex-officio Planning Commission member and County Board Vice-Chair Char Christenson.

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.

Election of Officers: Chair, Vice-Chair and Secretary

Grob made a motion to nominate Mark Petersen as Chair for 2019.

Andres seconded the motion that carried unanimously 4-0.

Johnson made a motion to nominate Ken Grob as Vice-Chair for 2019.

Andres seconded the motion that carried unanimously 4-0.

Andres made a motion to nominate Tim Johnson as Secretary for 2019.

Petersen seconded the motion that carried unanimously 4-0.

Board of Adjustment:

Approval of Minutes: December 17, 2018.

Grob made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 4-0.

Old Business: None.

New Business:

[Variance Application 44-V-18 by Douglas and Donnette Taylor](#): Lots 1 and 2, Block 1, Bonn-Terre, Section 15, Township 141, Range 34, Lake Emma Township on Pickerel Lake, a recreational development lake. Parcel 16.70.00100. Applicants are requesting an after-the-fact variance from Section 901 of the Shoreland Management Ordinance to allow an area within the shore impact zone to be converted from vegetative cover to a sand beach.

Trent Wilcox, 120 Main Ave. North, Park Rapids, MN, attorney representing Doug and Donnette Taylor, presented the application.

Wilcox stated the basic problem is that there is an existing sand beach that was put in at some point prior to the Taylors purchasing this property. The fact that this has suddenly

shown up and the enforcement was sudden. They simply were not aware of this when they purchased the property in January of 2014. The prior owner, as I understand it, that family had the property since 2011. The property has been occupied since 1993 or 1998. My understanding is that prior to the sale of the property to my clients, the prior owner had done some improvements to the beach that existed there. I don't know when that beach was actually put in. The property was occupied substantially prior to that owner. Environmental Services had gotten in touch with the prior owner in 2013 and followed up. My client unfortunately bought this unaware. Once he found out about the issue, he contacted his real estate agent and gave him an authorization to act on his behalf. That was early in 2014. He didn't hear anything further and there was a real estate agent who was supposed to be acting on his behalf, he assumed it had been taken care of and there was no problem. The issue wasn't taken care of in a purchase agreement, but an agreement afterwards. For some inexplicable reason, the seller had not continued forward with his application, which was deemed inadequate and rejected on those grounds with some instructions to fix the application. Apparently he just dropped it at that point. This sat for four years with my client assuming everything was fine. They have been using the beach; his grandkids have been using the beach. It is a sand beach. I asked my client if there was another beach, because the report from Environmental Services references another beach. He replied it was all weeds and bushes there, so reference to another beach, he does not know what that is about. He is not trying to double the size of his beach. He just wants his beach that he has had since he purchased the property. He did mention that there was a 2008 MLS listing sheet that showed a picture of the beach and that shows the sandy patch in the exact same position. My client has not added to it. The previous owner said they put in five cubic yards of sand and no more than that. My client denies that there is another beach there. As far as working through this, he would like to keep the beach that is there. I don't think there are any other violations on the property. He just got put in a situation that he didn't know existed until after he purchased the property. I would like to go out there and see if there is sand underneath these bushes and grass, he says there is nothing there that would indicate a prior beach. Obviously right now we cannot inspect and see that. I just saw it referenced for the first time today, when I picked the report from Environmental Services. Someone who is looking to buy this property down the road would probably appreciate a beach; it may help the resell value. Our request is to approve this variance and allow him to have the existing beach.

Grob asked your client purchased the property when?

Wilcox replied January of 2014.

Grob asked Buitenwerf was there an open violation identified before that period of time?

Buitenwerf answered yes, the violation was brought to the department's attention in 2013.

Grob asked Wilcox is there any reason why your client, who used a lawyer to help with closing, didn't take the opportunity to check if there were any outstanding violations, which would be a standard thing that legal counsel would do.

Wilcox replied you are right on that, I have done a few title opinions over the years, there was an abstract title opinion provided that does not mention any outstanding violations.

Grob stated you have to go to Environmental Services in general to get that.

Wilcox added as an attorney, on a title opinion, I am actually not allowed to do my own investigations. I am supposed to go through the abstract and I am not allowed to go outside of that abstract to do an independent investigation. If I see something that appears on an abstract, then what I do is I draw attention to that and I tell the parties I can give a recommendation, you must get a Certificate of Trust filed or something. I tell them there is something wrong here, you should investigate and rectify this title issue.

Grob continued it seems to me then the lawyer would recommend that to anybody who is closing on a piece of property. Buitenwerf, can you give us your view of the sequence of events, this has been ongoing now for four or five years in terms of repeated letters and contacts, as to why something wasn't done to correct it?

Buitenwerf said the staff report gives the chronology of the events from the beginning to when it was sent to the County Attorney's office. The current owner was given notice in January 2014, as soon as our Department became aware of the ownership changing for the property, so that they would be aware of the violation and the options for bringing it into compliance. They were party to the variance application submitted in 2014 that was deemed incomplete. That notice of incomplete letter was sent to the Taylors as well as the prior owners and then nothing happened thereafter as far as submittal of a subsequent application or the missing elements of that incomplete application and it pretty much sat that way for four years until the County Attorney's office was able to pick up the matter again and contact the owners and say this matter is still unresolved.

Grob asked Wilcox, did your client indicate why they did not try to correct the violation and the recommendations that were provided?

Wilcox replied when they received notice of the initial violation, that is when my client went to their real estate agent and said that it was undisclosed. The second notice that Buitenwerf is mentioning here, as far as the deficiency in application, the Taylors did not get that. They were unaware of the failings of the initial application. I have talked to Doug about it and he doesn't know why they didn't get it. He did not get the deficiency; otherwise he would have done something. He just assumed they had a professional involved, a real estate agent who has been given the authorization to act, and that should have been followed up on at some point. From Doug's point of view, he did exactly what he thought he was supposed to do. He didn't find out until 2018 that now he's got a mess.

Petersen said I noticed on the application that your client filled out, in the box for an explanation for his request for the variance, he said, "when notified I instructed the seller to take care of the problem, and we had no reason to suspect he had not." I don't know if you can answer to that, but was his expectation of taking care of the problem? You could do the remediation that the County was looking for; you could expect that a variance had been approved. He really leaves it open ended there. I am wondering what his expectation was there?

Wilcox responded I think in his mind there was a more simple system in process. He thought there has to be a variance and I have told the real estate agent that I am upset over this and you need to take care of this. I think he thinks it was simpler. I think he thought the real estate agent talks to the seller, letting them know they have a nondisclosure issue and to send in a variance application to fix it. It is obviously more complex than that. The Taylors have acted in good faith here. You purchase a spot on a lake and you just want to go there and relax. Now he is dealing with this.

Petersen asked Buitenwerf to pull up a picture of the lakeshore. You had stated earlier that your client is looking at this as one beach. The picture shows here, as you are looking at the beach from the water, the area to the right of the dock is legal, nonconforming, but legal?

Buitenwerf replied correct.

Petersen continued it is the area to the left. We really are talking about two separate areas here, just for the record, so we understand. We are not talking about the whole thing; we are talking about the area to the left of the dock as you are viewing it from the water.

Buitenwerf replied correct.

Grob referenced a picture. That is what is referred to as the other beach.

Wilcox said so that is the other beach? I haven't seen that picture. Can you enlarge that?

Grob said that is a 2013 picture. I don't know what it looks like today because it is winter.

Wilcox stated he has told me that it is overgrown with brush and grass at this point on that side of the dock. That is 2013?

Petersen clarified just so you understand from where we are sitting on the Board, the section it is showing on the right, we are not contending anything about that section. It is the section to the left if you are viewing it from the water.

Wilcox asked do we have any more recent pictures of that area?

Johnson asked Buitenwerf did you know approximately what the lake level was in relationship to the ordinary high water mark at the time of this picture?

Buitenwerf replied no I don't.

Wilcox asked is that set up as an ice break there?

Petersen said I am not sure what your question is pertaining to?

Wilcox asked the non-conforming but legal side of the dock, I don't know if that is set up as an ice break with that rock? Either way Mr. Taylor is telling me that is overgrown at this point.

Grob stated very clearly this is by the Ordinance a very egregious violation of the Ordinance. To destroy the vegetation in the shore impact zone and create a beach are clearly not allowed by our County Ordinance. I don't quite understand five years of inaction, but clearly that retaining wall and that sand that is creating that beach, are a serious violation.

Wilcox asked how long would that have to have been there in existence, to be grandfathered in?

Grob said I believe prior to the Ordinance. 1971. He would have to prove that it existed since before 1971 for it to be nonconforming but legal.

Wilcox added I don't think anybody occupied that property prior to 1993.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Grob asked Buitenwerf I think your department has made recommendations as to what the remedial actions should be. Can you clarify that, if we choose to deny this variance request, what has to be done? Does the sand have to be removed and then black dirt and vegetation planted? What is your recommended remedial action if we choose to deny this?

Buitenwerf said the sand would need to be removed and then hopefully once removed; we would have to assess what the soil conditions are beneath that to see if they have been altered. If they haven't and that is natural, it would be a matter of getting vegetation reestablished in that area.

Johnson asked that would only be to the ordinary high water mark. So if that was up the shoreline two feet, they would only have to re-vegetate to the edge of that and leave the sand if the lake level is lower than ordinary high water?

Buitenwerf replied correct, they would have to establish vegetation to wherever the ordinary high is located.

Grob made a motion to deny the application and accept the staff report findings of fact for questions 1-3 and question 5 while providing an answer for question 4.

Petersen seconded the motion that carried unanimously 4-0.

Findings of Fact

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

Yes () No (X)

Why or why not? The Shoreland Management Ordinance does not allow a sand beach area devoid of vegetation to be located in the shore impact zone. There is an

existing, legal, nonconforming 9' x 22' sand beach area already on the property. Allowing an additional 16' x 24' beach expansion area would thus not be in harmony with the ordinance's intent. The application also provides no documentation of a practical difficulty in complying with the ordinance or explanation of why the applicants need to double the beach's size. Doubling the beach's width via this expansion would double the shoreline's exposure to erosion potential from wave action because the area would be void of the protective vegetative cover that holds the soil in place and protects the shoreline from erosion which is the intent of the ordinance.

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

Yes () No (X)

Why or why not? The ordinance does not allow sand beaches to be located in the shore impact zone. There is an existing 9' deep x 22' wide sand beach already on the property. Doubling the size of this beach via the requested expansion would not be a reasonable use of the property as it would be contrary to the ordinance's intent and the application provides no reasoning as to why the applicants feel the beach's size needs to be doubled.

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 () No (X)

Why or why not? The need for the variance is due to the prior owners of the property admitting they illegally expanded the beach in 2012. The ordinance does not allow sand beaches in the shore impact zone. A shoreline recreational use area is allowed by permit, but it must be fully vegetated. The application provides no reasoning as to why a grass covered surface will not work and why a sand covered surface is required.

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

Yes () No (X)

Why or why not? It is hard to tell this time of year. The applicant has not provided any kind of information regarding this. We can't view it and he has not proven that it is consistent with the essential character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The application does not state any practical difficulty in complying with the ordinance.

Variance Application 45-V-18 by Steve Thompson: Part of Government Lot 1, Section 12, Township 140, Range 34, Henrietta Township on Boulder Lake, a recreational development lake. Parcel 13.12.00600. Applicant is seeking a variance from Sections 502.2 and 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure that would make the structure more nonconforming by not complying with the 50' road right-of-way setback.

Steve Thompson, 21072 County 18, Nevis, MN, presented the application.

Thompson stated we had a previous variance that was approved and what we want to do now is to increase the size of the addition on the west side. Originally it was 15'x25' and we want to increase it to 20'x40' to add some additional space for a utility room, laundry, master bath and master bedroom. Originally I think I wrote down the wrong measurement. We wanted 15'x35' but then in talking to my builder, they said let's just try to get it as big as possible. That's where we're at, increasing that size on the west side addition.

Grob clarified the issue here is that there is supposed to be a 50' setback from the road right-of-way. The original variance we allowed him to encroach to within 19' and the new proposal puts it within 4' of the right-of-way. There is not an impervious surface issue; the encroachment on the right-of-way is the issue. Could you explain what you originally intended to be in that addition and what you intend to be in it now?

Thompson said it was going to be just a master bedroom with a bath. We had a utility room and a laundry room in a different area and the way it all laid out, it didn't work. We decided to try to get this larger so we can add those on that new addition. The way everything laid out, it would make more sense to do it this way if possible.

Grob asked the original application included the approved addition and a garage, but the building permit that was pulled in October doesn't mention the garage at all.

Thompson replied we were looking at moving the garage over to the west side of that, but when I went to apply with that variance, it was so close to the road that Buitenwerf wouldn't accept it. He said it was a state statute that you can't be within a certain distance. We took that out and we were going to put the garage back to where it was. That is why we never pulled it. We were going to try to move the garage, so when you drive in, that shared driveway is straight in to the garage rather than turning in towards that. That is why he didn't pull the permit; he was waiting to see if we were going to be able to do a variance to place this garage in a different area.

Grob asked the building permit does not allow you to build that garage?

Thompson answered right now yes. He just pulled the permit to build the living room addition on the east side.

Petersen asked Buitenwerf was the previous variance that we approved earlier, the setback from the right-of-way was 19', is that correct?

Buitenwerf replied I would have to do some digging to see.

Petersen continued at this point, we are looking at 4' as the current request?

Grob added that is what I understand from the numbers.

Andres asked you have proposed that it is going to be two-story on the application. In that two-story, what is going to be in the upper levels?

Thompson answered it is a lofted bedroom and we are going to put a bathroom upstairs to go along with that bedroom that is already there. It is just going to be a bathroom and an attic space.

Andres asked is it the same above the living room?

Thompson replied that is vaulted. It is open.

Buitenwerf addressed Petersen, the answer to your question is the August 2018 Variance granted an 11' right-of-way setback for the east addition where the garage is to be located; I don't know that we have a good measurement on the west addition. I can keep looking at that if you would like.

Petersen said so it is 11'?

Buitenwerf clarified that was to the garage.

Grob added I said 19' based on the fact that the current one is 4'. He has added 15' to the structure. That is where I came up with the 19'. Not looking at the garage but looking at the addition.

Andres asked you mentioned that you relocated the well position, correct?

Thompson answered we didn't relocate the well, we relocated the pressure tank. Moved it inside under the crawl space so it was better for winter and insulated under there. The well is in the same spot.

Andres asked is it still going to meet the 3' setback that is required?

Thompson replied yes.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Johnson added I asked you at the lot viewal about the water in that corner between the existing and addition, did you ever come up with a remedy for that?

Thompson asked for clarification.

Johnson explained to get rid of the runoff that is trapped in that corner?

Thompson asked as far as running off the building itself?

Johnson said the whole hillside goes to that corner.

Thompson answered the garage and everything will be landscaped. The garage is actually going to be higher. I don't know how all of that is going to flow, but there will be some adjustment to that.

Johnson added that is what I am concerned about myself because I believe there would be someone coming back with another variance to try to cut into a hill to get drainage around that.

Petersen asked I don't know if you have a builder now that you are working with and going to Johnson's question, if it has been discussed at all about the grade issue there.

Thompson replied it has. I wish he was here because he has some drainage ideas for the driveway to funnel it around the garage. There has been conversation about that. If he was here I know he could explain it.

Andres added I think what Johnson is trying to convey is that you are making a U-shaped house and when we were there, there is so much slope. When did you purchase the property?

Thompson answered in 1996.

Andres continued so you have been there several years. How is the drainage now with heavy downpours, on that side of the house, not the garage side.

Thompson answered there is no problem there; there has never been a problem there.

Andres added so you don't feel that the U-shape is going to cause any issues?

Thompson replied I don't think so. There has never been a problem with water on that side of the house. It has mainly been where the driveway is and people park on the east side and it would flow around, but that is going to be built up. My neighbors actually built up their driveway so there isn't that flow that comes around the corner like it used to. I don't think it is going to be an issue.

Petersen asked Johnson could you tell me again what your concern was for the future if we allow this to happen?

Johnson explained my concern was if we allow that in its location, he is going to have runoff and snow melt when the ground is frozen, when we warm up, he is going to have a bunch of water in that corner. How else would we deal with it, other than creating something for runoff around it? If there was an addition coming out, how does he go around that without going in that hill?

Petersen asked how would we be involved at that point?

Johnson said my concern is that if we approve this, he is going to have to come back for another variance to remedy that.

Thompson asked what would the difference be from the previously approved one? That was sticking out there too?

Johnson replied you had more room between the base of that hill and the addition. It is close now, really close.

Petersen said I guess from my standpoint, I am looking at that 4' from the right-of-way as getting awful close. Since the Ordinance originally starts at 50', I thought we were at 19' and now we are down to 4'. Personally speaking, I am not real comfortable with going that close and infringing that much on the right-of-way setback.

Andres added I feel the same, when we were at the lot viewal, requesting an additional 15', which puts you at that 4' setback there. It is extremely close, especially on that curve right there on County 18.

Johnson made a motion to deny the application and accept the staff report findings of fact.

Petersen seconded the motion that carried unanimously 4-0.

Findings of Fact

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

Yes () No (X)

Why or why not? Having a house 4' from the edge of a county road right-of-way where the house would lie on the inside of the curve at the base of a steep hill would be too susceptible to vehicles on the road sliding off the road in poor winter conditions down the hill and hitting the house. The lot is only ~146' deep at its deepest point. The proposed additions would run 40' and 44' deep which is the opposite of what the lot's size/shape best supports. The two proposed additions make up 1,680 sq. ft. of footprint while the existing cabin is 740 sq. ft. in size – thus making it seem like a totally new structure that could be designed to maximize its ability to best utilize the lot makes more sense than the current proposal.

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

Yes () No (X)

Why or why not? The scale of the proposed additions is not reasonable for the lot's depth and usable space constraints. The existing 740 sq. ft. cabin is the size of residence suited to the lot. The proposed finished structure would be 2,420 sq. ft. in footprint and only 4' from the edge of the road ROW on the downhill side of the

ROW and at least 8-10' in elevation below the road surface. The proposed structure is too large for what the lot is reasonably and safely able to support.

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 100' OHW and 50' road ROW setbacks overlap by at least 20-25' on this lot. The house is located on the deepest portion of the lot which is still only ~146'. The west two-thirds of the lot averages ~45' deep. There is no way to do anything on this lot without a variance of some kind.

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

Yes (X) No ()

Why or why not? The locality is made up of seasonal single family residences on the riparian lots and year-round single family residences on the backlots located on the south side of County 18. The neighboring riparian lots share this lot's lack of depth issue as they are all sandwiched between County 18 and the lake. The homes on the two lots to the east are located at approximately 20-25' OHW setbacks and are about the same size as the existing home on this lot. The next two lake homes to the east are located at OHW setbacks similar to that of the house on this lot and are larger in footprint – similar to that proposed in this variance application. The nearest lake home to the west is ~580' feet away. The homes on the backlots on the south side of County 18 are generally much larger than this house would be if the requested additions are constructed, set back ~130' from the road, and well screened by forested vegetation. This all said, the proposed additions will likely not alter the locality's character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is due to the lot being ~146' deep at its deepest point and the 100' OHW and 50' road ROW setbacks overlapping on the entire lot.

Planning Commission:

Approval of Minutes: December 17, 2018.

Grob made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 4-0.

Old Business: None.

New Business:

Minor Subdivision Application Larry and Kathy Lueck: Part of the Northeast Quarter of Section 8, Township 140, Range 35, Todd Township, Parcel 27.08.00120. Applicant is requesting to subdivide 36.3 acres into 6 tracts.

Eric Landstrom, realtor, presented the application.

Landstrom said Larry has got an irregular parcel, and he is going through the process to put in a road and then condemn the road back into the County. I believe Buitenwerf's office was out there on the 23rd or the 24th. We had it plowed so you could get in there and take pictures. You can see the road heads south and immediately heads west and then you have a turn around there. This is all properly ditched and crowned and surfaced with Class 5. The road should be good to go for the County to take care of. We have got these irregular lots. I have got six deeds and the remainder, the tiny portion that we couldn't figure out what to do with, to stay with Larry and Kathy Lueck. I have got those documents ready to go here along with the County recording fees. As far as I know we are on track and we have satisfied everybody's requirements.

Grob asked has the township committed to adopting that road as a township road?

Landstrom replied yes.

Grob asked is there any risk in that, because I think if I looked at the minutes of the meeting, one of the township supervisors voted against it. Is there any possibility that might not happen?

Landstrom answered I have not heard of any push back. As far as I know this road is 100% in compliance with the requirements for the County. As far as I know it has been inspected.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Grob made a motion to approve the minor subdivision application with the condition that if Todd Township does not adopt the road, the necessary 66' wide ingress and egress easements for the road right-of-way are conveyed with the tracts when they are sold.

Johnson seconded the motion that carried unanimously 4-0.

Conditional Use Permit 2-CU-14 Amendment Application 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 to amend conditions 7 and 10 of Conditional Use Permit 2-CU-14.

Brent Nicklason, 25275 State Highway 34, Nevis, MN, presented the application.

Nicklason stated in 2014 we got an approved conditional use permit to operate an event center at the parcel. At that time we didn't really know what our business was going to look like. We had 10 conditions associated with that permit. After four years of operating our business, we have found what works and what doesn't. We just have a couple of changes. One to our parking and the other is to a vegetative buffer. Both of which were part of the original permit. With respect to the parking, our existing parking lot is out in the field and it works great; however, up by the building we have a natural parking lot and people are always parking there. Anywhere you go you want to park as close as possible to whatever you are doing. That is human nature. We have put up "No Parking" signs and tried to get people to not park in certain places, but it is a challenge. It is nice to have parking up there. There is really no reason that we couldn't have parking up there, it was just a miss in the foresight of the original permit application. Do you want me to stick with that first, the parking, or do you want me to go to the second item?

Grob replied I think we should do them separately.

Petersen said do you want to address this issue first, Grob?

Grob added I am just suggesting we deal with the parking and approve or disapprove and then move on to the other one. There may be different reasoning for approval or not.

The Board agrees.

Grob states I am looking for Exhibit A in the packet, it is referenced. I have a drawing here and that shows precisely where those parking spaces are to go.

Nicklason replied there should be a site map, or a picture, from the County website in the packet.

Grob said it is not this one; it is another one that shows red parking spots. If we are modifying the parking, we need to reference some kind of drawing or exhibit. I don't know what this exhibit is. His reference is Exhibit A, but I don't see it written on here any place.

Buitenwerf added I don't see that it does have any label on it, but not to say that you couldn't use this label and then you could certainly add to it and say we will mark it as Exhibit A.

Grob continued that is what I would like to do, because the way that we are going to suggest changing Condition 7, which is the parking, we are going to want to reference something and I would like to reference this drawing.

Andres asked you mentioned during lot viewal that people are parking anywhere and everywhere and you have tried multiple times to put "No Parking" signs up. What is the MN Fire Marshal Code against parking right by the building? Do you have people parking right by the doors?

Nicklason responded we have an unloading zone sign and people are pretty good about unloading things there and then they go and park. They are parking in that parking lot, and so we will probably add signs in each of these locations.

Andres said that was my next question, how are you going to designate this? Are you going to have bumpers that they are going to park up to? I didn't know how you are going to designate each stall. You have it pictured well on this, but how are you going to actually do it?

Nicklason answered on the one with the fence, I have the two handicapped signs and I can do more of those with a fence like that.

Andres replied so what you are currently saying right now, you have the unloading zone, but your patrons aren't parking up close to the building. Where are they parking?

Nicklason said they are parking in those locations. That circle is always maintained and once those spots are filled, people will go down to park in the field. The field parking is used all the time at every event after that top lot gets full.

Johnson asked on the picture that Grob is referring to, would all those sites meet that 9'x20' then?

Nicklason answered yes they do.

Petersen clarified are you willing to use signage to delineate each individual spot?

Nicklason said yes or a curb if that works. Ideally, my wife and I have had conversations, one of the things that we don't want is to appear unwelcoming and have "No Parking" signs all over the place. If a parking sign is required in front of every spot, or maybe it is a curb. We're trying to remain more natural without a bunch of signs.

Johnson added it looks like the trees dictate where people go anyway.

Nicklason agreed. It is kind of a natural spot and people pull in there. It may require a couple of "No Parking" signs in a few spots where we won't have parking now. Now that we have a parking plan we can put up a few key "No Parking" signs and then the balance is parking spots.

Andres said just another note, by having those spaces, the 9'x20', is that still going to leave enough room for fire department access?

Nicklason answered yes. There is access around all sides of the building.

Andres asked by Fire Code are you supposed to have any parking by the building? You said that your customers aren't. How does Fire Code work with parking close to the building when they unload, that is acceptable?

Nicklason replied I guess I don't know exactly what the Fire Code says.

Andres clarified like a fire lane.

Nicklason added the only problem I see, there is complete access, but on the picture there is a little shed off the main barn and there is a parking space right up to that. Maybe remove that parking spot there to maintain that drive, that way there is access all the time to all areas of the building. I drew that out with the measuring tool on the County website, it is only as accurate as the program is. When I drew it out for you guys for the lot viewal, I was able to get four spots directly north of the barn where there is currently three shown. And I think I had three in the next lot over where there are only two shown. So actually I had marked out seventeen or eighteen spots. If we remove those two or one that we are talking about blocking that fire lane, if we remove those two, there are still sixteen viable parking lots. I don't know if you want me to resubmit that Exhibit A as labeled such.

Grob said I think we need to label it as Exhibit B, because there is an Exhibit A in the back that has to do with the buffers.

Petersen asked Buitenwerf if he were to propose changing this evening, would we want this drawing redone, if we are approving this, so that we have something here that we could memorialize, as it's going to be, so that if there is any question in the future about what might get done versus what we approved?

Buitenwerf replied yes, if the Commission would be entertaining those changes, it would be good to get that sketch updated or a different sketch that would reflect the discussion.

Petersen asked if we were going to eliminate that one spot next to the building, and you were going to place it somewhere else, we would like to see this drawing amended so we have something black and white that we are approving here.

Grob asked for clarification on what is being proposed with the parking spots.

Petersen explained the changes.

Johnson asked can we just designate a fire lane around the building of so many feet?

Grob said we could make a motion and then he would be required to update the drawing for Buitenwerf. If we call this Exhibit B and we said we approve the new parking plan subject to the parking spot closest to the building on the east side be removed and be placed on the north side of the driveway and the applicant is required to produce a new drawing reflecting that?

Petersen asked is that allowable Buitenwerf?

Buitenwerf explained that is fine, but before the Commission starts entertaining ideas as to motions, I think it important that we solicit any public comment on the application.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres added I agree it would be nice to have customer parking up close to your building, for your customers and patrons. I think this is something worth pushing forward.

Petersen asked when I was out there; obviously it was snow covered, what is your surface there? Is your parking area the same as where you drive?

Nicklason replied it is exactly as the picture shows. It is grass, the parking spots are grass and the whole parking lot and drive is Class 5.

Petersen asked is that how you are intending to keep it?

Nicklason answered yes.

Petersen asked Buitenwerf with Grob's recommendation that we deal with these independently, we would need to make a motion on this item separately and develop our own findings of fact here and then assuming whether we approve or deny, then we could move on to the next item?

Buitenwerf agrees.

Grob made a motion to recommend approval of an amendment to Condition 7, to add Exhibit B updated to remove the parking spot to the east side of the building and be added to the north side of the driveway area, and that Condition 7 should now read, "Vehicles of event center use patrons must be parked in the area marked 'parking' on the amendment application site plan sketch that is attached (to the CUP recording form) as Exhibit B. The two parking areas on the north and south sides of the access road near County Highway 13 must remain fully vegetated in 100% grass cover. Patron vehicles can only enter/exit the property at the two existing access points designated on the amendment application site plan sketch."

Petersen seconded the motion that carried unanimously 4-0.

Part 1 Findings of Fact

1. We have accommodated keeping an open fire lane around the event center structure by moving the furthest west parking space nearest the shed in the south row of proposed parking spaces so that it will instead be located in the proposed north row of parking spaces.
2. The parking spaces are adequate size in that they comply with the ordinance's 9' x 20' required minimum dimension.
3. Having parking spaces closer to the event center structure in winter time is a reasonable request.

Petersen said now that we are on to Part 2, I will reiterate that question about removing the buffer, I am just trying to familiarize myself a little more and that caught my eye when I was reading through your application. If you could give me an idea of where that is and what you are wanting.

Nicklason stated the vegetative buffer was part of the first conditional use permit, Condition 10. After it was approved, we planted Norway pine and white spruce that first year and I know it is poor soil condition and a high traffic area. There are people in the yard and kids running around. Also, I think the year they were planted was a tough year for trees. The consecutive year I did replace a number of trees that had died, which was part of the original conditions. More recently, this summer, most of the trees were dead. I had conversations with Buitenwerf regarding remedy of the issue. Trying to get different trees planted and he indicated that we couldn't really change species of trees without going through this process. My wife and I hadn't made the decision to go forward with that process because we were trying to figure out which direction to take our business and how to move forward with our business as a whole. The issue got pushed back and a number of the trees got mowed off because they were dead anyway. That is the reason there is no buffer there. We know we need a buffer so part of the application is to remove part of the buffer on the face of the business to the highway. The ordinance allows a highway exposure. That is an exception to that buffer rule as I understand it. I am requesting that part of the buffer, where we have the highway exposure, be removed from the condition and then that we reinstall the buffer with a different species of trees that I hope will fare better in those soil conditions.

Petersen asked for some clarification. There is currently nothing there now, we don't have anything there. That is why I was confused about removing something. I thought we had talked about it when we were out there, that we were going to ask for the buffer to be brought out all the way to that point.

Nicklason said removing the requirement would be a better term. Right now, you are correct, there is nothing to remove, and I am requesting that we remove the required buffer coming all the way to that point. I think we said 50' or 60' from that pole was agreed upon.

Petersen commented so we are not talking about going to that pole anymore.

Grob added I assume your 160' starts parallel to Highway 34, does the angle, and then comes back. I think what we discussed there was nothing facing 34 and only removing that 60' from the post. So we are basically saying, removing the requirement of that small section facing 34 and only 60' back from that corner post, which gives you the visibility that you are allowed. That still buffers you from the neighbor but gives you visibility from the road.

Nicklason agreed.

Grob commented I don't quite know how we are going to state that.

Petersen added if we go to the 60' mark and from there down to meet your requirement, you are on board with two rows of the vegetative planting? I think we talked about the hybrid poplar and lilac. Two rows from there the other way, you are fine with that?

Nicklason said yes, I think the only other language in there was talking about where my yard is. It's all yard until you get to the concrete pad that was part of the barn when it was functioning as a farm. That is where the field starts. That has nothing to do with my business. I am fine with the spacing that was in the original conditional use permit. I think

my amendment request, where the buffer exists in the yard, that the spacing be 5' and 10' from the property line.

Grob asked do you have a problem running it all the way back that way?

Nicklason replied it could run that way the whole way.

Grob stated you would still have trouble getting things to grow.

Nicklason said but I could plant it that way the whole way if that is the way you want me to do it.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Grob said I think that what staff has recommended for 10, with the closer spacing and the lilacs and hybrid poplar, with the lilacs in first because of the better buffering, and it says here, "according to the blue line on Exhibit A" we need to find a way to modify that to allow him to not have to put the buffer on 34 and 60' down on the line, so help me out on the words for that.

Johnson added he is bringing back a sketch for the other one; he could bring back a sketch for that.

Grob explained I am just trying to find a way, we could make the motion that Exhibit A has to be modified and we could state how and then adopt the changes to 10 with the understanding that you will bring back a sketch A, modify it to allow a 60' setback from that corner post and off of 34. Is that doable?

Buitenwerf said yes. I think you can describe that well enough referencing one of the drawings that we got tonight. I don't know that Nicklason would necessarily need to submit another drawing. That is something that I can memorialize with a similar exhibit to this Exhibit A from the original conditional use.

Petersen asked Buitenwerf in your staff report you had suggested a size for these plantings. Would you recommend that we describe what size lilacs and hybrid poplars, if you are looking for something specific?

Grob added he has that here. 18" on the lilacs and 3' on the hybrid poplars are recommended.

Buitenwerf said yes and 18"-24" stock is a standard size for lilac shrubs and 3' whips are what they are called for hybrid poplars. They are like the stick that you would typically stick in the ground with about a year's additional growth on it. The idea being that you have something of a little more size that hopefully gets you closer to what it would have looked like had those things been planted and been able to survive the first year.

Petersen asked Nicklason you are fine with that suggestion there?

Nicklason agreed.

Grob made a motion to recommend to allow changes to condition 10 of the conditional use permit where Exhibit A is modified to remove the buffer parallel to Highway 34 and remove 60' of the buffer from the corner post on the property to the south. The new condition 10 would read as follows: A vegetative buffer shall be planted in the area of the property highlighted with a blue line on Exhibit A (see attached aerial photo with the blue line labeled "Vegetative buffer location".) The buffer shall consist of two parallel rows of common lilac and hybrid poplar planted parallel with the property line. An outer row of shrubs shall be located 5' away from the property line and consist of common lilac that are at least 18" in height and spaced 5' apart within the row. The inner row of trees shall be located 5' in from the outer row of common lilac and consist of hybrid poplar trees that are at least 3' in height and spaced 10' apart within the row. Any tree or shrub that dies in a given year must be replaced within that same calendar year with a newly planted tree per the details specified in this condition. This buffer must be established by June 15, 2019 and remain in place as long as the conditional use is occurring.

Petersen seconded the motion that carried unanimously 4-0.

Part 2 Findings of Fact

1. The current vegetation that was specified in existing condition 10 does not grow.
2. Removing the buffer near Highway 34 is consistent with the intent of buffering from the neighbor.

Shoreland Management Ordinance - proposed amendment re: outdoor recreational facilities use.

Travis Guida, 24250 Shady Ridge Drive, Laporte, MN, presented the proposed amendment.

Petersen asked Buitenwerf can I get a clarification of what the goal tonight is regarding this agenda item.

Buitenwerf responded the original applicant, Mr. Guida, first came before the Planning Commission. You were agreeable with the concept proposed. That recommendation was brought to the County Board, who then said they were also open to the proposal, and so the County Board directed the Planning Commission to now develop a draft to incorporate that proposed use into the Ordinance. Tonight would be the start of the Commission's work to formulate what you would like for content to accomplish that end.

Petersen asked the Board if they have any suggestions on content if we're going to revise this?

Grob stated the information we have to reference is the items you attached, examples from other counties in the State and other areas in the Country. There was also something from Hubbard County COLA with some recommendations. I think those are

the two pieces of reference information as far as I know that we have. I think we have to reaffirm that we do in fact want to do a general outdoor recreational activity addition to the Ordinance, not just focus on an aerial zip line. I think that is what the County Board wanted us to do. We have to cover much broader potential applications. I wasn't at the December meeting, but if I can recall, we are going to focus this only on recreational development lakes.

Johnson asked would this just be in the Shoreland Ordinance? This would not be for outside of it?

Buitenwerf replied that is correct because we only have land use regulations in our Shoreland area.

Johnson clarified so anything beyond the 1,000 feet is not considered.

Grob added I have a thought to propose after looking at the Cass County, Stearns County and some of the other things; they seem to start with a definition of what an outdoor recreational facility should be. I am going to read something that I wrote down as a starting point. Can I read that?

Petersen replied yes.

Grob read, "A commercial, recreational outdoor use that incorporates and/or mimics on-land features, derives its principal benefit from natural surroundings, and does not incorporate directly into recreational activities any mechanical propulsion of the patrons. For example: dirt bikes, go-cart tracks, ATV trails, etc. Acceptable, but not limited to, uses include aerial zip lines, rope courses, biking trails, skiing trails, hiking trails, and athletic fields." That is my thought for definition. From there we should think about what kinds of conditions we might want to put with that.

Petersen added just one thought that has occurred with me, and I have asked and gotten an answer, for your particular property, how much property do you have there?

Guida answered I don't have an exact number, but it's approximately 3.7 acres.

Grob agreed that is what the County shows.

Andres said something to add on there, as I did a little research today for your definition, is what about animals? Some of these recreational outdoor activities have horseback riding and some of them have dog sleds in the winter time. Do we need to add anything with animals?

Grob clarified I was just proposing that as a starting point so we had something to think about. Buitenwerf, I am assuming we are generating ideas for you then to come back with a more formal, written form of this for us to do next month?

Buitenwerf answered certainly you are in the brainstorming stage, but to give you a rough idea of things that you would want to consider developing; the first would be a definition to add to the definition section for this use. Second would be in the use table, to list that use, and then specify if you want it to continue to just have it a conditional use on recreational

development lakes only. The third piece, that would involve more work and time, would be if you would wish to develop accompanying performance standards for the use, similar to what we have for events centers that were just discussed. Anything that you can flesh out as far as language, I am able to type it up as you put it together this evening and then if there is further direction or refinement needed, I can certainly do that between this meeting and next.

Grob asked Andres' suggestion that we add to the definition-what were you suggesting?

Andres said some of the places I looked at had dog sleds, and then horseback riding as well.

Christenson asked did they have a minimum acreage?

Andres replied a lot of them did. A lot of them had a minimum of 20 acres. Some of them even had cabins.

Christenson continued that is one thing Guida is proposing, sleeping quarters and that was one thing COLA said. Their suggestion was not to have them. So you as a Board would have to decide what you wanted to recommend.

Grob stated the way it is written, to be acceptable, but not limited to. If there were adequate space, then you could do it. In going through all the reference material that we got, I also want to propose that we consider about eight or nine conditions. I could start with those, if you guys are ok with that.

Johnson said I am thinking, like Buitenwerf said, we should start with that definition. I agree with what you stated as a definition. I do have a question about it though. Where you state that it is commercial, when you created what you have as a business now, did you go through any State government entities for any plumbing or electrical?

Guida answered it has all been commercially constructed. In terms of the actual facility itself, there aren't State or Federal guidelines that run that yet so to speak. But it all falls under the ANSI standards and as far as the industry goes, we are doing everything that we are supposed to do.

Johnson asked by Department of Labor and Industry?

Guida replied yes, and as it relates to the new building, our office, that building meets all required commercial electrical specifications.

Johnson stated then I agree with adding 'commercial' in the definition.

Grob added that showed up in all the other definitions. Some conditions, reading all the other materials, it has to be a non-riparian lot or area. I wrote down non-riparian lot and only in the 3rd and 4th tiers of the shoreland area. The intent is to keep it away from the lake or public waters such that whatever we approve doesn't turn into a water-related activity. No mechanic propulsion activities for patrons. No overnight facilities. One that was suggested was that the facility must incorporate a 30% free space (undeveloped space) beyond the recreational facility use area, preferably on the perimeter of the lot

area. That is the approach of trying to deal with buffer. Noise must meet MPCA guidelines. No public waters-related activities are allowed. Accessory buildings must fit into natural and neighborhood environment. It requires appropriate septic/sewage, parking, lighting, hours of operation, fencing, signage, and stormwater management. Those things show up for an event center and we could pick those one by one and decide hours of operation and so on. A caretaker residence is allowed. I reference the Cass County statement which I think in its entirety would make sense because Stearns County repeated it. Should we put a minimum lot size, a lot of the references did. I am not too sure it is necessary and if not, at least we establish a buffer zone, 100'-200' and/or screening from any neighbor property. Those are the items I would lay out as possible conditions for us to discuss and or propose. Keeping in mind we are thinking far beyond just the specific aerial park that currently is in existence. Rather we have to think ahead to all of the possibilities that people are trying to propose in the future and make sure that they are consistent with protection of our waters and to any neighboring residential properties that exist.

Christenson asked Buitenwerf we currently do not have a noise ordinance in Hubbard County so the one that Grob referenced for noise with MPCA would not be applicable, I believe.

Buitenwerf replied the State does have noise guidelines. It is a rule that the Pollution Control Agency administers, but the administration of those rules are difficult to accomplish. We can certainly say that they have to abide by them, but I would want to word it in some way that it wouldn't then be viewed as being the County's responsibility to see that it happens. It takes very specialized equipment to be able to pick up decibel levels and then you have to pretty much be on site while it is occurring to be able to accurately measure that.

Grob added if it is unenforceable, then it is probably not something that we should put in there, but at the same time, you don't want a facility built next to residential homes that are used to a quiet neighborhood. I don't know how you would specify it, other than hours of operation. Or just not approve it if it is too close to neighbors.

Buitenwerf commented some of those things you can take in to account as you review a particular application, so if that would be an issue, then you can address that through a condition or multiple conditions. I think since the Pollution Control Agency has that rule on the books, it applies to the property regardless, so I don't know that there is a need for us to reference it, and then if there are specific ways we can address noise concerns through a condition, I would say that would be our best avenue. That would be such things as saying "quiet hours after 9:00 at night", that sort of thing.

Grob asked would we have to specify operating hours in the conditions we would put in the Ordinance, or just identify that those things would need to be addressed when a conditional use application comes in? We need to require adequate septic system, parking, lighting, hours of operations, stormwater management. I don't think we need to specify the details of those in the Ordinance, but rather that those things need to be considered and specified for the specific application that people are doing.

Buitenwerf added you could probably capture that in a statement that would say those items would need to be specifically covered in an application. Generally, your performance standards you want to be general and broad enough in scope that they would be applicable to all applications for that type of use and that you would find prudent to have in place as kind of baseline standards.

Grob stated we could say, “requires appropriate septic/sewer, parking, lighting, hours of operation, fencing, signage, and storm water management be addressed in any CUP application.”

Petersen asked Buitenwerf what would be the process if we did incorporate any of this into the Ordinance. Grob had listed “no overnight facilities for patrons” and then we have an applicant who would like an overnight facility. Does that just fall under a variance request?

Buitenwerf answered hypothetically if the County would adopt something that would prohibit overnight lodging, that would be a requirement of the Ordinance from which a variance could then be sought. So there would be that possibility.

Guida added in the letter that I wrote to the Board last month, I gave a couple of similar types of concepts for the Board to consider. Perhaps the Board would be willing to narrow its scope of the Ordinance to address our specific request. I understand by doing so it might eliminate future possibilities, but as we are the ones making the request, I am just asking if you have considered narrowing the scope to our specific request. Because we are a unique type of business, not dog sledding, not a softball diamond. I am just throwing that out there as a question.

Grob said you discussed that at length in December and then went to the County Commissioners.

Petersen asked what was the Commissioners’ recommendation again on that?

Buitenwerf replied it was to continue with the outdoor recreation use, broader type use concept. I would have to see if Commissioner Christenson had anything additional.

Christenson asked I was just looking at the ‘Expeditions Unlimited’.

Guida added I don’t mean any disrespect at all.

Christenson asked is this the one in Wisconsin?

Guida answered the Kohler Learning Center is in Wisconsin.

Christenson replied so is the Expeditions one.

Andres said I looked at both of the options that you provided, what exactly were you looking at for your facility to incorporate, because they have a lot of different things. Some of them have paintball; some have café snack bars where you could actually purchase things.

Guida replied the specifics of it are limited to what we do. About 70% of our guests are doing team building. We utilize the ropes course. We get a group that wants to come, often times they are coming from a great distance away and they often ask if we have accommodations for ten or fifteen people. The building could serve a couple of different options; one would be to host those types of groups that may not be able to come because of the distance. Secondly, when you do have a larger group, like a school from Grand Forks and you have 100 students. If they are there for the day and it is raining or thunder storming and we can't utilize our facility to come indoors for a time. Just to have an indoor space to get out of the rain. That would be beneficial to our business.

Andres asked currently you have schedules for overnight stuff. So your overnights, where do they go?

Guida responded you are referring to the special needs camp that we host and we host that at the resort. My business rents the resort facility for certain periods of time throughout the summer.

Andres clarified so your lodging is at the resort and then you come to your facility. I noticed a lot of that at the Expedition one as well and same with Kohler. Expeditions had some cabins, but Kohler had lodging at nearby hotels. Are you open to tent camping? Some of them had tent camping as well.

Guida replied probably not. It probably could happen, but it is not something I have considered.

Grob added I don't think we should be trying to be modifying this to accommodate this particular application, because the Board of Commissioners have basically said to look broader and put out definitions for a recreational facility. My view is, if we were to adopt this, and if the current aerial adventure park that he has doesn't quite fit it, he would have to do a variance request. And obviously we would take into consideration the historical part of it, but I don't think we should be trying to adopt this to meet just his application. He has triggered the thought, but very clearly we have to think a little broader.

Christenson stated I would agree with you Grob. That would be the Board's intent.

Grob addressed Buitenwerf. My thought is this is the framework that would go in Section 402 like we do with 10 or 11 other applications. I was going to recapture what we just went over; non-riparian lot, no mechanical propulsion, no overnight facilities. The free space might be constricting in some cases, all with the idea if we think about most of Hubbard County, I would say a high percentage of Hubbard County already has residential lot areas set up and something like this that would be built, you have to be very careful that we do not infringe on what I consider the quietness of a typical residential lake property. That is why I am looking at free space, buffers, and things like that. Not trying to prevent it from happening, but clearly if you have a quiet neighborhood on a lake and then all of a sudden right behind or right next to it you get something with a lot of commotion and traffic. Noise guidelines, you can't enforce.

Christenson added in past practice when I have been on the Board, we try to get rid of everything we can't enforce.

Grob agreed. I would take that out of there. No public water-related activities or accessory buildings. The other one I read off and proposed changing it, appropriate septic/sewage system must be addressed in any CUP application. Caretaker residence allowed. I am not aware if Mr. Guida is aware of what that says, but I will read it to him.

Buitenwerf stated I have it pretty much on the screen now, Grob.

Grob continued the Cass County statement where it says, "One (1) caretaker/manager residence may be allowed. The residence is to be used strictly for the caretaker and his/her family members. The caretaker residence shall be accessed via the access road to the recreation facility." The one thing that came to my mind is if he has summer staff, it is not unusual sometimes to house your summer staff. Some of the restaurants do it. I would see that someone could, in an application, say they want a bunkhouse for two summer staff. I don't know if we want to say that is allowed, or just it's not restricted. If someone would want to propose it, I see that it is reasonable. The last one is lot size. Do we want to do anything with lot sizes?

Johnson added I think some of these jump back and forth to me. Some I think should be looked at individually per conditional use and some should not be permitted. Like you are saying with the buffer zone; I agree with it, but I wouldn't want somebody to have a buffer zone against a federal forest where there is not going to be residential houses next to it.

Guida asked when you say buffer zone, I understand what that is, but a 100' to what? We are buffering what? That is what I would need clarification on.

Grob said to me it translates that no part of the recreational facility can be any closer than 100' and that some screening, vegetation, some kind of fencing might have to be put up to buffer from a residential property. That could be handled in a conditional use application, because you can't anticipate all of that stuff. You could handle that as a CUP came in, rather than be too restrictive at this point.

Petersen asked or would that be a variance?

Buitenwerf clarified a variance only comes in play when you have a provision in the Ordinance that someone feels they are unable to comply with. Typically those things that Grob was just addressing would be handled with conditions to the permit. Those would be things that you would see would be issues with a unique location where the use is proposed and then you would address those through conditions to make sure that the use is in harmony with the surrounding public health, safety, and welfare.

Johnson asked what tier is this property in?

Buitenwerf answered it is in at least the 2nd tier.

Johnson stated it is about 500' from the river.

Christenson added I was wondering if it would be in the 3rd tier. When you are saying it can only be in the 3rd or 4th tier, Guida's property might not qualify for that.

Grob said he can do a variance. If you are starting with a clean condition, someone wants to come and do something and it's going to be in the shoreland zone, it has to be in the 3rd or 4th tier. That is what I am proposing. His comes close, but doesn't quite make it. Across the road to Potato Lake is about 500'. The resort property buffers it in between.

Christenson advised I would encourage you to try to write this so it would be in keeping with our Shoreland Ordinance while being general enough that whoever is applying for this does not have to apply for several different variances. However you word it, if you can still be restrictively generous.

Grob commented most of the references say non-riparian lot. But we have these 100' riparian lots, so you can have something within 100' of the lake and if it is a pretty massive, active type of area, it could be detrimental to the lake. You could say it has to be at least in the 2nd tier. That is pretty generous. New people who are thinking about doing something like this, not one that exists. It's like today; you have to have a 40,000 sq. ft., 150 ft. lot if you are starting from scratch. I am trying to think in terms of starting from scratch, somebody wants to do a recreational facility or activity, they go to the Ordinance. I don't think it's so restrictive if you are starting with a clean sheet of paper, which we are in most of these cases.

Christenson said it makes sense to try and put it in the 3rd or 4th tier.

Grob mentioned with Guida, he did this before we were doing this. In some cases he would maybe have to come back with a variance and we will have to be very accommodating as far as I am concerned. We are trying to look ahead.

Petersen asked he would not qualify in the 3rd or 4th tier?

Grob answered I tried to look at the map and look at his property and scale it. I think it was about 500' across the road to Potato Lake and I think the closest thing through the resort is about 500'. But under the circumstances, it is very buffered. As far as I am concerned, that would be an easy thing to give a variance for. I don't want to do something that puts you out of business, but at the same time I want to look ahead.

Guida asked not being as familiar with the use piece of this, in the event we have initially applied for an event center use and we wanted to add an aerial adventure park to that use; I guess where I am going with that question is, is there ever a use that combines multiple uses. Obviously resort lodging is for resorts. Like an event center, what would happen if he wanted to add a zip line course to his existing use? Is that the sticking point for us is that it is falling under the Shoreland Ordinance? I think that someone said that COLA made a recommendation for no overnight facilities.

Grob added most of the other references did too; Cass County, Stearns County. That becomes a whole new set of activities. You can do two, right? You can have a conditional use permit for a resort; you can apply for a conditional use permit to add this to it, right?

Buitenwerf replied that is possible, it would depend on if there are any conditions on the existing use that would prohibit additional uses of the property or if there is any language in the Ordinance that affects one or the other use to say that you can't also have another

use occurring in the same location. Barring those two things, yes you can potentially ask for multiple uses on a given property.

Grob stated most of those things in the Ordinance; you look at them as free standing, not really combined.

Christenson asked Buitenwerf in light of one of the things Guida is thinking about is his timeline. How this will affect his business this spring? Buitenwerf what were you thinking for a timeline to have this Board submit something to the Commissioners?

Buitenwerf answered that all depends on how readily it comes together for the Commission. I would hope that we would have something roughed out tonight and then we can fine tune it in February and potentially have the recommendation to be brought to the Board then in March. That would be my ideal timeline.

Guida added if the Board would decide to deliberate further, my timeline is much less important. Building any type of new construction is not going to be part of the use anyway if that makes sense. Yes, we would certainly hope that we could have the use approved, but if not being able to construct a new building is going to be a part of it, perhaps the extra time would allow me or you to consider and to further discuss what this could look like specific to us. I know that is not the only thing that you are discussing, but I am here because of our business.

Buitenwerf said if the ideal happens and it is brought to the County Board at the first March meeting and if they are in agreement with the draft and there is not further tuning necessary, they would schedule a public hearing and that would need to be noticed at least ten days prior to the meeting, which would likely mean it would be the first April meeting before the hearing could take place. Then if that all goes well, the Board holds the hearing and then adopts it at that same County Board meeting after the hearing is closed, then you have got to wait for that amendment to get noticed in the official newspaper, which would probably happen with the meeting minutes of that meeting. You are looking at an effective date right around the end of April or first part of May. After which, assuming the use as amended would allow Mr. Guida to make application, if it was a way that would work with his business model, he then would be going through the conditional use permit application process likely with a June meeting date for consideration of that with the Planning Commission and then it would be before the County Board in July. That is assuming everything goes smoothly.

Grob asked is he able to continue to run the business as he has during this time frame?

Buitenwerf replied that is a question that we would need to continue to have further conversations with legal counsel on. Given the nature of the way the use was approved as an expansion of the resort, back when the original CUP was granted, now we have learned that it is not operating as part of the resort, which begged a lot of research by our legal counsel. He was quoting several thousand dollars to look into being able to provide that answer due to the nature of how that got to the core of what actually is a conditional use permit in terms of legal means of looking at it.

Guida added nothing has changed in terms of the original application; my wife is a part owner of the resort. When I first came in November to this Board, we just seek the legal separation between the two businesses so that the resort can operate free of any density or any restriction that we might have based on our property and we can operate separate in the event that the resort was to sell. We wouldn't want to restrict any use of that land. It's not change; we are just trying to follow the use code properly.

Petersen clarified has anything in the business entity part changed? Titling of the businesses?

Guida answered the only thing that has changed since we have opened is we started as a limited liability company. This year we incorporated to be a corporation with the ropes course business. The resort has not changed at all.

Christenson asked whether it is put in here or not that sleeping quarters are allowed, aren't you constructing a building for uses other than just to house somebody there sleeping?

Guida replied there are a lot of different things that this is opening up. I think I said it is not as urgent, but if I would have to wait until July to operate the business, then it is quite urgent that we be able to move forward ahead of that. The original idea, which I don't know if it was ever officially submitted to Mr. Buitenwerf, the original idea we had for the use of the property in addition to the ropes course, was to build a building that allows "X" amount of people and then provide a covered space for people to get out of the weather.

Christenson added to put your mind at rest, our goal is to work with business owners in Hubbard County. It is not to put someone out of business.

Guida stated we certainly want to comply with everything and do things the right way. That is why I am here.

Buitenwerf added that would be something our attorney has looked at, it can be looked at further, but just in looking at the ownership of the properties, it is in separate ownership. So far, from what I have seen for information, tells me that they are two separate businesses which then begs the question of, if this process isn't concluded prior to when he wants to be able to do his normal operating season, we would have to ask for our legal counsel to look into that to say whether or not the use could occur prior to any amendment taking place. That was kind of the whole point for kickstarting the process this winter, was to see if a use would be proposed in a way that would allow their use to fall under that umbrella and apply for the necessary approvals to operate.

Christenson asked Buitenwerf if what you are saying, if our County Attorney agrees with you and there is jeopardy about Guida and his wife being able to operate this whenever they usually plan to open, then this Board and the Commissioners need to do whatever we absolutely have to do to make sure that his business is allowed to run when it is time to start up.

Grob said that is a Commissioner issue, not a Planning Commission issue, right?

Christenson replied however, the Commissioners depend on you to put the language forth for the Commissioners to look at, correct? So I would suggest that you as a Board would put forth some sort of a draft tonight that Buitenwerf could get working on.

Grob said I was going to go down this list and modify what he had up on the screen.

Petersen stated one item that Andres had mentioned earlier, I don't know if we wanted to incorporate that into the top paragraph, was the question about animals. In the general definitions, are we serious about that or did we pass on that?

Grob added I suggest we leave it, because it says "acceptable, but not limited to." It doesn't say you can't.

Discussion ensued about wording the draft to be forwarded to the County Board.

Christenson asked Guida when is your open date?

Guida responded I think our first scheduled group is May 3rd or the following week.

Christenson said that just gives us an idea.

Additional discussion ensued about wording the draft.

Andres asked I have a question about the no public related water activities. What if a company wants to come in and just do kayaking or canoeing, is that what you are restricting?

Grob replied yes because then we get into shoreland docks, boats, water ski trails. There are other ways to do kayaking. Kayaking to me would be something you would do as part of a resort or something like that. A group of people would go to a public access.

Andres added some camps do offer canoeing.

Grob said school camps and resorts are all together a different application than this. We have lots of camps that have access to it.

Andres asked if they want to open up a specific one that is what we are going to rule out there.

Grob said they would have to come under something else.

Grob added if you have a non-riparian lot; that means you really don't have access to the water. That doesn't mean you couldn't have some kind of kayaking thing, but you would have to take it to a public access.

Grob stated that is our proposal Buitenwerf.

Buitenwerf said my question then, just as I am looking through this relative to Guida submitting this initially to hopefully encompass his property, do you want to stick with it only being allowed in the 3rd and 4th tier because he is in the 2nd tier.

Grob answered I think long-term, that is what you desire. I see that as a possible variance that he could get it approved.

Petersen commented aren't we trying to be somewhat general here instead of specific?

Grob stated I am trying to address the fact that there are some very small riparian lots that you could be so close to potentially having an impact. My mind says to try to do the best we can for the general thing, I guess what is in front of us is, do we want to force him to do a variance request, or when he does his conditional use permit, he is going to be asking for a variance. Or we could change it and say it must be in the 2nd, 3rd, and 4th tier? That at least gives you a 267' buffer to the lake. I am ok with that.

Johnson said or make it a 400'.

Christenson added we have three new Commissioners. I don't know what their thoughts are on some of this, but the past Board struggled with someone who wanted to do a business, having to go through the CUP process and then having to turn around and fork over money and time to do a variance. Once again, how can you write this so it is good without putting so much restriction? Look at Guida now, he is supposed to open May 3rd, we're having trouble getting this through, and if you stick a variance on top of that. You are already saying he can't open. I understand you are trying to do the big picture, but right now we have a little picture to put into the big picture.

Grob replied I understand that.

Christenson asked if you did non-riparian lots only, then when someone comes to apply for the CUP, it is up to the Board.

Grob stated I would rather say it must be in the 2nd, 3rd, or 4th tier than to leave that open. Three years from now, if none of us are here, nobody will remember what we intended to do. We are trying to protect the lake. In this case he has no impact to the lake at all, ideal situation. You would have no trouble approving that from day one. But I can see these other situations where the closer you get to the lake, the more ways people find to start infringing on the lake. I guess the question would be if any of the other conditions are things that would require a variance on his part, or is that the only one?

Grob asked how much of your 3.7 acres is covered by your facility?

Guida replied I don't know, it is all in trees other than the buildings that are there that are on the map. There is a portion of it, but I have no idea.

Grob asked do you think an acre of it is undisturbed woods?

Guida answered I would say probably an acre and a half to two would be undisturbed right now the way it is.

Grob said you would meet that requirement.

Guida clarified I shouldn't say undisturbed, natural vegetation. We just planted grass. Vegetation wise I would say two acres. Undisturbed would be less than that.

Petersen asked Buitenwerf you pointed out that number three would be potential variance requirement?

Guida added I wouldn't say it is a requirement to the use because we could still use what we currently do without needing to adjust number three.

Petersen commented that your intention is to try and build.

Guida said my hope would have been, but we can still operate without number three. While I would request that you just eliminate that one, if you do keep it on there it would not prohibit opening.

Grob stated I would suggest we put 2nd, 3rd and 4th tier.

Christenson added in the interest of the overall County, I think it is a good idea to have condition three in there and the Board can look at each individual business. That is a pretty big one.

Grob said most of the other ones do it that way. As soon as you add overnight stuff, then you are running a resort.

Christenson commented it changes a lot.

Buitenwerf said eyeballing the aerial photo; I think your proposal of condition four is going to be a little difficult to do. Maybe Guida can help with how far back into here your ropes course is set up. It is probably at least in the trees here; does it go back into here?

Guida replied just what you can see right there.

Buitenwerf added when you calculate this one, I don't think it is going to comply with that.

Grob said I don't want to see us scrubbing it down that we would be sorry about it in the long term.

Christenson asked did any of the others here have something like that in there?

Grob answered I picked that up from the COLA letter.

Guida added without getting a tape measure out, I could speak to the picture. The open space to the east of the property, the majority of that has not been developed. There is no tree cover there. I don't know if you were factoring that into the developed portion or not, but that area towards County 40, that is just grass. We didn't develop that.

Christenson asked if I came and I had a two acre plot and I wanted to put something on it, but I had to leave 30% free, I might not be able to run my business on that.

Discussion ensued on restrictions of the draft.

Petersen asked what about a vegetative buffer, either natural or in areas where there is none, it is required that we have the applicant plant something like that instead of the 30%?

Grob stated I would want to fight hard for it; I am trying to envision anything we put under this outdoor recreational use leaves some amount of natural vegetation there. The only thing I wrote there is that it would be preferable if it was on the perimeter, but if that gets to be very problematic, I guess we could take that off from there. I am looking for ways to make sure that it does end up being something that fits in a natural environment. Guida has done a good job. It is very nice. What would you suggest that should be changed to that would make it more manageable and make sure whatever we approve, that it does fit into the environment? Biking trails, skiing trails, all those kinds of things generally can be done in the woods so to speak.

Christenson added athletic fields would be on a cleared space.

Grob replied true.

Buitenwerf said or if it is a bicycle motor cross course, those typically look like a motorcycle BMX course; you are just peddling instead of using an engine. I don't have a good alternative that is coming to mind, I just know that one is very difficult to administer because it is similar to the language we have got in the Ordinance for how much vegetation you can have in the shore impact zone and that is very difficult to calculate percentage. So something that is more quantifiable, would be more easily administered.

Conversation ensued including discussion of COLA recommendations for requirements.

Petersen stated we have a document here that we can forward to the County Board. Are we ready to make a motion on it?

Andres asked Christenson do you think this would be something that they would look into, that we hit all the targets?

Christenson agreed.

Written Public Comment Received

- Travis Guida, 13218 County 40, Park Rapids, MN, letter
- Hubbard County COLA, P.O. Box 746, Park Rapids, MN, letter

Petersen made a motion to approve recommending the draft for outdoor recreational facility to the County Board.

Johnson seconded the motion that carried unanimously 4-0.

Miscellaneous:

Communications: Buitenwerf added as far as agenda items for the February meeting, it appears currently it would be a conditional use permit application. We had a number of variance applications submitted, but they were incomplete in various forms and none were resubmitted prior to the deadline today. It should just be that CUP application for February.

Grob asked the CUP application is for?

Buitenwerf replied it would be a continuation of Mr. Nicklason's operation.

Adjournment:

Petersen made the motion to adjourn.

Grob seconded the motion.

The motion carried unanimously 4-0.

The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary