

## **HUBBARD COUNTY**

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

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

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

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:** February 25, 2019

Andres made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 3 – 0.

**Old Business:** None.

#### **New Business:**

**Conditional Use Application 2-CU-19 by Kenneth Thompson:** Lot 28, Block 1, North Oaks, Section 20, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel 21.61.02800. Applicant is requesting a conditional use permit per Section 401, Table 1 of the Shoreland Management Ordinance for a retail shop use.

Ben LaPatka, 301 Main Street West, Nevis, MN, presented the application on behalf of Kenneth Thompson.

LaPatka stated we are looking to expand and have an area in front of our building to sell trailers, fish houses, and possibly pontoons.

Johnson asked do you plan on continuing the existing conditional use?

LaPatka replied yes, he plans to have Budget Exteriors still be there.

Andres asked in the application, it mentions “other licensable items”. Can you be more specific on what items you are looking at?

LaPatka answered if he has a used car that he wants to sell up front. Basically he is looking at pontoons in the future.

Petersen asked the pontoons are a possibility right now?

LaPatka agreed.

Petersen asked what type of trailers?

LaPatka replied right now he is looking at fish houses and car trailers, utility trailers, that sort of thing.

Petersen asked that is a "for sure", where as the pontoons are a "maybe" at this point?

LaPatka agreed.

Petersen asked do you have any idea of the amount of inventory you are initially planning to keep on hand?

LaPatka responded I would say no more than 6-10 trailers or fish houses at a time, total.

Petersen clarified total between the fish houses and the other trailers?

LaPatka agreed.

Petersen asked you answered earlier, in regards to your original conditional use, that you are planning on continuing that line of business also?

LaPatka replied yes.

Petersen stated I think it said in that conditional use permit that there is to be no merchandise that you were using in that line of work, to be stored outside. Is that your understanding, and that is how you are still operating?

LaPatka answered yes, we just have the trailers outside that we use for the business.

Petersen continued the other day when I was out there, I asked you a little bit about the upstairs of that building. What is going on up there, is that a residence? Is anybody occupying that? I think we all noticed also that there was a dog kennel added to what I think was the original building. Can you give me an idea of what is going on there?

LaPatka said we added that because my boss goes south for the winter, so his dogs come to the shop so I can watch them. Right now there is no one living upstairs. We are planning to use that space for offices. If anyone does, Ken would be staying there during bad seasons of ice, since he lives out on an island. That is the only use for the apartment.

Petersen asked can you give me an idea what is up there, as far as bedrooms and bathrooms right now?

LaPatka responded there is one bathroom which is not done yet, a bathroom, kitchenette, a living room or a large office area, and then two other offices.

Petersen asked it is not finished living space right now?

LaPatka replied no.

Johnson asked have you worked there since this business started?

LaPatka answered yes I have been working for him.

Johnson asked so you are part of putting the trailers where they are?

LaPatka replied yes.

Johnson asked do you know where the property line is behind the existing building?

LaPatka responded yes, I knew we did have a few items that were past the property line. I did take care of all of that.

Petersen asked for oral public comment.

Charles Deutschmann, 24035 Elderberry Circle, Nevis, MN, submitted a letter along with providing oral public comment.

Deutschmann stated my main concern is that this is an extreme, substantial change from the original conditional use permit. I do not believe, underneath your criteria, that he even comes close to representing the character of the locality. That character is residential, not retail or business. The original CUP, as a foot in the door, that doesn't necessarily mean that we have to open the door and let everything else come in. I think the submission, in terms of "other licensable items", is way too wide. We could end up with RVs, cars, and trucks, whatever. "Licensable items" is quite an open area. One further thing, it would be disruptive to the area, especially if we have a lighted marquee, in terms of a lighted parking lot. I assume in the future we would look forward to having a fenced-in area as well as a paved parking lot and runoff contamination. With the increased traffic we, as residents, we were concerned with those that want to see what is around the circle. Then we would have exposure to safety problems, not just increased traffic, but security problems with my home. I would encourage that you would not approve this CUP in any measure as I see it as a "foot in the door" and I don't know what is next and it is way beyond the character of the locality.

Anne Zahn, 24059 Elderberry Circle, Nevis, MN, submitted a letter along with providing oral public comment.

Zahn said I agree with Charlie Deutschmann as to what he has just brought up. I feel strongly that this should not be allowed.

Judy Flemer, 24060 Elderberry Circle, Nevis, MN, stated I am going to be talking a little differently than the other people because in the summer there were so many vehicles going into this structure that is not complete. There was an RV, sports cars, and there must have been about twelve vehicles, trailers, all out during the day and then disappear at night. I am wondering if this isn't something that was being done before it was presented to the Commission. I wish I had taken pictures. I think I am not getting the full story here. I am hearing very little things, but there were big ones this summer, in and out. I don't want to see that. It seems very commercial. I am concerned that we are not getting a full story of what is going to come in the future because of what I saw in the last year.

Justin Schroeder, 23767 Elderberry Circle, Nevis, MN, said first of all, my concern is the business. Hearing him talk about wanting to sell vehicles there, I have seen vehicles for sale already outside there. I have seen snowmobiles for sale out there. He has already been selling stuff. Obviously he does not have the permit to be doing that. Whether it is

the people that work there, or just his stuff, I am not sure what he is selling out there, but we have seen it for sale. Schroeder read a letter that he wrote as public comment:

“To start things out by saying that, when I found out that Kenny bought the place, he originally told me that he was building a pole shed, which I did not like anyways, but what can I do about it. Honestly, I was not really excited about it, another big building going up. But then, come to find out, that Kenny was actually building a business there. He had told other neighbors the same thing. Right there you lose trust in people. Now Kenny wants to start selling items there and become a retail store. By doing this, there will be more traffic on the circle. I believe it will lower property values. If you don't think it will lower property values, I know for sure it will lower the amount of people that are willing to buy a house there. Who wants to buy a house next to a big business selling stuff? I know I wouldn't again. We have a great neighborhood; everyone looks out for the other person. I have been recently told that Kenny has a lot on the lake, and that the lake association has been fighting with to keep clean, and he hasn't. Who is to say that won't happen here on Elderberry Circle? I know Kenny has put two large bathrooms in the building, Men's and Women's. He has also built living quarters upstairs. In talking with some other workers there, Kenny had mentioned to them possibly starting an event center. So, what is to stop that from happening if the retail store goes in? Our neighborhood has been recently upset with this business that has gone up right in our back yards. A lot of gorgeous homes on the lakes, nice houses stuck back in the woods. A nice, quiet neighborhood we have. I am the first house on the circle, for fifteen years now, and I have noticed more traffic there than ever. Bringing in business by selling stuff would also bring more traffic. We will be directly across from the business, and that is not something anyone wants to see. Yes, times change, but building a big business and possibly selling equipment or other merchandise? It is not a good location for it. I have a child, as well as many neighbors who have children on the circle. Putting a big business in like that also may be dangerous to our neighborhood. If this were to pass, I believe at least making his road come off the highway would be a little more presentable and a little less traffic on the road. Not that we want that. We don't want a business here, plain and simple. When it comes to the safety of our neighborhood, property values, and just how nice the neighborhood has been, that is way more important to me. I hope Kenny will not hold a grudge. I don't believe something like this is good for our neighborhood at all.”

Michael Barr, 23849, Elderberry Circle, Nevis, MN, said what I would like to talk about is basically what has already been talked about. My concern is a couple things. What was presented to us as a neighborhood, because it is a circle, there is only one way in and one way out. My understanding is that is the reason a lot of the people are there, because that does get rid of a lot of the cross traffic. People don't just go cruising around for no reason at all because there is no place to cruise. The original intent, that I understood, was just to have a repair shop/office building/place of employment with not a lot of traffic during the day; definitely not anything for sale on the highway. It was mentioned before about other things that were sold, and that is a true statement. The other concern that I have is the amount of traffic. They are using Elderberry Circle, which is not even a County Road; it is just a dirt road. It might be 100 yards from the main stop sign; you are going to have traffic backing up. My impression originally was, if they were planning to put a business there, they should have gotten the proper permits to come off of 34. There are

roughly 60 residents that use this road as their main road; it is the only road in and out. Now you are going to mix in all these businesses. There are a lot of things that should have been looked at originally, I feel personally I was misled in the original statement that was let out with what they wanted to do with this property. I also feel that over and above the property values and everything else is a safety thing. There are children that do live around the circle. We don't have a lot of cross traffic because there is no exit. This is going to increase the traffic going up and down this road and also the traffic that is all going to be stopped at the same stop sign to get back on 34. In the way it was originally given to us as a residence and then turning it into this.

Craig Hanson, 23983 Elderberry Circle, Nevis, MN, said you have heard many opinions tonight regarding a multitude of concerns surrounding this particular business. What I am concerned about, in reading the proposal, I am concerned about the level of information that we have been given. In hearing tonight that they plan to continue with the Budget Exteriors and now they are going to expand to equipment sales, my concern is not only the fact that this will turn into some used car lot or some repository for K-BID. I have no idea how the merchandise is going to be delivered. From a logistics perspective, I have a concern, which is warranted because of the safety concerns that my neighbors have expressed. In the proposal, they stated that they would be seeing ten customers per day. I don't see how you can sustain two businesses on ten customers per day, let alone the deliveries. My concern is the level and validity of the information is not up to standard. Before any decision gets made, I implore you to consider not granting permission for this until we receive information that we feel comfortable with.

Sunny Schroeder, 23767 Elderberry Circle, Nevis, MN, stated our driveway is right across from the business and I don't want it. I have a ten year old son that I had to walk down the highway because one of their semis went off the side and fell and blocked me from my driveway. We had to crawl under the semi to get to our home. We have already played host to breaking up fights from dumb teenage kids that want to pull into their parking lot and do stupid things at night. I don't want a big sign in my bedroom, lighting up the night. If I wanted a nightlight, I would buy one. I don't want this, it is not safe. It is a horrible location for a business. It is ugly, it is tacky and that is not what the circle is about. We are in a neighborhood, if we wanted to live at Wal-Mart, we will go hang out in the parking lot. This is not what we want, so please do not let it go through.

**Written public comment received:**

- Charles Deutschmann, 24035 Elderberry Circle, Nevis, MN 56467, letter
- Jody Tofte, P.O. Box 511, Williston, ND 58802, email
- Anne Zahn, 24059 Elderberry Circle, Nevis, MN 56467, letter

Petersen closed public comment.

Andres asked how will the retail shipments be delivered? Are they on big semi trucks typically?

LaPatka answered usually we would pick up the trailers one at a time, with one of us going and getting them and bringing them in. I don't foresee any semis coming in with the trailers and fish houses.

Andres said so, no late night deliveries. A lot of times, when deliveries are made with cargo, it is sometimes late at night, dropped off and then you get your slip that you look at in the morning.

LaPatka stated one of us picks up the inventory. It would be during our business hours.

Petersen asked could you walk me through your current business and the type of activity that it generates? I wasn't involved in the original CUP.

LaPatka answered the current business is windows and siding mainly. The front space is a showroom for that. He doesn't really get too many walk-in customers for that. We haven't been doing a lot of work in the area really.

Petersen clarified the original intent was for the showroom to display products in a remodeling situation. I looked briefly in the window and I didn't see anything as far as product displays. Was I missing something?

LaPatka stated we just kind of finished it up this winter and we are working on getting our window displays.

Petersen said moving ahead to the current application, this drawing up on the screen right now, in the dyed area, that is where you would display the products that you want to sell in this current CUP application, is that correct?

LaPatka replied yes, out in front of the building is what we were thinking.

Petersen asked customer parking would be restricted to that area that is shown there, right in front of the building?

LaPatka replied yes.

Andres added you mentioned "licensable items" and you said maybe cars.

LaPatka responded he has had a couple of his own personal vehicles that he has had out there for sale. Those are the items that they are talking about, not selling anything for anybody else. He just wanted it to sell a personal vehicle or something like that.

Andres asked do you have any intentions or plan on selling ATVs or snowmobiles?

LaPatka replied all that he has is his personal stuff that he has been trying to sell there.

Andres clarified this application is strictly for fish houses and utility trailers?

LaPatka answered yes, and then the possibility of pontoons.

Petersen asked Buitenwerf is it allowable that in the conditions that we could specify exactly what the applicant is telling us as far as items that he is intending to sell and restrict to that?

Buitenwerf answered yes.

Petersen added I think one of the things that I would be interested in pursuing here is to try to get the scope of what you want to do on paper. If we were to grant this and you were to do something additional in the future, whether it would be to expand the building, or enlarge your product line, all those things would require coming back to us for approval of a new CUP. What I would like to continue with is exactly what product line you would want listed in this CUP as what you are going to go with right now and anything future, we would have to deal with that at a different point. Does that seem acceptable to you?

LaPatka replied yes.

Petersen asked perhaps you could give me an idea then? Utility trailers?

LaPatka responded utility trailers, car trailers, possibly enclosed trailers, fish houses, and then pontoons were another big thing he was considering.

Petersen added another thing that occurred to me as we were talking, is the intention to have a shop in this building where you would do maintenance and repairs as part of your business, is that your intention?

LaPatka replied there could possibly be some repairs in the shop. If he would expand into pontoons, he would have to have a maintenance shop to work on the products that we sell.

Andres asked Buitenwerf is that a profession that he is available to do in the Shoreland?

Buitenwerf clarified the way that the use table in the Shoreland Ordinance is currently structured; it does not allow a type of business use that would involve the repair or maintenance of boats or other types of equipment. The Ordinance only allows either a professional services type use where there is a business that is occurring that has some type of a State issued license for it to operate, or alternatively, we have a retail shop category, which is the category under which this application is made. We do not have a use category that would allow the type of use that would involve the repair of vehicles or watercraft or other such things.

Petersen said I believe that is pretty self explanatory that we would have to prohibit that type of activity going on in the business. As a representative, are you able to accept that condition?

LaPatka replied I would have to talk to Ken about that.

Petersen asked Buitenwerf if we were to put that as a condition, even though the ordinance states it, I would be tempted to put it in there if I were to go forward with recommending this. If he cannot accept that condition, is it something that we would want to consider tabling for that reason?

Buitenwerf answered it would certainly be an item I would consider tabling to allow the agent to consult with the applicant and see if that is a deal breaker or not. That being said, I think there is still value in vetting the other aspects of the application and seeing if there would be additional items that would benefit from possibly tabling for further information.

Andres added one of the other questions I had, when he does go to sell, I assume that you would probably take trade-in items for some of those fish houses, or consignments. Would that be something that he would be doing as well?

LaPatka said that was not something that we had discussed, so it would be another issue I would have to talk with him about. I would imagine there would be some trade-ins of similar products.

Andres mentioned it appears there are comments from public that Elderberry Circle is going to be heavily traveled, would maybe the owner propose an idea to put in a new driveway for the business? Is that a possibility?

LaPatka answered I don't think that would be out of the possibility. It would be something we could look at, going off of 34.

Petersen asked Andres is your idea there that it would be in place of the entrance off Elderberry?

Andres replied yes.

Petersen continued that would be something that Mr. Thompson would need to give the final approval on?

LaPatka responded yes.

Andres asked Buitenwerf on the application it appears the signage question, that all appears to fall under the Ordinance. I didn't see anything out of the norm.

Buitenwerf answered correct. The signs as proposed would comply with the Sign Ordinance.

Andres added he did say that he was having a lighted sign. Can you give a little bit more input on this 10'x15' sign?

LaPatka answered we were thinking an internally lighted sign. We haven't really thought a lot about signage, we just put a sign there because I know it will probably come in the future.

Andres asked not a flashing sign that is going to flip different advertisements?

LaPatka said if anything it would be one of those small message boards underneath. Not the whole 10'x15' sign would be flashing.

Andres asked does he have any plans for the future of expanding the building?



LaPatka replied not at this time, no.

Petersen stated my feeling is, until we get some definitive answers from Mr. Thompson on some of these questions, the best course we could take right now would be to table it, try to get those unanswered questions answered and see if the applicant is still willing to go ahead with the conditions that we are thinking we would want to put on here. As representative, I am guessing that you can't formally make those decisions.

LaPatka responded no.

Andres made a motion to table the application.

Johnson seconded the motion that carried unanimously 3-0.

**Conditional Use Application 3-CU-19 by Travis Guida and Sarah Coumbe-Guida:** Part of Government Lot 7, Section 22, Township 141, Range 35, Arago Township between Eagle Lake and Potato Lake, recreational development lakes. Parcel 02.22.01620. Applicant is requesting a conditional use permit per Section 401, Table 1 of the Shoreland Management Ordinance for a commercial planned unit development conditional use permit.

Travis Guida, 27250 Shady Ridge Drive, Laporte, MN, presented app.

Guida stated back in the fall I had approached the County with the possibility of building. The plans have changed a little bit since then, but generally speaking, our ability to build is constricted by the density under the current use. We have gone through the process by coming to the Planning Commission starting in the fall to amend the Ordinance. That was approved and went to the County, then back to you again. I don't know if it came back to the County a second time. In the midst of that, after some consultation, an idea was provided to possibly go a different direction and do a planned unit development with the property, as our business fits the criteria of what a planned unit development could be.

Petersen said you showed us the other day where you are planning on building and we talked a little bit about the property line. Is it your intention, in the course of building or prior to building, that you would have that line officially recognized through a surveyor?

Guida replied I would be happy to include that in the application.

Petersen clarified as part of the building process, prior to building. I am not sure that we could compel that. My background is in building, it is a safeguard that I always adhere to, whether it is a property line or right-of-way setback. To make sure that you don't have any problems down the road, that is just one concern that I had.

Andres said I saw in your application that most days you operate during daylight, starting about 8:30 in the morning. What is usually the cut-off time?

Guida answered I would say it is dusk or a little before. Generally, it follows the daylight that is there. The only times that it has ever been altered is the four or five times that the

Park Rapids senior class came out for Senior Slam, and those nights got to be around 10 p.m. or 11 p.m., which seems late especially in the spring. There were a handful of those dates. In the later part of summer, and if we are still busy, it could go right up until dusk, but I can't think of one other example of a time that it has ever gone past dusk. That is from a safety standpoint and enjoyment factor.

Andres asked can we put a time on your hours of operation?

Guida replied generally I would say that it is not going to be past 9 p.m. That again, would be in the heart of summer when it is staying daylight longer.

Johnson said it is still daylight at 10 p.m., are you sure you wouldn't want that?

Guida stated I don't want to prohibit myself from moving forward and I am happy to abide by any standards along those lines. I certainly don't want to cause any type of disruption at all. If I am saying 9 p.m. and that is going to be restricted, I would prefer not to say that. I am happy to follow what your suggestions are.

Johnson added my point of view is going more towards 10 or 10:30.

Guida replied I am happy to say 10 p.m. then. In the event that I would need to go past that for whatever the reason may be, what would be the appropriate course of action if I was ever to exceed that time period? Just being a good neighbor, talking to the neighbors?

Johnson agreed. Speaking of which, you have existing exterior lighting that you apparently don't use very much.

Guida replied a couple times.

Johnson continued and you have had amplified music. Have you ever had a complaint?

Guida answered yes, from Roger Mead, who is the neighbor to the south of us. I would say over the course of eight years, there has maybe been nine or ten times that I have gotten a text from him saying the music is too loud or please turn the music down, and I have addressed it immediately. It is one of those things, when you are standing in front of it; it is kind of difficult to tell. I think the game changer for us was when we built the building. We had the speaker underneath the picnic shelter and it almost served as a megaphone to his house. His house is on the other side of that hill. When we closed in that portion of the building a couple of years ago, we moved the speaker to the north side of that building and last summer I don't think he ever mentioned any music issues because that whole wall was there, so there was no way for it to carry as easily.

Johnson asked did we get any written comments on this?

Guida replied I talked to Roger because I wanted to make sure he was aware that we were doing what we were doing and he didn't say anything specifically.

Petersen said in Buitenwerf's staff report, in the proposed conditions that he suggested, he had, on item number four, 10:30 p.m. Are we thinking of changing that?

Johnson replied I am good with the staff report.

Petersen asked Buitenwerf is my concern about establishing that property line before building, would that be something that would be added to the conditions, or would that be left to the applicant to take care of.

Buitenwerf answered you can do it either way. If it was a concern, you could certainly make that a condition, that there would be a survey completed to ensure that the building site would meet all the required setbacks. Otherwise it is the applicant's responsibility to make sure that it meets the setbacks at the time of construction. If it would later be found that it didn't, then they would be in a violation situation and needing to remedy that by either obtaining an after-the-fact variance as needed, or moving or removing the structure.

Petersen asked are there any feelings on whether we want to include that or we just leave it to the applicant?

Johnson replied I think leaving it to the applicant. We have been doing that in the past.

Petersen said I have stated my concerns and you seem to be aligned with that so I won't ask for that to be included, we will leave that to you. Buitenwerf has already given us the perils if you found that you didn't meet setbacks.

Petersen asked for public comment.

No public comment was given and no written public comment was received.

Andres asked in the application, I noticed that you said you would like to put in three units with the possibility of expanding to number four. Where would you propose number four to go? Would it be a separate structure?

Guida explained in wanting to apply for anything that could possibly happen down the road, I indicated three with the possibility of four. We have not considered where it would go. I can speak with near certainty that it wouldn't be connected with the building. That being said, there are certainly many restrictions in terms of the density, the distance from Eagle Lake anyway, so I don't know that we would necessarily have a lot of space. Even if the density works, we have to deal with impervious surfaces. I don't know if we are going to have the ability to do that but I wanted to include it in the application.

Petersen asked are there any other things that we might want to memorialize? I am in favor of adopting staff report items for conditions 1-4.

Johnson added I missed the lot viewal. Did you talk to him about maximum occupancy on the property at any given time?

Andres replied it was addressed on his numbers in the application.

Guida stated we have never had any more than approximately 100 people on the premises at any given time. Those are very rare circumstances when we will have a very large school group. We tend to have those large school groups in the month of May,

generally. On an average day during the summer time, there is a certain limit on how many people can really be there doing things because we don't want a long line of people because it's not that big. Usually capacity at any given time, if we have a tourist group or a team or a corporate group, usually it is around 20-25 people at any one time. A busy day would be 80-100 people. I can't imagine a situation where we would exceed 100 people in one day.

Petersen said instead of 1-4, Buitenwerf had a fifth condition in his staff report, I don't know why we would not include that, and we would want to include that too in my point of view.

Johnson agreed.

Andres said I have a question on the expansion; do we want to make that an additional condition on expansions in the future, that we are limited to what he has presented now?

Petersen asked Buitenwerf would that be wise to include that in our recommendations here, that any future expansion would need to come before us again?

Buitenwerf replied you can certainly do that. I think that was the intent of staff in the prepared condition number five. You could certainly add a sentence to that to elaborate to say that any future additional rental units desired would need to be granted through an amendment of the permit.

Guida asked could I add something to that? I am asking if it is possible. At one of the previous meetings, there was a discussion about living quarters. Is that something that is possible to include in that as well, or is that not even something that is possible with this particular use? For instance, if my wife and I wanted to move onto the property and met all of the other requirements in terms of density and impervious surface, not as a rental unit, but as a living quarters for ourselves.

Buitenwerf answered with a commercial planned unit development use, those types of uses are allowed to have an owners or managers residence on the property in addition to the rental units that are allowed. Assuming it would comply with setbacks, impervious surface, and the other ordinance criteria, it would be possible to be done through a permit.

Petersen asked that would require a permit to do that though?

Buitenwerf said a land use and septic permit, yes.

Petersen clarified you are not asking formally for that as part of this application now, you are just wondering?

Guida agreed.

Discussion ensued about developing the conditions to the conditional use permit.

Andres made a motion to recommend to the County Board of Commissioners that the conditional use application be approved and adopt the staff report conditions for 1-5 and

the Planning Commission providing condition 6 and adopting the staff report findings of fact as presented.

Petersen seconded the motion that carried unanimously 3-0.

### **Conditions**

1. This conditional use permit (CUP) is for the operation of the entire premises as one commercial planned unit development (PUD) 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. The existing driveway approach on County Highway 40 shall be the sole vehicle access by which vehicles related to this use (i.e. customers, vendors, etc.) may enter/exit the property.
3. The septic system to service the proposed rental units must be installed, connected to said units, and receive a certificate of compliance before the rental units can be occupied.
4. No outdoor activity related to the commercial PUD use may occur after 10:30 p.m.
5. Two rental units totaling 3,060 sq. ft. of habitable space that will be located in the proposed 40' x 70' + 6' x 30' (2,980 sq. ft.) structure shown on the application site plan sketch are allowed.
6. The CUP is for the operation of a planned unit development. In the proposed structure of the application, any expansions to this structure or 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 ropes course component of the use was operated as part of the adjacent resort without any complaints having been received. A commercial planned unit development is allowed as a conditional use on recreational development classified lakes like Eagle and Potato between which this property is located. The proposed rental units comply with the allowed rental unit density. The use complies with the 25% impervious surface area provisions in the ordinance. The existing access onto County Highway 40 has been in use since 2010 without any issues.

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 be located on a non-riparian lot that is separated from Potato Lake by County 40 which acts as a bermed physical barrier that would keep any runoff from this property from reaching Potato Lake. The property is ~500' from Potato Lake and ~430' from Eagle Lake. The Eagle Beach Resort property lies between the

subject property and Eagle Lake and is heavily forested for ~300' of its depth – which will also keep any subject property runoff from reaching Eagle Lake. The property will be kept largely undisturbed as its business use depends on maintaining the large mature pine tree cover. No topographic or vegetative alterations to the property are proposed aside from the construction of the proposed 2,980 sq. ft. structure and its septic system and driveway.

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? As mentioned in the response to question 2 above, the sole modifications to the property's topography and drainage are the proposed construction of the 2,980 sq. ft. structure and its septic system and driveway. Most of the property will remain in its natural mature pine tree cover that is critical to the continued operation of the business. The use's operation the past eight years as part of the adjacent resort use testifies to its not adversely affecting the site's topography, drainage, and vegetative cover.

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? All but the proposed ~40' x 70' rental unit structure and its accompanying driveway and septic system are already in place and have been operating for the last eight years without any noticeable erosion problems. The proposed structure and related improvements will be located in the NE corner of the property that is level and has no significant erosion potential. This area is separated from Potato Lake by the County Highway 40 right-of-way which is higher in elevation than the proposed structure site and will thus keep any eroded material from reaching the lake. The property's use is predicated on the property remaining "natural" in its vegetative cover so the applicants have a vested interest in continuing to safeguard the property from erosion.

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

YES ( X ) NO ( )

Why or why not? The property's existing access road is on County Highway 40 which is a main paved two-lane County highway. The property is roughly one mile from State Highway 71 which is a main thoroughfare between Park Rapids and Bemidji. The property is thus well situated in regard to proximity to well-traveled and maintained highways capable of supporting the number and types of vehicles used by customers that frequent this property. No issues related to the business' road access have been

mentioned by the public or observed by the County in the eight years it operated under the adjacent resort's conditional use permit.

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

YES ( X ) NO ( )

Why or why not? As stated in responses to prior questions, this use has operated under a CUP for the adjacent resort on parcel 02.22.00500 since 2010 without any complaints having been generated regarding its compatibility with neighboring uses. The west and north sides of the property abut a commercial resort use that has been in operation for decades and is owned by one of the applicants and her family. The south and east boundaries of the property abut a residential property of ~8.8 ac. on which no residence or other improvements are located. The extended radius area is low-density residential development due to a large wetland complex on the east side of County Highway 40 across from the property that precludes building on that side of Potato Lake. The properties to the south and southwest of the subject property are ~6, 14, and 42 ac. in size and heavily wooded.

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

YES ( X ) NO ( )

Why or why not? Much of the County falls in shoreland area due to its many lakes. These shoreland areas are where residents congregate to enjoy the lakes/rivers. Thus, these are also the areas where main transportation corridors arose and have been maintained to provide access to these residents. Resorts and other lodging providers are also located in shoreland areas and proximity to such lodging sources makes sense for this use as the use draws clientele from a broad geographic area who are in need of a place to stay when they come to the ropes course. Part of the ropes course's unique North Woods experience is that it draws from the natural scenery in which it is located. Having Eagle and Potato Lakes nearby along with Hay Creek and some other smaller lakes to the NE and SW along with the turns and elevation changes along County Highway 40 enroute to the property all contribute to the experience and efficacy of the course.

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? There is a permitted holding tank on the property that services the customer restrooms. Information has been provided by a licensed SSTS designer that there is room and suitable soil in the proposed location on the property for the SSTS to service the proposed rental units in the ~40' x 70' structure to be constructed.

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 property is ~430' from Eagle Lake and ~530' from Potato Lake so none of the property lies within the shore impact zone of either lake and thus

Section 901 of the Shoreland Management Ordinance does not come into play on this property. The structures on this lot are not visible from either lake due to the aforementioned distances, the existing mature evergreen tree cover on this property and surrounding properties, and County Highway 40's bermed design.

11. Is the site adequate for water supply and on-site sewage treatment systems?  
YES ( X ) NO ( )

Why or why not? The property is nearly 3.5 ac. in size and has an existing well and holding tank that service the customer restrooms. As stated in the response to question 9, a letter from a licensed SSTS designer was submitted in the application that states there is room and suitable soil in the proposed location for the septic system that is to service the ~40' x 70' structure that is to house the proposed rental units.

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 proposed use will not affect public waters as the property does not front a public water body and the use does not involve any watercraft-related activities. The use is solely that of providing a ropes course experience to customers – some of whom may then stay in the provided rental units due to the distance they travel to reach and experience the ropes course.

**Board of Adjustment:**

**Approval of Minutes:** February 25, 2019

Andres made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 3 – 0.

**Old Business:** None.

**New Business:**

**Variance Application 1-V-19 by Shawn and Brian Gray:** Lot 1 and part of Lot 2 and 3, Block 2, Kola-Tee-Park, Section 10, Township 141, Range 35, Arago Township on Hay Creek, a tributary. Parcel 02.38.01000. Applicant is requesting an after-the-fact variance from Section 701 of the Shoreland Management Ordinance to expand a nonconforming use.

Brian Gray, 1008 Park Ave N, Park Rapids, MN, and Shawn Gray, 15801 County 40, Park Rapids, MN, presented the app.

Shawn Gray stated we are seeking to expand and have the use of our outdoor music on Wednesday evenings in the backyard of Foxy's Bar and Grill.



Petersen said you operated in this manner last summer, not in compliance with the ordinance?

Shawn Gray responded we did. I guess understandings and perspectives that got us here today, about being in non-compliance; I will address those as you ask the questions.

Petersen added one of my biggest concerns was that we did a previous variance where we worked on that parking lot. That was to address the patrons inside the facility, now you are expanding to outdoor use and additional patrons there. How do you feel that you are going to be able to address the parking needs of those patrons, especially if you have nights where you have a loaded outdoor and indoor? How do you intend to accommodate all of those patrons, as far as parking needs?

Shawn Gray answered I think the capacity of the new parking lot, we tried to maximize the spacing in that and we still have the entire area along the northeast edge of County 89 that borders the building, as well as the south side of the building. In our experience, it has absorbed a relatively large amount, even before we had any events outdoors. The nights that we would have the outdoor events now, there was much less parking on 89 during the outdoor events. We address this the best we can by maximizing our layout. We have changed the layout of how we park inside the parking lot a couple of different times and the angle that we go. We feel that we have it maximized now as effective and efficient as we can. Obviously, it is hard for us to tell on any given night how many people are going to show up. We have had some nights there were very few people and there were very few parking spots, and there are other nights where some people did park on 89. Our overall view was that the parking lot was a great variance because it has relieved a lot of traffic on there in general.

Andres asked how many parking spaces do you think you currently have with the different ways that you have tried to assemble them?

Shawn Gray replied I should have tried to count that.

Brian Gray answered I have counted cars there. One evening when we did have music on a Wednesday night, there were literally zero cars parked across the road. We had probably up to 30 cars parked and there was nothing parked across on the road. We could possibly get up to 40 cars when it is not raining and muddy. Generally speaking we have really increased our parking, way beyond what it was, and it actually took care of the problem on the County Road much to our surprise. They did an excellent job.

Shawn Gray added I would say 40 is not an outrageous estimate.

Petersen asked what is your feeling on any night last summer where you had a good crowd inside and out, were you able to handle all the parking needs there? I didn't go by, but would I have seen cars out on 89 on those peak nights where you really had a good crowd?

Shawn Gray replied I think it would be unrealistic for us to say that we can handle 100% of it all the time and there will never be a car on any night. At the same time, you have some people that have come to that place for decades and they are used to parking on 89, even if there is an open spot in the lot. It is a lot less. I would say on our peak nights, there were some cars, but there were also nights where we had none. I feel like we can handle it, like I said, our best nights of customers are better than our best nights without the parking lot. I feel like we have addressed it in a large amount. I wish I could give you numbers. Before we had the parking lot, there were a couple of nights they were backed up almost to the bridge. We have had nothing even close to that since.

Petersen added you have to understand my position, I was in favor of that parking lot improvement to get people off the street and that is still my goal because I have frequented your place and I have parked in the parking lot and I have also parked in the street and it worries me. I have grandkids and if I were to bring them over and one of them bolted, that could be an issue. Any way we can accommodate your patrons off street parking. That is what I am looking for there.

Shawn Gray stated on Wednesday nights, what we are proposing is having music from 6-9 and being done by then. I wonder if there isn't a way to have staff directing parking. Or to make sure we put some environmentally friendly paint on the ground or something.

Brian Gray added generally speaking, it is not a problem. I guess you are dealing with four weeks in July and a couple in August. That is your peak time and after that there is never a time where there is not enough parking in that lot.

Petersen said from our position, we have to look at max potential that you could have onsite. I am using, in Buitenwerf's staff report, some of his data that he has supplied as to what your needs might be. His estimate could range from needs of 80-86 parking spaces to accommodate the potential crowds you could have. He has expressed that concern; I have got that concern also from my point of view. I am wondering, on the side of the building where the trailer home is, is there parking that goes on over there?

Shawn Gray replied there is. That would be a concern, 80 cars is obviously more than we have capacity for. We have yet to see that. From a business perspective, we would love to see that, but from a safety perspective, obviously that would be a concern for us too. If you look at the map, the trailer to the south, we actually angled them in coming off of 89 and taking a right turn. That used to be brush and perennial plants. We tore all that stuff out and we allow people to park against that trailer at angles. You get four or five cars in there. We moved the blockage fence more to the east so we could put some cars into that little fence that is to the southeast corner of the building. It used to be out; we moved it in closer away from the road so we could put more cars in there. Then we have cars of course alongside the deck and we have the parking that goes all along the west side. That particular map does not show our fence, we have actually since adjusted the fence in a northwest corner so you can park cars on both sides of the entrance fence. Again, if it were 80 cars, which I would be shocked if we were anywhere close to that at this point.

Brian Gray added if you have 80 cars, they don't stay. They go up the hill to the other restaurant/bar.

Shawn Gray continued but like we said, could we have some flow onto Inlet Circle? Could we have some people park up there? Is that realistic? That is what we notice more than anything; Foxy's is not a big place. We get a lot of people that will drive up and then, even now when it's not busy, they will just drive up and see there are too many cars and not stick around.

Petersen asked for public comment.

Butch DeLaHunt, 17487 Driftwood Lane, Park Rapids, MN, CEO of Park Rapids Area Chamber of Commerce, said I am here supporting a member business. That is a member of the Park Rapids Lakes Area Chamber of Commerce. I have been to the event on Wednesday night. I see a lot of family members; I see vehicles coming with multiple people in the car. You will have families coming and you will see it in some of the videos if you go onto social media, you will see many of the vehicles are bringing multiple people to that event. I want to talk about experiences that people are trying to have in our community, and businesses trying to thrive in a very competitive market place against other communities that are hosting events and also doing outdoor activities throughout our entire region. These experiences that bring our community out, our visitors out, and allow families to get together and enjoy each other's company. It is very important that we have facilities that are fostering these types of activities in our community. I really urge you to keep that in mind as you make your decisions. Experiences like "Why not Wednesday" are exactly that. I come by ATV. People come by motorcycle, people come by car, and people can come by boat. It is an experience that they get to enjoy in our north country and get to enjoy music in the great outdoors. It is only 6-9 p.m. on Wednesday nights. The music is not blaring and loud. If you have concerns, put a condition on there that they can't exceed a certain noise decibel level. You can keep track of that electronically. There is also a huge amount of increase and concerns that are threatening some of our legacy facilities. I talk about our legacy restaurants that have been there for multiple years. Yes, there is going to be conflict with our existing Shoreland Ordinance. We need to come up with solutions and ways that we can solve these very difficult problems with our legacy facilities. If we don't, they just will be gone. And when they are gone, we will all be saying, "Why don't we have these things?". I urge you to pay very close attention to that as we move along. It may be time that for legacy facilities, grandfathered facilities, or facilities that are bought and trying to expand, that we come up with a unique way that they can thrive against other competing industries and other events. This is the time and place to look at our Shoreland Ordinance and reassess what is going on with our legacy facilities in that shore impact zone. With that, there seems to be an awful lot of questions that are asked about "what is the frequency of the event", it has to be inside of the building, it can't be outdoors. Why do we live here, I wonder? Also, next will be lakeside weddings, family reunions, school reunions. Where do we stop? Just because these events occur from time to time within the impact zone. I think we have to be very cognoscente of that. I urge you to consider those facts as we move forward.

Dave Huber, 12191 Island Lake Drive, Park Rapids, MN, said my wife and I bought the property in 2002 so we have a lot of experience. We have been up there seasonal, part-time residents up until two years ago. Safety, I hear a lot of talk about parking and concerns, we bring our kids down there. Last year they range from ages 10-14. We have no problem letting them go back into the parking lot into the car to grab a wallet or a cell phone. They have cleaned the place up; it is really nice to have a place to go. Park Rapids needs more of this, not less of it. I have never went down there on a Wednesday and thought, "What are we going to do for parking?" because people come and go. It's not like everyone goes from 6-9 and you have 45 cars there the entire time. There is a flow, and like I said, if we didn't think it was safe, we wouldn't go down with our kids. We go down with our kids as much as we can. We really appreciate what they have done.

Rodney Kylonem 322 3<sup>rd</sup> Street, NW, Menahga, MN, said up until a few months ago, I worked for the Grays. I attended every "Why not Wednesday" that there was because I worked it. I sat right on the parking lot where I doled out food and there was never any time that there wasn't adequate parking and there were only one or two times out of all of those Wednesdays where I saw anything but maybe a few vehicles on 89. Just a few, never lined up and down the road. That new parking lot is wonderful. I never counted the cars, but mine was always wedged in there right by where I served. People would come and go and I never saw any hazard whatsoever in the parking situation. As for the music volume, I don't understand that at all, it is always very mellow. I don't see how it could really disturb anybody, especially for just a few hours on one day a week for a couple months.

Nate Ackerman, 26298 County 89, Park Rapids, MN, stated we live just up the road from Foxy's a couple blocks. Wednesday is something we look forward to with our family. We have five kids ages 1-14. We enjoy it, they enjoy it. We walk down and have a good time. We have never had a safety concern. You talked a little about safety with your grandkids; we feel that is our responsibility, not someone else's responsibility to make sure that our kids don't get hurt. I feel that it is a fun event that it should stay even if there are cars on 89. We live there; we have to drive by there and it never has affected us.

Joe Christianson, 300 Mill Road, Park Rapids, MN, said I want to say that my support for live music in general is huge, and to have a place that will hire local people is tough to find. I have played at their bar quite a bit, most of the stuff that we played has all been 7:00-11:00 inside. One of their rules is that you have to be able to make a phone call inside there, so outside the bar is not going to be any different. Whether it is music, art, sculptures, I think Hubbard County needs way more of it. All it does is promote happiness. It brings joy. To me, it would be a shame if we ended any live music anywhere in the County.

Petersen closed public comment. No written public comment was submitted.

Andres stated on July 17<sup>th</sup>, 2018, ESO sent out a violation letter. You were in violation of your conditional use permit by having the outdoor activities. I believe later, down the road

there was a cease, you were supposed to cease. Can you give me a little information as to why you did not?

Shawn Gray answered that is a fair question. I will start by saying our intent, Foxy's corporate intent and our personal intent, is in no way trying to disrespect establishment or rules or policy or ordinances. That is not our intent. The idea came forth and we tried it in 2017 and we really didn't know if we were going to do it in 2018 again. When I was asked in 2017 if you are going to have outdoor music, at that point it was done and my intent at that point was that we didn't have plans to. We decided in the winter to see if we could make it work because it costs \$600 or so depending on the band. It is not a money making activity much of the time. We would make a little bit of money or break even. We thought, can we do it in 2018. We got the letter on July 17<sup>th</sup>. It was really more trying to understand what we were violating. Because we went back and talked to prior owners, we talked to patrons who have been there longer than I have been alive, and they have said there have always been outdoor events. Everybody has had drinks in the backyard and food in the backyard and music in the backyard. So, we were trying to understand how are we changing what is there. By the time we got that letter, we had two or three more events scheduled for the rest of 2018. They were paid for and bought. I was not completely sure we were in violation. Is there an element of selective interpretation of the Ordinance here? Because it seems like it has been happening a long time. We are not trying to change what Foxy's is. Foxy's has been Foxy's for a long time through different names and different owners. There was this question in our mind. Now, what wasn't a question is that the stage was not in setback. The stage needed to be taken to 150' setback by such and such a date. We did that. It was probably a choice at the time, perhaps incorrectly on our part; we have two or three more events. Let's do them because I am not completely convinced. What choice do we have? I am not completely convinced that we are changing the scope of what Foxy's has been. But our recourse would be what? Come in front of the Board or talk with Mr. Frieden. Our thought was, let's do our last couple events and then we are going to need to decide. Number one, are we going to do this in 2019 or not? We need to look at numbers, was it worthwhile? It was a great community event, but can it flush out financially? And then, truthfully, our plan was that if we are, we are going to have to seriously address this. Apparently there is belief that we are changing the scope of what Foxy's is or was or has been. We can't just do 2019 again and have it be that way. It was kind of at the end of the summer. What brought us here today is that we hadn't really decided that we were going to do it again until the County Board changed our liquor license obligation from what it had been in the past. So now if someone wants to buy a beer and go sit in our back yard, they can't do that after they have been doing that for 40 years. Our intent was to say this, now obviously we would like to try and change the financial liability a little bit. To make it a little bit more of a flush item, but we don't want to change what it is; a family friendly, 6:00-9:00 event. We think it is great for the community. We would like to make it work financially. To get the variance and then hopefully we can go to the County Board and ask for their approval to change the restrictions on our liquor license. That is really a step two. We needed to come in front of you folks first. For lack of anything else, to maybe apologize for the couple of weeks overlap from July 17<sup>th</sup> to the end of our music. Maybe it wasn't the right choice, but that was the choice of where we were at the time.

Brian Gray added throughout this entire process, when the variance Board met out on the parking lot, was the first time that somebody looked over and said I think you need a permit for that stage. The stage is on wheels. I don't know why we would need a permit, it can be moved. We continued to feel that this whole thing was about the stage and we knew we could move it. We knew we could get it outside of the 150' zoning. I checked with the sheriff three times in a year and a half to see if we were violating any noise statute. We are 6:00-9:00. We were not violating any statute, any noise statute. We continued to feel that it was the stage until the July 17<sup>th</sup> letter. Then the stage has got to go and because of the frequency of the events we were in violation. We checked with a couple of owners and they said they always had music out in the backyard.

Shawn Gray continued it left us in that spot at the end of July and brought us to where we are today. That is why we wanted to put in an application for this and look forward. That is a really long answer to your short question, Andres. My apologies.

Petersen said I am going to go back to the parking, because that is where I am hung up on. I have heard some of your patrons talk about safety concerns and how they feel that they can address it. In my feeling, there are formulas used for these types of establishments, and you have given me an estimate of what you think your parking capacity is. To me, it doesn't come close to the formula that the staff report would require in order to have safe parking there for your patrons. That is something that, in my opinion, I would be a stickler for is to try to get something to accommodate the potential patrons you would have onsite. It is a good problem, to have a lot of people there, but somehow we have got to accommodate them safely within recognized standards of what industries are for this. I know that your establishment has been there for a long time and you are trying to grow it. I get that and I like that, but still you have to meet some sort of standards for giving capacity for those people to park safely. We wouldn't want any mishaps and I certainly wouldn't want that on my conscience. That is where I am really stuck right now as far as what to do with that. As far as the music thing and your violation in the past, you have given us your explanation. I am not hung up on that so much but I am hung up on that parking.

Shawn Gray asked Petersen was the formula for the parking, was that communicated to us at all? This was the first that I have heard of the potential for 85. If it was, I could have missed it.

Petersen answered it is what Buitenwerf has in his report here, that is the data that I am using as far as whether I am on board with what they can do versus what they might have for patrons there on any given night.

Buitenwerf replied that information is on the staff report that was provided to the Board of Adjustment for this meeting. It wasn't something that has been communicated to you, but it is a public document that you are welcome to get a copy of.

Brian Gray added Foxy's is a little bit different than a lot of places, we are up there in the trail systems, we are on the river, we have boats come, we have ATVs come, we have side by sides come, we have motorcycles come. If you take a formula that says for X amount of people you need to have 80 spaces, how do you integrate how many people that come in those types of vehicles. It is a different situation.

Petersen said I understand what you are saying.

Johnson added I am struggling trying to answer yes to my findings that I need to answer yes to in order to pass your request. One of them is, "Will the issuance of this variance maintain the essential character of the locality?". Well, we have had an awful lot of complaints about the music from people who are in that locality. I can't say yes to that.

Shawn Gray said can I ask where those complaints are filed? We tried the Sheriff's office and we found three. And they were all from the same guy.

Johnson answered I have it in my staff report.

Shawn Gray continued unless there is something we didn't get. We checked. These are things of concern for us; we don't want to be disrespectful. Truthfully in 2017, we had an event that just ran late. Not my intention and it was too late. We sat down and said these things can't happen again. It was too loud. That is why we tried to change it this last summer.

Johnson added for instance number three is, "Is the need for a variance due to circumstances unique to the property and not created by the current owner?" well, if you had applied for a conditional use permit. You created the need for a variance by rescinding that while you were in the process of applying for a conditional use. You created the need for this variance.

Shawn Gray explained the CUP that we originally applied for was for numerous things. One included a proposed extension on the north side of the building, which we have since changed our mind. We just don't have the capacity to do that and it would be too tough to fit it in there with the existing tanks. Plus it is expensive and not worth it. We talked a little bit, this is not our business and we were trying to learn about it, and so we came in to talk about everything, it was recommended to maybe look at a CUP. Then we said we are not going to do this, and we are not going to do that, so let's just scrap the CUP thing. Someday we might take that trailer out of there that has been sitting there forever. Maybe we will turn that into more parking. We scrapped the addition and said let's just have the music. That is why when I came in a month or two ago and I talked to staff about it in Buitenwerf's office, so we could just do a variance for this. At the time I was not told that was not acceptable.

Johnson said you can ask for a variance for anything. But one of my questions that I have to answer is, "Were you the one that caused the need for it?" That is a test that we have

to follow. I would like to say I know you guys are good, let's just do it. But, we have a process to follow so that doesn't happen.

Petersen asked do you understand the findings that Johnson is referring to there? There are five questions that we have to answer in the affirmative in order to consider granting this variance and he has already raised questions about two of them where we would struggle to answer yes to in order to grant this variance. So we are trying to give you some basis for his concerns, my concerns, why we are having trouble with going ahead with this variance right now the way it is proposed.

Andres added along the same lines, I love that your business is growing. I understand that and you are doing good things to do it, but you also have guidelines, you have restrictions, because of the size of your lot. You have big ideas and big changes that you want to do, you may in the future think about moving to a larger lot. Taking your business to a larger lot so that you can accommodate what you would like to do. This particular lot lacks the room that you need for what you are requesting. That is why we are having issues with the size for your outdoor expansion.

Shawn Gray replied I understand that point. I would have a hard time justifying moving our entire business for seven nights a summer. That would be hard; we are not seeking to expand this thing beyond what its capacity is. We are seeking for a couple simple events outside. Those are two different things. I would struggle to find a single day, now that we have a parking lot, I would struggle to think that we had many cars on the road at all during our Wednesdays this last summer.

Johnson added I can tell you from experience that Moondance Jam started on a ball diamond. And it just went big.

Shawn Gray said that is bigger than us. Truthfully, let's be honest, Foxy's can only do so much and that is really the attractiveness of it, it is a neighborhood bar and grill. That is why the inside is old, wood, and rickety. It has this cool feel to it. People have been outside for a long time, so we give people a chance to sit outside along the river and have a drink or listen to some good music. We are not trying to change the scope of it in that sense; we are just trying to have an event.

Petersen said this is just a question for Buitenwerf for purposes of me understanding how a liquor license works. Is that simply, or exclusively prohibit the sale of liquor in the outdoor area? Can there be tables and liquor use out there without the sale? What does that mean for a liquor license to be granted or restricted there?

Buitenwerf stated you are probably getting into the realm of wanting to pose that question to the County Attorney's office. My understanding was, while sitting in on the County Board's action on the license, was that they did not want any outdoor alcohol use or sales to take place.

Petersen clarified use or sales. Ok.



Shawn Gray asked what was the purpose of that, given our last two years liquor license clearly stated that both use and sale was acceptable outdoors.

Brian Gray added it has been acceptable for years.

Shawn Gray continued it is all public record. Unless I misunderstand. The map clearly stated that it was ok. The way I understand, the way Mr. Frieden explained it, is that it was recommended punitively. In a sense, because we didn't address the variance. That is what my understanding was. Did I misunderstand our past liquor license?

Buitenwerf explained liquor licenses, whether they say or don't say something, don't have any bearing on the zoning from the Shoreland Ordinance standpoint. That would be my answer for what a prior license may or may not have contained for information.

Shawn Gray asked Johnson if you had to lay it out, what would it take to get this approved? Or are you saying we think you are going to have too many cars to be there, or are you saying we need to apply for a different type of permit? What would you do if you were us? I am trying to get clarity.

Johnson replied I would say like Andres said, the lot is too small and I don't know where you go with the outdoor music without going through a conditional use. I don't know what conditions that would be.

Shawn Gray asked a conditional use does not change the size of the lot. Lot size is still lot size, parking is still parking.

Johnson said I am not going to get into that, like Buitenwerf said, there will be attorneys who get into that. You are a legal, nonconformity?

Shawn Gray replied right now we are.

Petersen added the estimate that I was given, for the parking capacity, was off the top of your head. If you were to go forward in the future, I would think I would need to see something formal for capacity there. You can say 40; someone else could say it's 30. I have no way of knowing what the parking arrangement is out there. I have seen it, but there is nothing marked so you can't really tell how many cars could be out there. From my perspective, formalizing that would be one step in helping your case here so that we could know what the facility could handle as far as patrons from a parking standpoint.

Shawn Gray asked how would we account for the Ackermans who are seven, who walk down there. There are a large number of patrons who walk down there or take an ATV. How do we account for that with a formula that we have yet to understand or to see? How do we know how many people are going to be at the events? Just based on our application saying that we average 60 or 70 people? I don't how that would quantify 80 cars. This is why I am trying to understand. I want to leave here with a little clarity. I am

still trying to get clear in my head that the size of a parking lot has to do with the use of what we are talking about here.

Petersen said to me there has got to be some assumptions made as far as capacity of the building and the outside, as far as patrons that you can have there. Granted, it is hard to take into account, for walk-ons, motorcycles, boats. I don't know how much that happens, but whenever these types of formulas are developed, they have to start somewhere. All I am saying to you, first of all we don't really know what your capacity is. We have been given the formula that Buitenwerf has applied to your property size. We have an idea of what you might need in a worst case scenario where everybody drove. But we don't know what you can handle. I think in my mind, I would want to know that. I would want to know how many car spaces there are there. I am sorry to keep going back there, but that is something I would want to see. Then maybe, you can take into account some of those variables, but right now I don't know how many you can handle.

Shawn Gray replied that is fair. If we were to come back with exactly how many spots we have and our best estimate of how many people we believe of the 80, or 70, or 90 people who might be there on any given night, that is kind of hard to tell, and we think that 20% of them will walk or come by whatever and maybe we believe there will be three in a car, or something like that. If we were to come back with that, would that satisfy, in the Board's mind, the ability to say that sounds good and let's go ahead and approve the variance for the events?

Johnson said it doesn't for me, for a variance.

Andres agrees.

Shawn Gray added carry on.

Andres added I know it is hard for you to figure out where you are getting these numbers from, and how we are determining how many are in one car and how many are in another. This basically is based off of your occupancy and we are just doing the calculation for that. It is hard, and you are going to have walk-up customers and you are going to have people by boat and ATV, so I understand that. But based on these calculations, with even just 100 people there, it says you need 83 parking spots. We know you are not going to be near 83 as we have already discussed. You only have like 34-40 maybe. That is also why they are also going down County 89. I think we are way off on the parking spots anyhow. Regardless if we say 10% of them are walking, 20% of them are going by ATV. I still think we are way off on the capacity part of the parking lot compared to the numbers that you are presenting on those Wednesday nights for the outdoor activities.

Shawn Gray asked Johnson you said something about a conditional use permit. How would that change any of the concerns that were here?

Johnson replied I am not here to talk conditional use; I am here to vote on this variance.

Petersen added that might be something that would have to be discussed after this. Johnson said, and I agree with him, we have to move on this variance application and make a decision on that. In the future we can talk about conditional use or future variance, whatever you want to talk about there.

Shawn Gray said I just need to understand what our next step is, because it still seems nebulous to me at this point. We solve the parking issue, somehow we limit the number of people, and we do whatever. People could park on 89 anyway, we can't control if they park on 89. They did for decades prior to that; we just tried to get some off. I think we have done a lot better job of that. At that point, what I am hearing is, that happens to be the first issue at hand. Even if we come up with a solution to that, I am still trying to understand what the other concerns would be. If we came back with another variance, it sounds like that doesn't satisfy whatever the five things are for a variance that I don't understand yet.

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

Andres seconded the motion that carried unanimously 3 – 0.

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

Yes ( ) No ( X )

Why or why not? Public comments and complaints received during Planning Commission/Board of Adjustment public hearings and by the Environmental Services Department in 2017 and 2018 document the business having insufficient vehicle parking area which caused customers to park along the sides of County Highway 89 which caused various traffic safety concerns and illegally operating the proposed use and generating noise levels that were disruptive to the neighborhood and affected parties as far away as on the west side of Island Lake. The 2017 variance granted for this property to expand the parking lot to accommodate the indoor customer space's needs attests to there being a lack of parking space on the property. The property only has enough vehicle parking spaces to accommodate roughly half of the recommended number of spaces needed for the proposed use and customer numbers. There is documented history of the owners knowingly not following the Shoreland Management Ordinance requirements. Allowing such a nonconforming use to expand when the property lacks adequate room to accommodate the proposed expansion would not be in harmony with the SMO's intent of protecting the public health, safety, and welfare and shoreland environment.

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 property lacks the necessary number of vehicle parking spaces to adequately accommodate the proposed outdoor use expansion. The

property is not large enough to support the proposed use as evidenced by the inability to provide sufficient customer/employee parking spaces on the property. The applicants illegally operated the proposed outdoor use in 2018 after having been told during Board of Adjustment public hearings in July and August 2017 that such a use was not allowed and being told the same by Environmental Services Department staff in a July 2018 letter. Public comment during the 2017 public hearings documented vehicle-related safety concerns arising from insufficient parking space on the property and customer vehicle-related noise issues. Complaints filed in 2018 documented consistent noise level issues due to the illegally conducted outdoor use. This history shows that the proposed outdoor use is not a reasonable use of the property. The property is simply too small to handle the proposed outdoor use expansion.

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 Shoreland Management Ordinance allows a restaurant/bar use to operate as a conditional use on this property. A conditional use permit could potentially allow the requested outdoor customer space and music use to occur. The owners created the need for a variance by not applying for a conditional use permit (CUP) to see if the proposed outdoor use could be permitted that way. The owners submitted a CUP application in 2017, but withdrew it before the Planning Commission finished its review and created any recommendation on it for the County Board's consideration.

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

Why or why not? The business is located in a moderately dense residential area whose residents expressed concerns during the 2017 variance and conditional use permit application hearings about insufficient vehicle parking space and related traffic safety issues from Foxy's patrons parking alongside County Highway 89. In 2018, the Environmental Services Department received consistent complaints throughout the summer regarding noise levels generated by the proposed outdoor use that was then occurring illegally. Noise level complaints even came from parties residing on the opposite (west) side of Island Lake.

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

Yes ( ) No ( X )

Why or why not? The application's only stated difficulty is economics.

**Miscellaneous:** Buitenwerf said I shared information with the PC/BOA and County Board in regard to a land use training that AMC is hosting. It will be in Baxter on April 26<sup>th</sup> I

believe. Scott Anderson, our outside counsel, and his law firm partner Jay Squires will be presenting it. It is very good training. I have heard from the three of you. Ken Grob won't be able to make it. I will be attending and Char Christenson indicated she will be going as well as Tom Krueger, from the Board. That is who I have heard from so far being able to attend. We also have, for April, a variance application from Mr. Bolton. That matter will be coming back before you. The RV pad size, square footage variance that he sought and was granted last fall, but that was void due to the fact that the accompanying CUP application was denied. That is one variance we have. We have two or three other variance applications and I don't think that we have any Planning Commission business. It looks like three variance applications, probably four. To give you a rough idea of what the agenda next month will be. I think it was conveyed at the lot viewal, and elsewhere, also to formalize the amendment that was being considered to the Shoreland Ordinance. The County Board held a work session on that earlier in the month and took under advisement my recommendation, which was, given the amount of money that the matter was starting to require, we spent to develop the two sets of standards that some of the Board members had expressed interest in, and the fact that we were able to handle Mr. Guida's interest through another channel, it didn't seem prudent to spend the money to develop something that we didn't have demand for from other parties. So, the Board chose to set that matter aside. If and when there is that demand, they will take up that matter again, but until then, the issue will be considered taken care of.

De La Hunt stated I believe Christenson will be back with you next month. I wanted to say I appreciate what you do. These things aren't easy. It takes a lot of homework. Some of this stuff is not easy to do, tough decisions. If I need to fill in, I would be happy to come back.

Andres asked would the CUP that we tabled be on this agenda? What is his time frame?

Buitenwerf replied we will tentatively place that on the April agenda and then we will wait to see what information they will provide additionally.

De La Hunt brought up a question about the possible development of a flow chart or a list of questions for people to consider in order to help people when they apply for a variance or a CUP.

Discussion ensued about ways to educate people and possible ways to inform new property owners of ordinances.

### **Communications:**

### **Adjournment:**

Petersen made the motion to adjourn.

Andres seconded the motion.

The motion carried unanimously 3 – 0.

The meeting adjourned at 8:12 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary