

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

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

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

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

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

Board of Adjustment:

Approval of Minutes: February 22, 2021

Grob made a motion to approve the minutes as presented.

Petersen seconded the motion that carried unanimously 5 – 0.

Old Business:

[Variance Application 2-V-21 by Shawn Gray](#): Lots 1-3, Block 2, Kola-Teepee-Park, Section 10, Township 141, Range 35, Arago Township on Hay Creek, a tributary. Parcels 02.38.01000 and 02.38.01200. Applicant is requesting a variance from: Part 1: Section 502.7 of the Shoreland Management Ordinance (SMO) for two proposed structures to be located within the ordinary high water mark structure setback; Part 2: Section 701 of the SMO to expand a nonconforming use; and Part 3: Section 904.6 of the SMO to increase the property's impervious surface area. Applicant is also requesting an after-the-fact variance from Section 507.4 of the SMO for a portion of a fence located within the 150' OHW setback that does not comply with the 50% unobstructed view requirement.

Kovacovich stated it is my understanding that we are going to withdraw Part 2 of the application based on the action of the County Board this last month on the CUP application. Is that correct?

Shawn Gray responded that is correct. I communicated with Buitenwerf at his office. He said in light of the approval by the County Board of Commissioners to approve the CUP, that this was a moot point, so we withdrew that from consideration. We just have the other three issues to discuss.

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

Gray stated we are requesting two proposed structures, one is our 20' x 20' tent and the second is our 10' x 12' stage, to be allowed relief from the ordinary high water mark structure setback. Given the space in our backyard, we are requesting that we have that stage be about 25' from the high water mark and the front edge of the tent to be between 60' and 80', depending on the best layout

of it. Of course, all of that falls under the fact that it was approved that all of our picnic tables had to stay at least 50' away. That is the first one. The second request is to increase our property's impervious surface area by a couple points. The addition of these two structures would bring us to 33.6% impervious surface. Then, the third, is the after-the-fact fence that we collaborated on with the neighbor to the east. When that was constructed there was a misunderstanding about the 50% unobstructed view requirement. I am requesting that would be approved to be left as it is.

Grob asked are these two structures, the tent and the stage, permanent structures or will they be only seasonally in place?

Gray replied the tent is certainly seasonal. That is projected to be around our summer season, which we are defining as May 15 - September 15. It is more for shade and rain. We would take that down after the summer season. Obviously, we would not leave that up through the late fall or winter. The stage, on the other hand, takes a pretty big piece of equipment to move it. The wheels don't turn. Even though it is moveable, it would probably be considered a permanent thing.

Grob asked how high off the ground will the stage be?

Gray answered I don't have the exact measurement. If I had to guess, I would say it is 18" at the bottom of the stage, then it is raised up to have the floor, and then it has a roof over it. The roof is between 10' and 12' high and it has a little bit of an angle on the roof.

Andres asked are we going to go through each part separate, or keep them all together?

Kovacovich replied I think we can go through all three of them together, but when it comes time for a motion I think we should probably separate them out.

Andres said during my lot viewal I spoke with the manager. He mentioned that you would be open to moving that stage a little bit further than 25' from Hay Creek if needed. Would you be open to pushing it to maybe 40'? We have talked about sound barriers on the stage to direct towards the audience. Can you give some clarification on that?

Gray responded we are very open to moving that. 25' probably would be ideal, but we can make anything work. There is a back on the stage so the sound would move forward. It would face to the north, which therefore keeps the noise from going out towards Island Lake. It would basically go back towards our parking lot. I think the bands we would have are easy listening. The intent is not to disrupt. Obviously, noise is a consideration for us. Two days ago I got a call from our neighbor. We had a good conversation about what to do with the fence. We don't want to be disruptive in any sense. If putting sides on the stage makes a difference, we are open to that. Let's have an event and see how the sound carries. Then we can talk to the neighbors and get their feedback. I am very open to make adjustments to keep the community happy. We will manage the direction of the sound and then adjust as necessary.

Andres continued as far as moving it back just a little bit, would you be open to maybe 35'?

Gray answered I am open to that. We will make it work. We may have to change the angle of our tent. We are very open to making it work so that the Board feels comfortable with it.

Grob added the setback requirements from the shore impact zone is 75'. What is the possibility of putting the stage where you show the tent and try to make 75'? The noise would be directed where there are no homes, into the cattails. What is the possibility of meeting the 75' requirement, and then place your tent wherever it has to be? I don't know what the intent is with the tent. What is the

possibility of reversing those two directions? I think controlling the noise and meeting the setback requirements would be accomplished.

Gray explained we talked about that. The biggest challenge that we had when people were there was that the stage was open enough, and if you are sitting there at 6:00 or 7:00 at night, that is directly into the sunset. It would be easier for us to have it so that whoever is on the stage is not looking directly into the sun. It is possible for us to move the structure, we just need a backhoe to lift it. We are going to reseed that back area, and I would rather not have big equipment back there after we do that. If the 75' would be a concern, perhaps in the summer time if we have it at 35', and once the season is over we could figure out a way to store it at 75'.

Grob added I believe that putting the stage where the tent is would be better for noise, the impervious surface becomes a non-issue, and we are closer to meeting what is the shore impact zone setback requirement. I am very strong on my conviction that would be a better way to do it.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Grob added there was talk about portable toilets. The County Commissioners approved 50 people in addition to what is in your seating capacity. How many portable toilets do you think you are going to need?

Gray replied I am trying to find out if there is a standard for a certain amount of people. I thought maybe one of the members of the Board last time had said that one would be enough. I don't know what the parameters are on that. If we had 50 people in the backyard, if it requires two, I am fine with one or two. We seem to believe that one would manage it based on what I heard last time, but we obviously will verify that. I just want to fit inside the guidelines.

Grob stated I think the comment last time we were thinking there would only be 24 people out there. Now that it is 50, I think you are going to need more. Are you going to return back to doing the water use monitoring for your septic system once this is all done and over with?

Gray replied Buitenwerf and I had a conversation about that. We were pretty diligent for a four or six month period, and we were very pleased with the results that we had. I am not against it. I feel we are going to be fine. He suggested there are meters that can automatically read that, rather than make sure that my staff is always down there at the same time every day taking a picture. If the Board feels that it is absolutely necessary, I am not against doing it. We will either put an automatic meter in there or get people in the habit of taking pictures again.

Grob said it is up to Buitenwerf if he thinks that ought to be done. I have another question for Buitenwerf. Currently, the County has a special resolution that is in effect for restaurants. If we approve this variance, would it be in abeyance until such time that the County removes that resolution and the State opens up for full capacity use, or would this immediately take effect and be independent of the County's resolution?

Buitenwerf explained if you are referring to the conditional use permit, Grob, that will be able to be commenced once the condition concerning the impervious surface area is implemented. Gray and I have already visited in regard to that. He will make work of that this spring, as soon as conditions permit. With the CUP being granted, it kind of negates his need for doing anything per that resolution.

Grob added there are some pretty tight restrictions on the capacity of your restaurant and deck, the number of people who are going to be outside, the parking, and the buffer zone. How are you, as an absentee owner, going to make sure that those things are adequately managed? When 51 people are out on the lawn, is someone going to tell one of them that they can't be there? How are you going to manage this very complex situation? Will people migrate from the restaurant outside and you will have 75 outside and 20 inside? How are you going to manage that?

Gray replied that is a very good question. It is not a simple answer. There are a lot of variables. I think, as an example, from a parking standpoint, we have already ordered some custom metal road signs that say we kindly request you do not park on 89 and that you park in our designated parking areas. We are going to put those on the West side of 89. For locals, it is a habit. If tourists don't see other people parking there, they will go into a parking lot. Our manager and I have had good conversations about it. For the buffer zone, we have some posts in there now. We are going to make sure that those are at the right distance with a rope as a border. I live there in the summer. I think it is about having consistent communication with my staff. I am going to try to get an idea of what they are seeing at peak amount of people. It is about being on top of it when I am there myself or having enough consistent meetings with my staff to make sure that we are complying with guidelines.

Johnson commented I have the same question as Grob about moving that stage back. I understand your answer with the sun, and that does make sense. Is there going to be a roof on that stage to shade the players from the sun, or is that what you are concerned about?

Gray answered there is a roof on the stage. It is not on the property right now. We moved that off per the directive a year ago. It is constructed, and it does have a roof with a little bit of a half-T. When you are talking about 7:00 or 8:00 pm, the sun would be right in their face. It would be pretty difficult to change the roof structure to have it be effective for a sunblock.

Petersen asked Grob I wanted to revisit with you your suggestion for switching the tent and stage around. What was your rationale in that?

Grob explained I think it would substantially help the noise. The noise direction would be focused away from any residential area. I think it negates any concern for the impervious surface area, whereas if it is 25', any runoff will most likely go into the lake. Thirdly, if it is outside of the shore impact zone, it is consistent with our Shoreland Management Ordinance for 75' back. I think that makes sense and fits the setup. Gray indicated the sun in the band's eyes, the reverse of that is that the sun will be in 50 people's eyes. If you are looking south after 3:00 in the afternoon the sun is farther to the west. I don't see the sun as an issue.

Petersen commented I am lost on the negating the impervious surface.

Grob responded if you look at the lawn area, they have the buffer. They are adding 2%. If it is 75 feet away, a 2% increase in impervious surface I think is negligible.

Petersen clarified you are saying 75' for the band shell? Then where would the tent be?

Grob replied I was going to propose that it had to meet the 50' setback, the same as the picnic tables. That would make sense that the tent could be over the tables. If I were going to make a motion it would be to approve the stage at a 75' setback, the tent at a 50' setback, the increase in impervious surface, and the after-the-fact fence with the neighbor. That is what I would be proposing.

Petersen asked we would still be approving an increase in the impervious surface? We are not reducing it by placing those in your suggested spots.

Grob stated 2% that far from the lake, I don't think is an issue. Especially with the increase in the 15' buffer versus 10'.

Andres commented I contacted the Environmental Services Office earlier, which is the picture on the screen. I did some calculations as well and so has the Environmental Services Office. With the conditional use permit, one of the conditions was for that area that is highlighted to be revegetated with grass. We are going to somewhat decrease that impervious surface because he is going to turn that to green, an additional 1,300 sq. ft. I think that we can go ahead and utilize that condition as well for this variance just to make sure that it gets into place before any of the permits for the tent or stage. That condition should be added to make sure that we get more green space and less impervious surface.

Grob added you are supporting my thought that, with that addition, the impervious surface issue is a non-issue.

Andres continued if he is going to revegetate that 1,300 sq. ft., I don't think that we are going to have too much of an impervious surface issue because he is offsetting it with the extra vegetative area.

Grob replied it doesn't negate the fact that the stage is right next to the river. None of that revegetated area is going to help that runoff.

Andres stated I am strongly suggesting moving it more than 25', since the applicant mentioned that he would be willing to move it. I would strongly suggest not at 25', but something more like 45'.

Grob commented that is going to put it in the middle of the area. It is going to squeeze everything. Putting the band stand right in the middle of that field doesn't seem to make sense.

Andres explained it would help with the setback, not being right by the river.

Grob stated moving it from 25' to 45' just pushes it more into the middle of the field, whereas if you put it at the upper end of the field, you then have the entire field area for people to stand all the way down close to the buffer zone. If you put it in the middle, I am not sure that you are going to squeeze 50 people and all the tents in. What is the distance to that little berm just beyond where the last two tents are there?

Buitenwerf answered that is 92'.

Grob continued you could put a 10' x 12' stage, meet the 75' requirement, direct the music to the south, and have that entire field open for the tent, people standing, and lawn chairs.

Gray added when I initially put this application for a variance together, and we talked about changing the impervious surface, we discussed revegetating and adding what is about 1,300 square feet of vegetated surface. The 20' x 20' tent it 400 sq. ft., and the 10' x 12' is 120 sq. ft., so a total of 520 sq. ft. of new impervious surface versus 1,300 sq. ft. that we are actually adding back in. We are not asking for more, we are decreasing it. If we move the tent closer to the river, does that throw even more if you have a larger percentage of impervious surface closer to the river? Ultimately, if everyone feels we need to flip it, then we will live with it. It seems like this particular request of increasing impervious surface might even be a moot point because we are actually decreasing our

impervious surface. You are right, Grob, if we put that thing at 50', that is the worst of all worlds because that is right in the middle of the backyard.

Grob added I think the other thing is noise. The current restaurant will buffer it from the people to the west. Probably not an issue to the one to the right. Clearly, to the south there is no living structures at all. I believe he could fit the stage at a 75' setback and the tent at 50'. That would be able to accommodate a nice music venue, protect the neighbors from noise, and protect the creek.

Kovacovich stated I would like to split it out and deal with the fence first.

Part 4: Kovacovich made a motion to approve the after-the-fact variance for the fence providing answers for the findings of fact questions 1-4 and adopting the staff report answer for question 5.

Grob seconded the motion that carried unanimously 5 – 0.

Findings of Fact for Part 4

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes (X) No ()
Why or why not? The neighbor is in favor of it.
2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?
Yes (X) No ()
Why or why not? It is for the benefit of both the owner of the property and the neighbor's property.
3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?
Yes (X) No ()
Why or why not? The fence was constructed to be a good neighbor.
4. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()
Why or why not? The fence is not really visible for anyone unless you are back there looking at it because of the lay of the land.
5. Does the stated practical difficulty involve more than just economic considerations?
Yes (X) No ()
Why or why not? The property is limited in its size (i.e. 47,529 sq. ft., 130' east-west dimension at its midpoint, and 318' north-south dimension) for being able to fit a residential mobile home, restaurant/bar, septic system, and customer parking lot. With Hay Creek running along its south boundary and the creek's accompanying 150' OHW setback, variances from one or more aspects of the Shoreland Management Ordinance are thus not unreasonable.

Andres added I think that it might be beneficial that we have a condition that the ESO staff will measure and mark whatever the setback requirements are for this variance. I think that would be beneficial to have as a condition.

Kovacovich stated I would also add that the tent is seasonal and must be removed by October 15th of each year and not put up again until after May 15th.

Grob made a motion to approve the variance request for a stage placed at least 75' from the ordinary high water mark of Hay Creek and a 20' x 20' tent that is placed 50' or more from the ordinary high water mark with the condition that the tent is removed by October 15th each year and not installed before May 15th. The Environmental Services Department should mark the setbacks. The revegetated area in the conditional use permit should be completed before this variance can be acted on.

Gray added in thinking through this, I would almost rather table this and have a discussion again. If we have to have the leading edge of a tent 50' back, you have 20' of tent, and the stage is got to be at 75', what we are going to have is people who are going to be looking at a tent. That is all they are going to see. It basically makes our backyard not useable. I am wondering if there isn't a way that we can find a work around to do something different.

Grob stated 25 of the 50 people are going to be under that tent. I don't see them being any closer than if you had music indoors in a venue.

Gray responded my struggle is that everything to the south of that, if you have people in a lawn chair, they are looking at a tent. If we have to have the tent setback at 50', and the setback of a stage at 75', it just basically handcuffs that entire backyard. That is my struggle with it.

Kovacovich added when Buitenwerf measured out to approximately the corner of the building, the garbage cans, it was at 90'. I don't know how much further back from that you would be able to set that stage. That would give you more than you want. I am certainly open to this being tabled and readdressed, but that is up to the rest of the Board also.

Gray said we can move the tent further away. The largest concern is runoff from impervious surface. That is what I am gathering here. We are adding vegetation and decreasing our impervious surface, which is the condition after I initially filled out the application. I have already contacted some guys to figure out how we can redo that. The 400' of the tent has got to have more runoff than the 120' from the stage. If we move the tent back more and put the stage at 35', then I have some functionality where people can sit at 40', 50', and 60'.

Grob stated my counter argument to that is if it is possible for us to meet the shore impact setback, we should do it. I absolutely believe the noise issue is going to be substantially less. Take the impervious surface out of the argument.

Gray explained I feel if we tuck the stage to the north, we are sending all the noise to the guys on the west. They are going to hear it much more than if we sent it into the trees where there are less neighbors. If you look at the houses to the west there are no trees, not a lot of barrier other than maybe the building. If we had a tent angled towards the north, it seems to send it into the trees, which has got to be better than out on the wide open water. Again, it is only three hours, it is eight times a summer, and we are done by 9:00. It is manageable noise levels.

Kovacovich added I tend to agree with Gray on this, as far as placement of the stage and how that building sits for the noise. Most of that noise is going to be deflected away from the majority of the houses there on Island Lake. Where it is directed is more into the hillside, parking lot, and trees. I am not sure what we are proposing for the stage, if it is from a noise standpoint, really is the best solution. The other part that I would tend to have some problems with is the larger of the impervious surfaces that he is proposing is that tent. I believe the further that we can keep that tent from Hay Creek, the better. With the increased no-mow zone and decrease in impervious surface, it is actually better to have the smaller structure, the stage, closer. Maybe not at 25', but at 35' or 40' as Andres

mentioned. Then we would push that tent back as far as practical, so it will still work. I think from an impervious surface standpoint, it would be better to keep that bigger surface further away.

Grob stated since I made a motion, we either have to second it before we have the discussion, or vote down the motion and change it.

Kovacovich said if you want to keep your conditions as such, you are correct. I am gathering that you want to keep your conditions?

Andres mentioned without a second, it will fail. I am in line with you, Kovacovich, and with the applicant. I appreciate Grob's input, but from the owner's point of view, putting the stage behind the tent totally blocks the view of the rest of the backyard. I think the placement that the applicant suggested is about right, having the larger tent towards the back and then having the stage up front. Not at 25', but maybe 35'. When I was out there it looked like the tent could go up closer towards the trash cans or towards that gravel parking lot. It could be moved an additional 10' before that mound starts. It would be good to have the Environmental Services Department mark them before we get started.

Gray responded the other thing is that people like to sit, listen to the music, and look out on the river. The ambiance is different than looking at a stage and into the woods.

Kovacovich stated we have a motion on the floor with conditions, do I have a second?

Grob added since it seems that the leaning of the Board is towards what is proposed by the applicant, if I change my motion to 45' for the stage and 75' for the tent, would that be more in line or should we just vote on the motion?

Gray commented I understand where you are coming from, and I want to work with you. 25' is ideal for us. That gives us the best use. I do understand the need for 45'. Would you be willing to split the difference and go with 35'? That 45' still pushes us pretty far right in the center of the property. If we are in the center of the property we would end up turning the stage a little facing west, which is what we would want to avoid. We would want to face it north as much as we can.

Grob stated I am going to leave my motion in place. I think there are options with the tent, both size wise and location on the property, without blocking the view. I am going to leave my motion in place, looking for a second.

Johnson asked Buitenwerf, could I have you show me where 35' is from the Creek?

Kovacovich stated I think that is sufficient, especially when you look to the area that is adjacent to it that is going to be revegetated.

Kovacovich said I am looking for a second, if not we will start again.

Kovacovich continued hearing no second, I will make a motion.

Parts 1 and 3: Kovacovich made a motion to approve Parts 1 and 3 of the variance application with the following conditions:

1. The 10' x 12' covered stage is approved to be placed at a 35' ordinary high water mark (OHW) setback and the 20' x 20' tent is approved to be placed at a 50' OHW setback from Hay Creek. Environmental Services Department staff must mark these two OHW setbacks before these two items can be placed in these locations.

2. The 20' x 20' tent must be taken down by October 15 of each year and cannot be erected until May 15 of each year.
3. Condition 6 of Conditional Use Permit 1-CU-21 must be satisfactorily implemented as determined by the Environmental Services Department before Parts 1 and 3 of Variance 2-V-21 can be acted upon.

Petersen seconded the motion that passed 4 – 1 with Grob voting nay.

The Board provided answers for the findings of fact questions 1-4 and adopted the staff report answer for question 5.

Findings of Fact for Parts 1 and 3

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes (X) No ()
Why or why not? By the mitigation of decreasing the impervious surface from the CUP, it actually improves conditions.
2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?
Yes (X) No ()
Why or why not? It is reasonable for a restaurant/bar establishment to have this ability.
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? It is a very small lot overall and with the configuration it is necessary.
4. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()
Why or why not? It mitigates the runoff to a large degree and the noise factor will be minimized.
5. Does the stated practical difficulty involve more than just economic considerations?
Yes (X) No ()
Why or why not? The property is limited in its size (i.e. 47,529 sq. ft., 130' east-west dimension at its midpoint, and 318' north-south dimension) for being able to fit a residential mobile home, restaurant/bar, septic system, and customer parking lot. With Hay Creek running along its south boundary and the creek's accompanying 150' OHW setback, variances from one or more aspects of the Shoreland Management Ordinance are thus not unreasonable.

New Business:

[Variance Application 3-V-21 by Stephanie and Travis Boland:](#) Lots 8 and 9, Block 1, Blue Waters, Section 15, Township 141, Range 35, Arago Township on Eagle Lake, a recreational development lake. Parcels 02.44.00800 and 02.44.00900. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed structure to be located within the 100' ordinary high water mark setback and shore impact zone.

Stephanie and Travis Boland, 881 16th Avenue W, West Fargo, ND, presented the application.

Stephanie Boland stated we are here to talk about a setback variance that we are requesting on the east side of Eagle Lake. We started looking with our realtor over a year ago to find a piece of lake property where we were able to place our camper. We found this beautiful piece of property on Eagle Lake. We started to clean up the property and noticed a natural opening in the trees that we would like to utilize for the placement of our camper. This spot in the trees is within the setback area, but it would also allow for minimal disturbances to the environment. We are here today to discuss the setback variance that would allow us to place that camper on that natural opening. Our main goal is to maintain the aesthetics and the integrity of the property with minimal disturbances to the environment. We feel that without the approval of this variance, then we would have to remove approximately 20 mature trees to find a placement for our camper. The camper we had out there last year is currently sitting in a temporary location on the driveway. We hope you had the opportunity to go out to the property to walk around, and you would be able to see this nice, natural opening in the trees, which is where we would like the placement of our camper to be.

Travis Boland stated I would like to talk about the facts and what our project entails. We are aware that in Section 902.1 of the Shoreland Management Ordinance, we are allowed to grade and to move dirt with a permit. The grading project in shore impact zone would be 35% of the allowed percentage with a permit. The zone between the shore impact zone and the structure setback would only be 60% of the allowed percentage. This project will have proper BMPs in place until 70% vegetation is achieved. This really is the best placement to maintain the integrity of the lot. When the camper moves to its proposed location, we will be 175' off of the lake. The space between the lake and our proposed camper location is Type 6 and Type 7 wetlands and is forested. From the public waters there will be significantly less than 50% visibility of the camper during summer leaf out conditions. 175' of forest is between us and the lake. With our current camper spot we are 275' off the lake. The reason for this is because there is a gap in our ice ridge, which moves our ordinary high water mark back onto our property. Because of this, the structure setback is set deep into our lots.

Stephanie Boland stated ultimately we are just here today to request a variance so we are able to maintain the integrity and the aesthetics of the property, and use that natural opening that is already there to place our camper.

Grob asked in looking back at the records of the application, there was an ordinary high water line drawn back in 2011 that was substantially closer to the lake than the current one. Is there any rationale or reason for that? Could the gap to the lake that has caused this to be a wetland opened in that timeframe, or is it a different measurement technique? Buitenwerf, does your staff have any insight as to why that ordinary high water mark has moved?

Buitenwerf explained it is hard to say since I wasn't on the property. With the terrain being relatively low, depending on where points were taken with the laser level, that might have some bearing on where the ordinary high is. I don't have any information to say one way or the other whether there is a difference between the 2011 placement of the ordinary high flags versus the placement that was done this last year.

Travis Boland stated I was out when Environmental Services came out and measured for the setback. His flags and the 2011 flags were very similar, essentially right next to each other. All of the flags from 2011 still existed. I think that issue is maybe with the scaled drawings than anything.

Grob clarified these two lines are much closer together than what the drawing shows because there are no dimensions there.

Travis Boland continued correct, the flags were on top of each other. They matched up very well.

Johnson added my question is about the same as yours, Grob. I thought maybe that gap may have opened up more recently since there are 100 year old ash trees in the ordinary high water mark. I questioned the setback, but it must have been because of that opening.

Andres asked when did you purchase the property?

Travis Boland replied we purchased the property at the end of July in 2020.

Andres continued before you purchased it, according to the Environmental Services records, you had authorization from the previous owner to get that setback measurement?

Travis Boland answered that is correct.

Andres stated you were aware of the wetlands before you purchased the property and what the setback was going to be for your camper?

Travis Boland responded that is correct.

Kovacovich opened for public comment.

No oral public comment was given.

Written public comment was received for the application.

Kovacovich closed public comment.

Kovacovich asked Buitenwerf there is a berm between where the trailer currently sits, approximately at the end of the driveway there, would they be allowed to move some of that berm by permit? Is that far enough back that it can be done by permit, or would that require a variance?

Buitenwerf answered as Boland indicated, there appears to be the ability to issue permits for removal of some of that.

Kovacovich stated it certainly seems like there is the ability to place this trailer by permit without a variance outside of the limitations of the ordinary high water mark, and then the ability to do some of the dirt moving to improve the view of the lake. It is my inclination to think that I am not in favor of this variance.

Grob asked I know the applicants are promoting putting a trailer on a pad like that is the end of any living arrangements that are ever going to be there, but it is inevitable that they may want to build something permanent, which we would not like that close to the lake. Ultimately, if they were going to build a cabin of some type, is there room on the property for well and two drainfields if we deny this, and they would have to build back 100'? It is inevitable that is going to happen. It also raises the issue of the SSTS violation from 1993. Did that ever get resolved?

Travis Boland replied we did have a question into our realtor about it with the previous land owners. There was not septic system ever put in. It would be tight. Because we are not requesting a septic system at this time, we didn't have a study done.

Grob asked if there was never a septic system, why was there a violation from 1993 that indicated there was?

Travis Boland explained I believe it was because they never had it inspected, but they assumed that they put it in. The previous homeowners claim that they never installed it.

Kovacovich said in my walking of the property, I believe there is room for a septic system and an alternate site on that property in the upper area between where the trailer is and the road. I did not measure it out, but those are my feelings just from walking the property.

Petersen asked Johnson did you look at it that way? If they were to build within the setbacks by permit, do you think there is room for the septic system and alternate site?

Johnson replied I believe there is. If I am going by where that existing trailer is on the map, because I am not sure where the property line was. There is high ground back there, and I believe there is room.

Petersen asked Buitenwerf how much, by permit, of that berm could be removed?

Buitenwerf answered I don't have the exact maximum numbers readily available. I would have to do those calculations. What they presented fell within permissible thresholds. What the maximum would be, I would have to work those numbers up.

Andres stated I support the staff report in denying the application as a travel trailer can be placed where it meets all setback requirements. Although there are unique circumstances to the property with the ice ridge running along the shoreline causing the open water connection to a large portion of the lot that falls below the ordinary high water mark, the lot still is sufficiently large enough to allow that travel trailer to be placed by permit. The applicants were aware of the setbacks prior to purchasing the lot as they demonstrated when they asked the questions about the site visit request. The applicants do have the option to remove that portion of the ridge as well with that shore alteration permit.

Travis Boland added one of our biggest concerns it having to cut down so many of the trees on the property to make room for it. The thought on it is trying to maintain the integrity of the land on all sides of the property, including the roadside, so that our camper isn't up by the road, as it currently is. If we were able to move it to the hill, it would be much more centered in the lot for privacy. The tree removal is the biggest aspect of this project. They are 50 year old pines, you can't really replace them that quickly.

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

Andres seconded the motion that carried unanimously 5 – 0.

Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes () No (X)

Why or why not? There is room on the lot to place the proposed travel trailer by permit in a location that meets all setbacks. When a permissible option exists, granting a variance from the OHW structure setback would not be in keeping with the ordinance's and State Shoreland Rules' intent.

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? Placing a travel trailer at a 40' OHW setback when there is ample room to site the trailer on the property in conformance with all setbacks is not reasonable.

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? While there is a unique circumstance of there being an opening in the ice ridge running along the shoreline of the main lake body that causes an open water connection to a large portion of the lot that falls below the OHW, the lot is still sufficiently large enough to allow the proposed trailer to be placed on it by permit without need of a variance.

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

Yes () No (X)

Why or why not? The neighborhood consists of similarly sized riparian lots that are all part of the same Blue Waters plat and then very large nonriparian lots. Most of the riparian lots are put to seasonal residential use with a few being year-round residences. The one large non-riparian lot across the road from the subject property is a year-round residence. The seasonal residences on the adjacent and nearby lots are situated at a similar distance from the main shoreline of the lake – presumably due to their not having the unique ice ridge opening situation that is present on the subject property. The requested 40' OHW setback for the travel trailer would thus place it at a similar effective setback from the main shoreline as is seen with the nearby residences.

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

Yes (X) No ()

Why or why not? Economics are not cited in the application as a difficulty. Rather, the difficulty is caused by the unique opening in the ice ridge that runs along the main shoreline of the lake and the fact that a majority of the lot behind the ice ridge falls below the OHW and is largely wetland.

Planning Commission:

Approval of Minutes: February 22, 2021

Andres made a motion to approve the minutes as presented.

Grob seconded the motion that carried unanimously 5 – 0.

Old Business:

Shoreland Management Ordinance – short-term rental content development

Kovacovich stated as I was reviewing the updates from last month's meeting, if we look at 14.E stating all short-term rental licenses will expire on the last day of each year. License renewal applications for rental operations in the following year must be submitted between January 1st and February 28th of that year. I had some problems with that based on what we put down below that for the yearly inspections, reports due, and the fact that if the permits are calendar year. We potentially could have the situation where someone does short-term rentals during the winter months. In January and February they don't actually have a current registration license renewal in hand. I am wondering if the following language could be substituted for E and meet what we need. Then it would be a questions to Buitenwerf on how that may impact the staff. It might spread the

impact to the staff out a little more instead of having everything coming in in two months. What I would propose is that we strike what is there and it reads:

All short-term rental licenses are an annual license and must be renewed each year. License renewal applications for rental operations in the following year must be submitted prior to any rental activity.

Kovacovich continued that would not set a time frame for when they could apply. They could, in fact, apply any time in the preceding year as long as they have their inspections in order. They would then, come January 1st, they could rent if they have it renewed, but if they have not gone through the process they would then not have a valid license to rent starting January 1st. It puts a little more onus on the short-term rental operators to submit this the year before and get everything in place. Plus, with being able to submit at any time in the prior year, it should possible spread out the workload on Buitenwerf's office.

Buitenwerf replied I would think so. We won't know until we get into it, but we might get a number of them that happen in the spring, prior to rental season commencing. It would certainly be better than having them all come in at the start of the calendar year. Then it would also address those issues that you mentioned, Kovacovich, with the logistics and timing.

Andres stated I am open to the change. I think spreading it out would be beneficial.

Grob added back some point in time, and I believe it was our December meeting, we had something on noise control and quiet hours. We struck that, but based on some of the public comment, maybe we should reconsider having a condition with regards to quiet hours. I know we had the debate that owners could be just as loud as renters, but I would offer the thought that I would like to see us reinstate the quiet hours.

Kovacovich stated I was the one that started the discussion about dropping it based on the existing State Statute about disturbing the peace. That is how the Sheriff's Office currently deals with noise complaints and disturbing behavior. My thoughts were that having anything in here without getting really specific is duplication of the existing noise ordinances that are under State Statute that the Sheriff's Office currently enforces.

Grob said I don't think that you should have to rely on the police if people are being noisy after a certain time. If that is in the conditions for a short-term rental, a simple report to Environmental Services could do the follow up. I would make the argument for it, but it is up to the Commission.

Kovacovich explained my thoughts are, if they were next door to me and it is any time after normal office hours, I am not going to get anybody in Environmental Services to take care of my problem. The next day I may still be upset and want to pursue it, but it becomes much more difficult unless I make that call to the Sheriff's Office and ask them to intervene. Then they have the documentation.

Grob added the other ordinances from other counties that we have looked at had that in there. There had to be a reason.

Andres asked Grob do you have the verbiage on hand that you could read for us and refresh our memory?

Grob read the verbiage.

Quiet hours of 10 p.m. to 6 a.m. are required to be kept by STR users during which time noise levels shall not rise above that of a normal conversation.

Grob continued I believe that was lifted right out of one of the other counties. I think that is typical of resort ground rules too. That is what I propose.

Andres stated I understand Grob's point. I don't think it would hurt to have it in there. I also understand if I have a neighbor causing a problem, I will call the Sheriff's Office, but I will also call the Environmental Services office the next day as well if I had a short-term rental next door with noise complaints. I personally don't think it would hurt to add it back in. Obviously, the Sheriff's Department is going to be the first person that people call for noise ordinances.

Buitenwerf added it is extremely difficult for our office to adequately document those things because the restriction would be at a time when we aren't staffed. Those types of issues are best handled through the Sheriff's Department responding to a complaint.

Grob commented instead of thinking in terms of everyone violating it, the flip side to that is all of these conditions will be published. A short-term rental owner will have to provide those conditions at some point, and therefore they would have to publish to their renters that there are quiet hours. I would just say it is a way to make sure that the short-term rental owner is communicating to his renters that there are quiet hours. I think that would cover most of the issues that would require enforcement action.

Johnson said I am thinking it would probably help to be in the language simply because I remember when we did the nuisance animal ordinance. The Sheriff's Office needed teeth in order to do what they needed to do. As far as enforcing it, everybody video tapes everything that is violated today. I am sure that there would be proof of somebody that is violating the noise ordinance. I think it would be a good idea to have it in there.

Petersen added I agree. I understand where Buitenwerf is coming from. I am really mixed on this because I feel that the renters should be made aware of a quiet time. If it is published in the ordinance, and the owners pass that on, they know. On the other hand, the enforcement is a difficult issue. I think it is always going to come back to Environmental Services. I am mixed on it, but I can see why we would want it in there.

Andres commented I think what Grob is also trying to do is to help us be more proactive instead of reactive. I think it is a positive thing.

Kovacovich stated we will reinsert that. Buitenwerf, do you have enough information to be able to put that back in the language that is there?

Buitenwerf adds the condition back into the draft ordinance.

Grob continues I have another one here, Item 14.D.

A separate short-term rental license is required for each short-term rental unit on a lot that has short-term rental operations conducted on it.

Grob asked because we allow guest cabins to be part of the short-term rental, does that mean that they have to do a short-term rental license for both the primary residence and for the guest cabin? Or does one short-term rental license cover both?

Buitenwerf explained it would be the former of the two options that you mentioned.

Grob stated they have to do one for both the guest cabin and the primary residence because they may only be renting one or the other at a time. I went through a lot of the history and tried to pick

up on things that we should think about one more time and either discard or include. In the December list, there were three items that were U, V, and W that never got carried forward. I think Buitenwerf added these for our consideration and we didn't act on them. Grob reads Item U.

An STR permit cannot be transferred to a different party than the one permitted.

Grob asked is that something, Buitenwerf, that you think is necessary?

Buitenwerf replied I do not have an objection to that.

Grob reads Item V.

Any violation of any of these criteria makes an STR permit immediately null and void.

Grob stated that gives Environmental Services the option to implement an action, as opposed to a warning letter process that sometimes goes on for months. Buitenwerf, what is your thought on that?

Buitenwerf answers I would be fine with that too.

Grob reads Item W.

The Environmental Services Department may impose additional conditions that will reduce impacts of the proposed use on neighboring properties.

Grob added I can see situations where someone got a license, but there was something unique about the property or conditions that could potentially be a strong impact to the neighbors that you might want to invoke. It gives Environmental Services the opportunity to impose additional conditions or restrictions if there is a perceived big impact to the health, welfare, or safety of a neighbor.

Kovacovich responded I don't like the vagueness of it. We could just put that statement in and not have any other conditions for short-term rental and just let the Environmental Services Office write it and deal with it. The intent is to let everyone know what is allowed and not allowed. To me, it is just a little too vague.

Grob replied you are suggesting dropping that one, but including the other two that we talked about.

Kovacovich answered I am fine with the other two being back in. They are points of clarification.

Andres agreed. I am okay with the first two as well, I am unsure about the last one.

Andres added I believe last month I asked Commissioner VanKempen about the fees. He commented personally that he would like to see us come up with a fee. I know there are approximately 150 STRs. After research has been done, 45-50 of those are resorts. Technically, we are down to approximately 104 STRs. Do we need to come up with the fees for the County Board?

Kovacovich replied it would be my thoughts that it would be up to the County Commissioners to set the fees. That is not our task. I would prefer to make a recommendation that the fees cover all expenses with an outside vendor and cost to the Environmental Services Office, and recommend that the fees be set at 2-3 times the nightly rental. I don't think we have the means and the information to dig down deep enough to establish exactly what that is. That would be for the County Board and the Environmental Services Office to work out.

Andres stated I agree. We should at least make a recommendation to the County Board that the fees cover those costs.

Grob added a number around \$300 is what I have seen for other counties. Initial application at one level and then a renewal, if there is no change, at half the price. That is one of the concepts that could be used.

Andres said at this time, with the number of STRs that we currently have, the number is going to have to be around \$500 in order to cover all of the fees.

Grob clarified that is premised on the existing STRs being the only ones that are going to apply.

Kovacovich added you have to remember that we will have some from that 100 that won't comply. I think that recommendation should be to cover the costs of the Environmental Services Office with a half-time position and any outside vendor fees. That is how I would recommend it and then they can work out the details.

Grob stated I agree with Kovacovich. Calculate the cost of what a half-time person and the outsourcing agent would be and use that as a baseline.

Grob continued these are single-family residences, sometimes occupied by the owner and sometimes not, and then also rented on a short-term rental basis. It is clear that there are many situations where people have taken that thought and turned it into a business venture. I think that gets outside of the basic premise to go from a resident-owner to an absentee-owner situation. Should we consider that anytime more than two STRs are under common ownership, we should require a conditional use permit? It is a business and it should be managed as a business. Should we set the criteria that anytime there are more than two STRs under common ownership it is considered a business and should require a conditional use permit? We have cases where people say that they own multiple STRs and it seems to me that those are absolute businesses like a resort or a motel. A conditional use permit would include all of these conditions that we currently have and possibly other conditions when there are multiple units.

Buitenwerf commented if you set that type of a provision, people will simply record the properties that they have in different names. It will become extremely difficult for us to be able to prove whether they are or not the same owner, and then if they are technically in a separate LLC for example, I don't know that we would be able to exercise any enforcement of that type of a provision.

Kovacovich said I am not sure what we gain for environmental protection by doing that. I think in the ordinance here, having them licensed meets what we need from an environmental protection standpoint. Plus, there are a lot of ways that a smart person can get around that.

Grob added when it becomes a business it is whole different ball game. There are loopholes that could be used, and if we think we have adequate control with every one of them being registered, then it is better to know who that owner is for all of them rather than some other devious approach.

Grob asked do we, as the Planning Commission, have any work that we need to do with regards to selecting an outsourcing agency other than just recommending that we believe that is the direction to go? It is up to the Commissioners and Environmental Services to decide who, how, and when. Have we done our job in that regard?

Kovacovich replied I believe so. It is our recommendation that we use an outside vendor. There have been a couple possibilities listed, but I really believe the selection of that is really up to the County Commissioners and the Environmental Services Office, as well as any application forms.

Our recommendations are to cover the half-time position, any outside contract, and that we use an outside vendor. It is up to the outside vendor and the Environmental Services Office to develop any application form.

Grob asked does it take a motion on our part to adopt all of the changes that came in the last STR draft from the February 22nd meeting? Does it take a motion to say we adopt those plus the changes that we have made tonight?

Kovacovich answered I think so, but we are not ready for that yet. We do need to open up for public comment before we do that. I think that at some point we will need a motion to cover the current draft that we have in front of us with the changes that we have made tonight.

Kovacovich opened for public comment.

Kim Butalla, 22976 185th Street NW, Big Lake, MN, 55309, stated we have a family cabin on Duck Lake. It has been there for over 40 years. We are next door to a short-term rental that is renting year-round. I appreciate what you guys have said here tonight because most everything that you have talked about would help greatly with the issues that we are having with our neighbor. They are renting year-round to the pipeline. It is a business like you have talked about. Many of the things that you have talked about like bright lights, cars parked all over, ATVs driving through our yard, and noise. It is a small cabin that is set very close to the lake. They are allowing sixteen people to stay there. The previous owner said that it was meant to be a seasonal septic, not year-round like it is being used not. You are checking to make sure that the septic is acceptable for the amount of people. That would help greatly. The number of sixteen people on a small lot, in a small cabin, right next door. That would help a lot. I don't have anything against short-term rentals. I have just stayed in a couple recently in Georgia while visiting my son, the difference is the common courtesy and the respect for neighbors. In their guidelines they have many rules that you are supposed to follow. Our neighbor at the cabin on Duck Lake has three. No smoking, no pets, and no more than sixteen people. At the places we have been staying there are lists of rules like quiet time that you have been speaking of, and to turn off the lights by the lake before you go to bed to not bother the neighbors. Both of the properties that we stayed at recently said if they get complaints from their neighbors they would be asking people to leave the property. I don't know if you can have them implement that in their Airbnb or VRBO regulations. If talking to the neighbor and telling him our concerns does not help, who do you go to? What do you do with that?

James Crabbe, 2292 Marymount Drive, Suwanee, GA, stated I am wondering what the noise ordinances are for Hubbard County? Why can't we just use those to make things enforceable? I think it is nice about the voice level, but I am not sure how that is enforceable. I do have concerns about the noise, but I also have the concern about overlapping jurisdictions. I think that if there are problems, we ought to be able to call someone. Who would that be? I also share the concern of the prior person that excessive renters are ridiculous, and how will that be enforced? If someone could relay the history of what is going on here. Why are we here discussing STRs? What is the recent history of this?

Kovacovich replied for the history, you would have to go to the County Commissioners for that. The County Commissioners asked us to review this and come up with recommendations. That is the history that I am going off from. As far as the noise, Hubbard County does not have a noise ordinance, but they do, and have, enforced the Minnesota Statute. As far as the number of people, our proposal bases that on the septic system. I am pretty confident in saying that in the previous example of sixteen people in a small cabin, that would not be allowed under this ordinance because I don't believe we have a septic system that is designed for an eight bedroom cabin on that property.

Steve Merlino, 29065 Jefferson Trail, Nevis, MN, stated we have had the cabin since 1954. We have been renting it recently after my grandfather passed away. I would like to get a copy of this draft proposal. Some of the things that you have put in there are great. What I would like to know is if there is a violation with one of the renters that your permit is null and void. I think that is a little on the harsh side. When I have had a problem with a renter before, I kicked them out. Our renters are typically husband, wife, and grandkids. We had one problem a while back with a renter who left trash on the property, and they were not invited to come back ever. As an owner, I am taking care of the situation, but the way that you have the language set, it is compared to getting a speeding ticket and you lose your license for the year. I would like to get a copy of this to read the rest of it because we just found out about this meeting last week.

Tim O'Neill, 24604 200th Street, Nevis, MN, stated our family has owned a cabin on Lake Belle Taine since the mid 70's. We do rent our lake home, and I have been sitting in on each of these monthly meetings since October or November. I have found your dialog throughout this entire process very reasonable. I know that it is a problem, and we all want to protect our lakes. The one thing that I have found surprising would be the last statement that you have added. Any violation of any of these criteria makes a short-term rental permit immediately null and void. That is a recipe for disaster because all it takes is one neighbor calling the sheriff at 10:05 for two people speaking a little too loudly by the bonfire. Everything else on your list, I am in favor of. But, that last statement cannot stand as that, maybe as the third offence, but not as the first. Who will determine that it is a violation? Thank you for your reasonable process but for this last statement.

Jim and JoAnn Alger, 330 8th Ave S, Fargo, ND, commented we appreciate the dialog that we have been able to have with you now. There are a couple of things that we would like to highlight. We would prefer if there were longer rental times. Having people come in just for a couple of nights, a weekend, or even just a short week involves us constantly getting used to new neighbors all the time. We would prefer a one month rental to give us the chance to relate to them as neighbors and get to know them a little bit. The second thing that we are concerned about is that the short-term rentals have no one present on the property to monitor what is happening. The responsibility lies upon the neighbor to ask them to be quiet or call the sheriff. We are not being paid for that type of service to the neighbor. There should be some way that the renter will be responsible for the ones that are renting the property. Those are the two things that are of major concern to us. Our daughter, Julie, and our son, Stewart, both of St. Paul are on the line tonight also. We would like to have them make a comment if they could.

Julie Marckal, 2500 St. Anthony Boulevard, St. Anthony, MN, and Stewart Alger, 1143 Portland Ave., St. Paul, MN, stated first off I appreciated the comment by the Planning Commission member who characterized this sort of use as commercial, which I think in many cases it is. I think, in terms of regulating this activity, that you think about requirements that make sense in that context of a commercial use. Our personal situation is that we have experienced short-term rentals at Ham Lake, and our neighbor is an excellent neighbor. We have known them for decades. We get along great with them, but we have had difficulties with their guests who are there on a weekly basis. I think because even with a good owner, and for the most part good renters, the context is hotel like. People who are in that circumstance just don't pay attention to the effect of their activities like a long-term occupant. I would join with the recommendation of setting the limitation of the rental to a longer period. Another issue that arises is the pressure on the lake and the introduction of larger boats that can be harmful to the lakes. That is just something that is going to be exacerbated in a circumstance like this where you have more people coming in who don't have the relationship to the lake that the owners have. Finally, I would say that as a practical matter you can expect the neighbors who end up having to enforce issues like noise, you are used to your neighbor having family over and most people don't have a problem with it. When it is people that you don't know

making noise, and it happens on a regular basis, then it gets to be hard on the owners who are reluctant to call the Sheriff or walk over late at night and confront the folks who are making a lot of noise next door.

Patricia Eaves, 1143 Portland Ave., St. Paul, MN, stated I have two questions. How many licenses will be given for each lake, Township, etc.? Would there be a fixed amount based on some criteria, like liquor licenses? Are you thinking about how many of these licenses will be given, and what are the criteria for where and when they will be given? I thought about this when you were talking about transferring them. The Belle Taine property owner mentioned a very good comment. It raised alarms with me too, having your permit be null and void after one violation. What is the criteria for how that violation has been reported, and what would be the process to have that license reinstated? I think there are a lot of problems around that particular addition to the ordinance. I was wondering if there were going to be any restrictions on guest behavior like quiet times. We have a small lake and some people are getting big boats on there. It is not a lake that can handle those big boats. We are concerned about the quality of the water in the lake.

Paul Swenson, 818 South Street, Owatona, MN, stated I hear a concern about staffing levels not being adequate to enforce what you pass. I would encourage you to pay more attention to regulating 100 or so business on our shores in the effort to protect property values of the 9,500 other lakeshore owners should be more of the concern. We will work out the staffing situation I am sure. If I own a property as a business, I should be regulated as such. You cannot operate any business on the shores of our lakes without conditional use permits. If it is a business, non-owner occupied, it should require a conditional use permit. If it is owner-occupied, and it is simply used for less than 30 days, let's have a registration and a permit. Even if you are owner-occupied, and you are going to rent for more than 30 days, as the previous couple said they have new neighbors every week to get acquainted with, that is a business. That should be regulated with a conditional use permit. I agree that Item S might be a little strict, but you have to have something more than a \$50.00 misdemeanor for a violation. Pulling the conditional use permit would accomplish that. The last point I want to make is that as of today, I talked to the Department of Health, and there has been one inquiry since last month with the Department of Health about a motel license, which all of these properties are required to apply for. There are zero plan reviews in queue, and there are zero applications in queue. So, you are working very hard to create a new ordinance to control people that are clearly demonstrating that they don't want to follow the rules.

Jason Hunter, 19221 219th Ave., Nevis, MN, stated I think this has come a long way to resolving a number of the issues that people have faced. I occupy our cabin part of the year, and we rent it out to cover expenses the rest of the year. It has been in our family for almost 50 years. One thing about the long-term rental, if we were to rent by the month, if we were to do that we would not cover our costs to maintain the property for basic upkeep. It is difficult to find a renter that wants to rent that long, and the revenue that it brings in is not adequate for what we need to accomplish. The one violation proposal, I have to agree with others. That seems to be problematic and a bit harsh. I am all for reasonable regulations, but that seems to be the one thing here that goes a bit beyond that. I would highly encourage you to modify that. I have heard some people talk about short-term owners not being present. We actually have a local who is there and manages the property. They are available at all times, comes by and meets the renters, and relays the rules. They are available to the renter and to the neighbors. If problems arise, there actually is a presence. We have worked through that process to alleviate that issue. We are doing everything we can to be as neighborly as possible. We have limited our rentals by almost 40%. We are instituting a number of rules that relate to nuisances and noise. A number of us who are Airbnb and VRBO renters are both owners and occupy the property as well. We are just doing this to meet our basic costs. We want to make it work with our neighbors the best that we can.

Kovacovich read the definition of short-term rental.

Short-term Rental. A dwelling unit that is advertised as, or held out to be, a place where sleeping accommodations are furnished to the public on a nightly, weekly, or for less than a 30-day period and is not a bed and breakfast, resort, hotel or motel, or other permitted venue as determined by the County.

Kovacovich stated that, I believe, is the standard definition of a short-term rental. Rentals outside of those parameters fall into other categories. I just wanted to clarify that. That is the premise of what we started under, the definition of what a short-term rental is.

Kovacovich closed public comment.

Grob added going back to the very last item that we added about the impact of a violation, I lifted that off of what we previously had. If some STR owner continuously does not respond to correcting a violation, then there has to be some action. I think we should avoid fines. Any continuous uncorrected violation of any of these criteria will result in the suspension of the STR permit until the violation is corrected. The penalty for continuous, uncorrected violations would be suspension of the permit. That might be a little softer, and a little more accommodating to the range of seriousness of violations and draconian action as some might imply.

Johnson asked are you saying something like three strikes? Are you putting a number on that?

Grob replied one could say that you get three warnings, or you get two months to correct it. I think the seriousness of it should be something that Environmental Services can deal with. It allows, just like if we find a nonconformance, generally a letter is issued to correct the violation and usually a time frame is given. If the person continues to resist it, then more serious action is taken on the part of Environmental Services. I would see that same model being used in this case.

Buitenwerf stated the adjustment Grob made to the language is similar in practice to the prior language. I don't have an objection to it.

Kovacovich added what if it read any violation of these criteria may result in the suspension of the short-term rental permit until the violation is corrected?

Grob stated I think some adjective to the violation would be preferred. If it is just any violation, it gets back into the stricter statement that we had before. If someone calls and complains about the noise, then immediately there is concern that they will be shut down. I would prefer at least adding that it is an uncorrected violation. That gets more into the normal nonconformance of a shoreland ordinance nonconformance.

Kovacovich said my concern is that not every part of this ordinance is the same. If you have a septic system that is failing, that is an immediate violation, not continuous. If it is failing, you are done. Whereas, if you have a noise complaint, if there is a pattern there, then we would need to deal with it.

Grob clarified so you think the flexibility comes with the wording *may result* instead, as opposed to using the word *uncorrected*?

Kovacovich replied I think the way that it read before was *will result*. It is an automatic.

Andres stated I was in favor of retaining it the way it was because this will keep the owners very mindful of their renters. I would also add that it is suspension or revocation. It depends on the severity. I am in favor of retaining it the way it was.

Petersen added I am interested in Buitenwerf's take on this. Are you fine with putting it into your hands as to how you deal with these?

Buitenwerf answered yes, that is actually where it would be if this was not in the draft. If there were complaints that we received, and upon investigation found that there was a violation of the license, that could be a remedy. We could suspend it or there are other measures that we could take depending on what the violation is. We might give them a time period to correct it. If it is extremely severe then we may suspend the license or potentially revoke it as well. That is a tool that we use with any ordinance violation.

Kovacovich asked within the ordinance right now you have the tools to accomplish Item S without adding it?

Buitenwerf replied yes. The upside to having it there, as you discussed with other facets, is that you would at least have the notice to parties that it is in the ordinance, and they can read it and understand that there are consequences for noncompliance.

Kovacovich continued the way that it is written here doesn't in any way interfere with other parts of this ordinance where you have that ability?

Buitenwerf responded no.

Kovacovich added my suggestion would then be that any violation of these criteria may result in the suspension/revocation of the short-term rental permit. To me, that gives them the notice.

The Commission agrees with the new wording.

Grob added to me, it is important that it accomplishes the fact that we should have some record of the consequences of a violation. In some of the other ordinances that we looked at for short-term rental, there were fines. I want to stay away from that process. This puts them on notice that if you violate these things you could lose your permit.

Kovacovich asked Buitenwerf if I had a short-term rental and chose not to procure a license, through the process of the outside vendor or someone reporting it, it comes to the office's attention that I am operating a short-term rental without a license, what are the penalties? What teeth do you have in those cases to do something?

Buitenwerf replied standard procedure would be that we would start with a letter making them aware of the need for obtaining a license and giving them an appropriate time window in which to obtain such. If they fail to do so we would handle that as we would any other ordinance violation which is to present that matter to the County Board who then grants authorization for it to be forwarded to the County Attorney's Office. If that authorization is granted, the County Attorney's staff would then correspond with the individual and take appropriate escalation of the matter.

Kovacovich stated so there are things in place for when that happens, and I am assuming it will happen at some point.

Buitenwerf replied yes.

Kovacovich asked are we ready to make a recommendation to the County Commissioners with this and also with the other criteria that we discussed of the fees and selection of an outside vendor? Are we comfortable with that?

Andres replied I believe we are. Can you please go over the additional items, the only thing that I have written down are the fees to cover the outside vendor and the fees to cover the part-time employee. Was there one more that I missed?

Kovacovich answered that we recommend to the County Commissioners that they contract with an outside vendor, logistics, and the fees.

Grob said our motion would be that this language for Section 111 and 402.14 be included in the Shoreland Management Ordinance and then that the County Commissioners set the fee to cover the cost of the outside vendor and the staff cost. Those two are actions for the Commissioners along with this being what we recommend be what is placed in our update of the Shoreland Management Ordinance.

Kovacovich added we still have a lot more to go through in the ordinance, but I think dealing with this as a separate issue.

Kovacovich made a motion to recommend to the County Board that they adopt the short-term rental language that we have developed here and that they set a fee to cover the cost of any outside vendor contract and staff time for the Environmental Services Office. We recommend that a contract be secured with an outside vendor for the logistical portion of this ordinance for application and other things as the Environmental Services Office recommends.

Grob seconded the motion that passed 5 – 0.

New Business:

Miscellaneous:

Communications:

Adjournment:

Andres made the motion to recess the meeting until Tuesday, March 23, 2021 at 6 p.m.

Grob seconded the motion.

The motion carried unanimously 5 – 0.

Respectfully submitted,

Staci Lee

Recording Secretary