

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, October 25, 2021

Chairman Mike Kovacovich opened the meeting with the following additional members present: Ken Grob, Veronica Andres, Tim Johnson, and Mark Petersen. Also present was Environmental Services Director Eric Buitenwerf.

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.

Planning Commission:

Approval of Minutes: None.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of Minutes: September 27, 2021

Grob made a motion to approve the minutes as presented.

Andres seconded the motion that carried unanimously 5 – 0.

Old Business:

Variance Application 52-V-21 by Sam Wakefield: Lot 8 and part of Lot 7, First Addition to Moccasin Acres, Section 4, Township 141, Range 35, Arago Township on Island Lake, a recreational development lake. Parcels 02.37.40600 and 02.37.40510. Applicant is requesting an after-the-fact variance from Section 902 of the Shoreland Management Ordinance for grading/filling in a bluff impact zone.

Sam Wakefield, 12091 Island Lake Drive, Park Rapids, MN, presented the application.

Wakefield stated I am asking for a variance to allow the excavation of the bluff impact zone to make a path that I was originally permitted for.

Kovacovich added I know this was presented last month and then tabled until this month for additional information.

Kovacovich asked did you read the permit when it was issued to you?

Wakefield replied yes I did.

Kovacovich continued what part of it didn't you understand about being able to grade and remove vegetation?

Wakefield answered originally I had paid the County to go out there and review what I was planning on doing. I had talked with the County about it. I explained in detail what I was going to be doing, and they gave me the permit to go ahead with the pathway. I had not seen anywhere where it had said anything about excavation in the bluff zone. Nobody had said anything from the County that I would have to file for a permit.

Kovacovich stated the meeting minutes reflect otherwise, and the last sentence on the permit says that vegetation will be maintained on all areas of the access path. It is quite obvious after the site visit that vegetation wasn't maintained. Right now we have bare soil going right from the bluff cut all the way down to the flat areas, is that correct?

Wakefield replied that is correct.

Grob said the proposal that you submitted in response to our request for more detail on how you would correct the situation indicated a log terrace wall on the cut out side of the bluff, but it is very sketchy in detail as to how or what you are going to propose to do on the downside. That side of the bluff wasn't clear to me how you were going to correct that back to a 4' wide path and what you would place there to ensure that it was a 4' wide path.

Wakefield stated what I will be doing would be planting grass there. There won't necessarily be a 4' path. It is going to be all grass with no gravel, wood chips, or anything.

Grob continued the Shoreland Management Ordinance is pretty clear about the fact that any access path down to a lake is to be 4' or less. You can clear brush on the side, but the actual walking path should be 4' or less. You have 8' there. How are you going to restore that to a 4' width?

Wakefield responded I was under the understanding that it was 6' with a 4' path.

Grob stated that is only for clearing trees or vegetation, but the actual walking path is to be 4'.

Wakefield answered if that is all that is allowed, I would have to do the log terrace out a little bit further and fill in on the cut edge. Either that, or I would have to excavate it down to that 4' area on the slope side.

Grob asked Buitenwerf I am correct in that?

Buitenwerf agreed the 6' width is for removing trees and shrubs to facilitate within that 6' area that is free of vegetation beyond just ground cover to place a 4' wide path.

Grob continued he is proposing water bars. Have you thought, in terms of slope, how far apart those bars should be?

Wakefield replied I had included in that packet. They gave a guideline as to how far apart the water bars should be depending on how much of a slope there is.

Grob stated I read that. Having looked at the slope, what would you be now proposing?

Wakefield answered I would have to go and figure out what the slope is. If it is in that 30% area for grade, I am guessing it is probably going to be 15' – 20' apart. I would say that the grade is in that 30% area.

Grob clarified you propose spacing them how far apart?

Wakefield repeated 15' – 20'.

Johnson asked I think that Petersen and I estimated that at 15%.

Wakefield replied then the spacing would be 50' apart. I would still like to do 20' – 25' apart, just to make sure that I don't have an issue.

Grob stated if they were 50' apart, there would only be about two of them on that whole hill. There would have to be more than that to protect it.

Buitenwerf stated where I have the transect on the aerial photo, that is a 26% slope.

Grob mentioned so 20' is probably a good number.

Wakefield added I certainly don't want to do it twice, three times, or every single year.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Kovacovich stated I am not sure how the rest of the Board is feeling on this, but this one is troubling to me due to the obvious ignoring of the Ordinance and the permit issued. We have several different applications similar to this. This one is already cut into the bluff. It is my inclination that the slope I saw there, and the angle taken where the trees were cleared to 8' rather than 6', is an ample slope to walk down comfortably without the cut, fill, walls and everything else. I am inclined to believe that restoration is the proper way to go on this and deny this application. It is tough for me to want to make exceptions to this rule now on an after-the-fact application when people who come to us to ask for a variance beforehand we're fairly explicit on what can and can't be done.

Johnson added I am on the same page as you. I think it would be more used by a 4-wheeler, and it is going to be two tracks of direct conduit to the lake for runoff. I am thinking restoration, and let it be a walking path or stairway.

Andres agreed. I agree with the staff recommendation as well as the excavated area is easily restorable to the natural slope. There would be a lot of issued involved trying to go the other route.

Petersen asked everybody feels that it would be easy to restore this, easier than to build this path properly?

Kovacovich stated I believe it would be easier to restore than to build what is being proposed with water bars and walls. The plan is not adequate to address all of my concerns on how that water is going to be handled, especially in those cut areas where that slope is. In places it no longer exists it is a straight cut, or it is steeper because of the actions taken by the individual. I do believe that restoration is the easiest and the correct way to go about.

Kovacovich made a motion to deny the application and require restoration of the site to pre-existing conditions.

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

The Board adopted the staff report findings of fact.

Findings of Fact:

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

Yes () No (X)

Why or why not? The reason for the ordinance’s prohibition against fill or excavation in a bluff impact zone is to protect the bluff’s integrity and avoid soil erosion. The access path constructed on the lot exposed a lot of soil to erosion from stormwater and created a conduit for stormwater to centralize, run down the bluff, and erode the exposed soil.

- 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 department staff site visit photos taken before the excavation was done show the area was well vegetated. The original proposal to remove a few small trees would have provided adequate access to the lake. Cutting into the slope and creating a 2’ high vertical face in the bluff that channelizes stormwater into an area of exposed soil 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? The bluff on this property runs almost the full width of the north side of Island Lake and bluffs are common on lakes in the County. Sufficient access to the lake would have been possible had the applicant acted on the vegetative alteration permit issued in 2019 and left the ground alone. An above ground wooden stair system or mechanized lift would have been two other viable means of traversing the slope. The cut in the bluff appears to be for the purpose of allowing the applicant to drive mechanized vehicles such as ATVs up and down the slope.

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

Yes (X) No ()

Why or why not? The locality consists of mainly seasonal residences with a few year-round residences. As the bluff runs along most of the north side of the lake, accesses of some kind are present on most of the lots to get up and down the bluff. The requested cut in the bluff would not be very visible from the lake due to the remaining mature tree cover on the bluff.

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

Why or why not? Economic considerations are not cited in the application.

Variance Application 53-V-21 by Scott Nyegaard: Lot 9, Little Wolf Shores, Section 1, Township 145, Range 32, Farden Township on Little Wolf Lake, a recreational development lake. Parcel 07.42.00900. Applicant is requesting: Part 1: An after-the-fact (ATF) variance from Section 902 of the Shoreland Management Ordinance (SMO) for grading/filling within the shore impact zone and ordinary high water mark setback that exceeds permissible thresholds. Part 2: An ATF variance from Section 902 of the SMO for removal of part of a permanent ice ridge. Part 3: An ATF variance from Article V, Section 1 of the Subsurface Sewage Treatment System Ordinance and Section 801.4 of the SMO for a holding tank that does not meet the 10' setback from an adjacent dwelling. Part 4: An ATF variance from Sections 502.2 and 702 of the SMO for making a nonconforming dwelling more nonconforming via an addition including exterior decks that causes the dwelling to not comply with the 20' road right-of-way setback.

Kovacovich stated because this application was amended in such a way that it requires re-noticing, we will be tabling this until the November agenda.

New Business:

Variance Application 54-V-21 by Jason Johnson: Part of Gov't Lot 4, Section 29, Township 143, Range 32, Lakeport Township on Kabekona Lake, a recreational development lake. Parcel 19.29.03110. Applicant is requesting a variance from Sections 901 and 902 of the Shoreland Management Ordinance for a proposed second access path to the lake and grading/filling in a steep slope that exceeds the permit threshold.

Jason Johnson, 35925 County 39, Laporte, MN, presented the application.

Jason Johnson stated I am proposing a path on a steep bluff. This requires a variance from Sections 901 and 902 of the Shoreland Management Ordinance for a second path and grading/filling in a steep slope. I was under the misunderstanding that it was a 6' path, I now realize that it is a 4' path. It would be a 4' wide grass path with grading on the upslope and the downslope side. It would consist under the direction from Environmental Services who asked that I utilize some erosion control matting. I know there was some question on that matting. I do have some examples here if you would want to see that. This is just an example of the matting that I would use to control. This would be a long-term control method as it would prevent erosion immediately during establishment of vegetation, but also long-term by dispersing any weight from traffic up and down this path. Also, for short-term we would utilize a straw mesh or matting that would be laid down to prevent the washing away of the grass seed and therefore establishing the grass quickly. I would like to note we went

and looked at a path just to the left. They provided a pretty good example of the type of path that I am proposing, but on a much smaller scale than that. I think it provided a good example especially on the down slope side. If you go further to the north, there are also two other paths of similar nature to that.

Grob stated my observation is that you picked the steepest and longest path for a second access. You already have a nice set of steps. Why didn't you consider farther left? The distance to the bottom is not as much. There is not as much vegetation. It seemed if you were going to make a path it would be easier there. Help me understand why you picked the path that you did. I personally am very concerned with the amount of side cutting that you would have to do or the fill required to maintain a 4' path with the steepness of the hill.

Jason Johnson explained there are several reasons why I chose that particular path. As I stated, I hadn't removed any trees there. This was a natural pathway down there. One of the things that is very important to me is to try to make this blend in so that you don't see it. There are no trees in the way and it is about 6' wide there. It is fairly close to the east property line. I felt as though that allowed space for the landing at the top. It allowed enough rise over run to make a manageable slope for the wheelchair.

Grob stated the area to the left of this seemed to be almost void of any trees.

Jason Johnson continued there are quite a few trees in that area. That is why I chose the spot that I did. It gave me enough rise over run, and it was already cleared and I didn't have to remove any existing trees. I could allow those trees that were there to continue to grow.

Kovacovich added in your application you state that the reason for this is to have an accessible pathway for a family member in a wheel chair. Have you considered a lift? It could be put in without any tree removal, and then when it is no longer needed it could be removed rather than a permanent pathway with cut and fill to maintain a wheel chair accessible pathway. Have you ever considered a lift rather than a pathway?

Jason Johnson answered up until on Thursday when it was suggested, I would say no. It was not considered. The primary reason for that is because I have discussed this proposal with my neighbors. With knowing what the culture is around the lake and the way that they like to see it as natural as possible, I felt that there was resistance from my neighbors and the culture around the lake that it would be too much of an eyesore.

Kovacovich stated my observations were, depending on the location, that it would be hardly visible at all from the lake if it went down on that shortest area on the far left. As I recall, there was some fairly good screening by the lake from that. It wouldn't be that visible.

Andres asked have you considered hiring a professional landscaper for this work that you are proposing to do?

Jason Johnson replied I would if it was considered to be a problem.

Andres continued my only concern was that it is a lot steeper, and when we looked into the cuts there were comments that there is going to be a good 4' – 5' difference. That is a lot of area to retain. I have concerns with how you are going to retain that. You mentioned that

you want to keep things as natural as you can, but with a 4' – 5' clearing that you are going to be cutting into, you are most likely going to need something because it is going to cause erosion.

Jason Johnson responded I think the neighbors that we saw, it was almost a vertical slope there. I think the soil is actually not as sandy as other places where it is going to be more prone to washing out or having problems getting the vegetation to grow. As long as we have the moisture, I think the vegetation will hold a pretty good slope. On the uphill side and the downhill side I would need to grade that so that it isn't vertical. I believe I could get a slope, with also using the matting, to hold that in place.

Petersen asked is that matting for the surface of the path?

Jason Johnson replied I would use it wherever I needed it to control the erosion.

Petersen clarified on those cut sides?

Jason Johnson agreed. This was a product that was suggested to me.

Kovacovich opened for public comment.

Doug Bren, 9997 Arcola Court N, Stillwater, MN, stated I own the property at 35927 County 39 in Laporte, which is adjacent to the Johnson property on the west side. I have two existing paths down to the lake. Our family purchased the property in 1962, so I have experience dealing with paths down to the lake. I think that the route that the Johnsons have chosen for their possible path has a lot of merit. I think that they started without getting too close to the east property line. I think they started in exactly the right spot. There was almost a natural pathway down through the trees. It looked to me like the path was pretty shallow compared to our paths. I didn't see any problem with that. The other nice thing about it is that his property has a lot of room between the base of the hill and the actual lake. If there was a runoff problem from a torrential rainfall, it would never reach the lake. He is going right through an area of young white pine that have naturally seeded themselves, and they are probably 10 years old. I think they would be really great for holding the vegetation in the bank. I think that is a real plus for that site. Also, it would be nestled in amongst those pines, and it would really lend itself to not being so visible from the lake. Over the years I have seen a lot of landscape contractors come in to do maintenance on other properties on the north shore of Kabekona. Typically, what they do to get their equipment down there is they will cut a shallow angled path down there when they are installing rip rap or fixing ice damage. When these areas are covered with vegetation again you are hard pressed when you are out on the lake to see these shallow cuts. They just tend to disappear. I think with the tree coverage that the Johnson's have on that hill, I think it would virtually disappear. I understand the issue with having a handicapped access to the lake. The concrete steps that are in place right now, they were installed in the mid 1940s. That was one of the first places on the north shore of the lake, and they are in remarkable shape. They have aged, but they don't look too bad considering that they are concrete steps. From a neighbor's standpoint, I would certainly hate to see those removed, modified, or damaged. In terms of having a mechanical assist, I would prefer not to see that type of apparatus attached to or replacing the steps. I think that the path as proposed by

the Johnsons is a far better alternative, and it will yield a more natural look. I never contemplated that the mechanical lift would be removed later, but the lake it is bad enough these days with all of the aluminum docks and lifts. To add more mechanical apparatus to a natural setting like that, I guess from a neighbor's standpoint I would not be in favor of that. I think that his path as proposed is appropriate for the site.

Kovacovich closed public comment.

Grob mentioned if you are going to put a 4' path down there, you are going to be doing a cut on the upper side at least 3' into that bank. You are going to have to wall that up or taper it, which you don't want to do. On the downside you are going to have to do some additional fill. That is a lot. When I look to the back, you can see this whole hill converging to a much shorter drop near the back. I don't understand your reluctance for considering moving it more to the east. There are trees, but it is open on the other side.

Jason Johnson answered there are other large trees in there as well. The other factor is the distance from the home to get that much further. Again, the main reason was that I felt as though that spot lent itself very well because of the fact that I don't have to remove any trees from the spot. I think a few of you went over to the south and saw what that looked like. I am not so sure that it does shallow going that direction because looking at where he put that path in there, it was an extremely steep spot as well. And that is even further to the south.

Kovacovich stated what we are looking at is allowing a second means of access to the lake. Only one is allowed, so this requires a variance. It is my understanding that a variance would be required even if it were a mechanical lift because it would be a second pathway. Because of the steepness of this slope, the route, and also trying to save the trees on either side, it more than likely will require retaining walls on both sides of the path. I am more inclined to go the route of the least amount of disturbance, which would be a mechanical lift, but I am not sure where the rest of the Board sits on that.

Petersen asked Buitenwerf what he is showing on both the high side and the low side, which would be disturbance going back away from the actual path, do you find that acceptable in your eyes? I don't know what the parameters are for disturbing away from the actual cut. I don't know if he is proposing a 3-1 slope here down to grade.

Buitenwerf responded we are lacking that information in the application, but just eyeballing it at the site, I would say it is a 4' vertical face that you would have on the upslope side of that cut. On the downslope side you will be needing some means of stabilizing that, otherwise it is just going to erode. I think what is proposed, even if it is scaled back to 4' in width from 6' which Mr. Johnson mentioned this evening, I would advise having an engineer work up a proposal so that you have something specific that you can see what the exact impact would be, upslope and downslope. I think that you are going to have a bigger swath of trees cleared to have this happen.

Petersen asked if we were looking at requiring an engineer to give us something more detailed, in my opinion we would all have to be open to considering this since he would be spending money doing that.

Jason Johnson stated I would be willing to do that. Also, in the application I did mention that as well as wheel chair access, I am also asking for this path for maintenance and access to the lake. There is more to it than just the wheel chairs as stated on the application. Obviously, the wheel chair is the primary reason.

Andres commented it is not that I am not opposed to the path for the wheel chair or the mechanical scooter, but I am concerned with the deep cuts. I would definitely be open to tabling the application to have a licensed engineer draw up the proper documents to see what type of retaining walls would be needed and provide the information for that. The staff report does also indicate that there is 18' of rise over 50' of run, and it is a 36% slope. It is quite the incline there. Do you know what your end result would be as far as the slope goes? What are you trying to achieve for the access?

Jason Johnson clarified you are saying the existing slope is 36%?

Andres answered according to the staff report, yes.

Jason Johnson replied it is a 68' run and I don't know what the rise is. I don't know how to do that math off the top of my head.

Andres explained I was just wondering for the wheel chair purpose and safety, what the end result of your slope will be.

Jason Johnson answered I just based it on the other paths that I have seen directly to the west. This would be similar. I feel as though the wheel chair would make it up and down those slopes.

Tim Johnson added that is one of the problems that I am having with this. It is primarily for a wheel chair, and this is a permanent gash in the hillside. I think there could be ramps with switchbacks and landings, which would be safer for a wheel chair. I think you could take a push mower down it to get it, and once you didn't need it anymore it could be removed. If we are going to entertain the path it should be for snowmobile access or 4-wheeler access, because that is what it will be.

Kovacovich stated the pathway, if we do allow it, is for a wheel chair. What I am most interested in is the least amount of impact on that slope and something that is restorable at the end of the day. What we are entertaining here, in my mind, is an accessibility. The access for maintenance, everyone wants that and needs that. You need to figure that out when you buy a property. It is not for this Board to allow cuts in the bluff for that purpose. I would certainly be willing to look at something, but it would have to be a solid plan that is easily looked at and will not cause any erosion with its purpose being for accessibility. When we talk about accessibility, the point Andres brought up is that ADA laws have requirements for slopes. So, if we are authorizing it in that name for accessibility, in my mind it has to meet those codes of what the slope would be. I am certainly willing to entertain that, but expense or no expense on your part is not a reason for me to consider it in the application. Your costs are your costs. It has nothing to do with how I should vote on a variance.

Petersen stated I agree with you. My only thought is that if we weren't even open to whatever would be presented, then we might as well not ask him to do it.

Kovacovich added I am open, but if it is for accessibility. I need to see the drawings that show the accessibility portion is met. I can't remember what that percent is, but the proper slope needs to be met in this plan if we are approving it for accessibility.

Tim Johnson commented I am looking at it as a permanent gash in the hillside, not something that could be removed after the need for a wheel chair is no more.

Grob stated this is not an ADA application for the owner or someone who lives there. I don't know all the laws, but this is an ADA request for an occasional visitor.

Jason Johnson asked what if it wasn't a cut, and was just fill?

Tim Johnson clarified I am open to what Petersen is talking about, but I want it to be clear that it is for accessibility for a snowmobile or a 4-wheeler. It is not about a wheelchair to me.

Grob added you could go down the hill on the left with a snowmobile. You wouldn't need to cut a new path.

Jason Johnson agreed.

Petersen made a motion to table the application to allow the applicant time to submit a plan for the proposed access path that is prepared by a licensed engineer and covers erosion control, mitigates runoff, and minimizes the impact to the steep slope.

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

Variance Application 55-V-21 by Richard Schauer: NE ¼ of the SW ¼ of the NE ¼ and the N ½ of the SE ¼ of the NE ¼, Section 36, Township 140, Range 35, Todd Township. Parcel 27.36.00210. Applicant is requesting a variance from Section 4, Subdivision A.b.1 of the Subdivision Ordinance to create a tract that does not comply with the 300' minimum tract width requirement.

No applicant was present for the application.

Grob stated I am not in favor of tabling it. It seems to me, based on the staff report, that this is pretty straightforward and reasonable. It meets the intent of the Subdivision Ordinance, and I would propose that we consider proceeding even without the applicant here.

Kovacovich agreed. I think it is fairly straightforward from what we saw and based on the shape.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Andres commented Todd Township already has given their approval. One of the supporting statements moving forward is allowing the lot width to be 106' shy of the minimum 300'

width requirement for that first tract in order to work around that existing structure is a reasonable request given the bulk of the tract is still 660'. I am supportive of the application.

Kovacovich made a motion to approve the application as presented.

Grob seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The remnant tract is 24.7 ac. in size and a bit over 660' wide for ~1450' of its ~1950' depth. The lot fronts two roads – County Road 6 on the east and Dad's Drive, a private road, along its entire southern boundary. There thus is plenty of elbow room for siting potential structures and related improvements which is the primary purpose of the minimum lot width requirement.

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? Allowing the lot width to be 106' shy of the 300' minimum width requirement for the first 390' of the tract's depth off of County Road 6 in order to work around existing structures is a reasonable request given the bulk of the tract is slightly over 660' wide.

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 need for the variance is due to the minimum lot width requirement and accompanying language on how a front lot line is determined being part of amendments made in recent years to the Subdivision Ordinance – well after the various structures on the property around which the proposed property line must jog in a way that causes the remainder tract to not meet the minimum width requirement.

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

Yes (X) No ()

Why or why not? The structure on the remainder tract has been in this location since 1990 and originally was a tack shop. It has since been converted to and used as a residential dwelling without any known complaints regarding the property use. Dividing this property into two lots with a slightly reduced width on the far east end of the remainder tract will have no noticeable deleterious effect on the locality's character.

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 practical difficulty.

Variance Application 56-V-21 by Tod Becker: NE ¼, Section 32, Township 140, Range 35, Todd Township. Parcel 27.32.00100. Applicant is requesting a variance from Section 4, Subdivision A.1.b of the Subdivision Ordinance to create a tract that will not comply with the 300' minimum lot width requirement.

Tod Becker, 14730 139th Ave, Park Rapids, MN, presented the application.

Becker stated we are trying to subdivide this parcel, and it goes under the 300' width requirement on a corner. Todd Township requires that it be 5 acres. We had it surveyed out, and that is the position that we ran into is that it is too narrow at the one point.

Andres added I am supportive of this as well, and Todd Township has approved. Staff indicated the proposed 5.6 acre tract is a sufficient layout and possesses adequate dimensions to facilitate the placement of the potential additional improvements with room to meet the setback requirements.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Andres made a motion to approve the application as presented.

Petersen seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The proposed 5.6 ac. tract meets all other ordinance requirements except the 300' minimum lot width, but it is only less than half of the lot that doesn't meet the requirement. There is plenty of room on the lot to be able to site improvements and meet applicable required setbacks which achieves the ordinance's intent behind the 300' minimum width requirement.

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? Subdividing the property to create a new smaller tract for the hog confinement structure to be able to separate ownership of it from the agricultural field on the remainder tract is a reasonable request. Todd Township approved the subdivision which shows the Township found the proposal to also be 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 (X) No ()

Why or why not? The need for the variance is due to the property being an agricultural field with a center pivot irrigator on it. The concave arc of the irrigator requires the proposed 5.6 ac. tract to have an arc for a rear lot line. The arc prevents part of the lot from meeting the 300' minimum lot width. The balance of the lot meets or exceeds the 300' minimum lot width which offsets the portion that does not meet the requirement.

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

Yes (X) No ()

Why or why not? The proposed Tract A is 5.6 ac. in size and has plenty of elbow room to be able to accommodate the placement of any additional improvements. Its proposed shape will not harm the locality's agricultural field character in any way. The subdivision will not have any noticeable impact on the area's character.

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 practical difficulty.

Variance Application 57-V-21 by Todd and Kelly Mittelstaedt: Part of Gov't Lot 6, Section 13, Township 140, Range 34, Henrietta Township on Lake Belle Taine, a recreational development lake. Parcel 13.13.00800. Applicant is requesting a variance from Section 703 of the Shoreland Management Ordinance for a proposed lakeward deck expansion on a nonconforming residence located in a bluff impact zone.

Todd and Kelly Mittelstaedt, 13346 94th Street, SE, Becker, MN, presented the application.

Kelly Mittelstaedt stated we are proposing to build a deck on the lakeside of the cabin. The deck will be 12' wide and will run the length of the cabin, which is 42'. We purchased the property August 30th, so we haven't owned it very long. There was a compliance inspection done of the septic August 7th, and that did pass.

Grob clarified this is a replacement of an existing, smaller deck?

Mittelstaedt agreed.

Grob continued the proposed deck would be more than 100' back from the lakeshore. The real issue is that this is a compound bluff, and the more gradual slope in front of the dwelling is a 20% slope. If that were 18%, that would no longer be considered a bluff.

Buitenwerf corrected it is 18% or greater.

Grob stated it is about 2% short of being able to be done by permit. That is the nonconformance issue that we are dealing with.

Andres asked you plan on just an open air deck with no canopy or covering?

Mittelstaedt agreed.

Kovacovich added the dwelling has been there for quite some time, and there certainly did not appear to be any type of erosion going on from the runoff at this point. I have a slight concern about the increase in impervious surface. I am not sure that the concern is enough to warrant anything unless one of my colleagues thinks there is some kind of mitigation needed for the increased impervious surface.

Grob stated there appears to be no erosion the way that it is today. The bluff is heavily vegetated, and there is just a small walking path to the lake. That is vegetated on both sides. Under current conditions there doesn't seem to be any water runoff issues. I don't think a little bit larger deck is going to change that at all.

Andres commented I have the same feelings. I did not see any need for an increased vegetative buffer. A 12' deep lakeside deck access the width of the cabin is a reasonable request. The cabin was built in 1964, prior to the Shoreland Management Ordinance. There is only a little bit of difference on that slope. I am supportive of the application.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Written public comment was submitted by Jason and Kristi Kath.

Grob made a motion to approve the application as presented with the condition that the deck cannot have a covering over it or ever be enclosed.

Andres seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact after deleting the last sentence of the answer to question #1.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The cabin sits ~120' from the OHW at the top of a compound slope bluff. A 12' deep lakeside deck on the cabin will still meet the 100' OHW setback. The immediate slope where the deck will be located is 20%.

- 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? A 12' deep lakeside deck across the width of a cabin that sits ~120' from the ordinary high water mark on a riparian lot is a reasonable request.

- 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 cabin was built in 1964 prior to the Shoreland Ordinance being enacted on a location that is now located in a bluff impact zone which triggers the need for a variance to place a larger lakeside deck on the cabin.

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

Yes (X) No ()

Why or why not? The locality consists of a mixture of largely seasonal and some year-round single family residences. Lakeside decks are present on other dwellings in the neighborhood so the requested enlarged deck on this cabin will not harm the locality's character whatsoever.

- 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 practical difficulty. The difficulty is the cabin is located in the bluff impact zone.

Variance Application 58-V-21 by Robert and Joan Comeau: Part of Gov't Lot 3, Section 23, Township 141, Range 35, Arago Township on Potato Lake, a recreational development lake. Parcel 02.23.03010. Applicants are requesting an after-the-fact variance from Sections 502.2 and 702 of the Shoreland Management Ordinance for a lakeside deck attached to a nonconforming dwelling located in the shore impact zone.

Robert and Joan Comeau, 13799 Hummingbird Drive, Park Rapids, MN, presented the application.

Robert Comeau stated I am asking for an after-the-fact variance. It is a very odd situation. I will try to be brief. Our history goes back quite a ways with this situation. Joan and I have been married for 50 years and we have been coming to Potato Lake for 42 of those years. We very unexpectantly bought this piece of property on a Saturday. We had a condo over at North Beach and it was getting too small. We needed a bigger place. One Saturday morning in July of 1986, we got in the van and drove around the side of the lake. We came to a clearing and there was a man and his wife staining the siding on his cabin. I walk up

and eventually I found out that the man's name was David Stearns and he and his wife Linda were there. He walked me around the side of the cabin and there was a beautiful, level shoreline where you can walk right out to the water. He said you can't get anything like this anymore because I got a variance to do this. I didn't know anything about a variance at that time. He opened the door to the cabin and there was just bare stud walls. There was a small deck on the back. David said he would finish it off any way that I wanted it. I said if I buy this thing I want a breezeway, a garage, a deck that comes over from the patio to the breezeway, and a deck out front. He said that was no problem. Everything was fine until my problem with the beach. I hired this guy with a machine that I should not have hired, but it was approved by the DNR. I didn't know any better. The beach keeps getting closer and closer. Everything happens in the backyard. We had my son's wedding rehearsal dinner there. A couple of our grandkids have been baptized in the backyard. It has been a real place for us over the years. About five years ago we needed the roof replaced because of a hailstorm. I hired a guy from down the road, a guy by the name of Roger Peterson. Roger said that my deck was getting bad and starting to come away from the house. He said he would check with Environmental Services for a permit. A couple of days later he reported back to me, and he said they didn't have a building permit for this property. Nobody ever got a building permit to build this. David Stearns was an honest man, and I couldn't believe that he built the deck without a permit. He said that I would have to tear down the existing deck and apply for a permit, or go ahead and rebuild the deck and apply for an after-the-fact permit. At that point we decided to fix what we could. We put some lag screws in the deck and held it back against the house for a while. In the meantime I had an accident last fall and became disabled. In March we decided we had to do something about the deck. I talked to a couple of carpenters. One came out to look at the job and told me that he could start that Saturday. We started back in March. They worked evenings and weekends until mid-May. Finally, in June we put some furniture on even though it was not completely finished. We had our family come to use our deck for the 4th of July weekend. On the day after the 4th of July, I had a doctor's appointment. We did an EKG and found out that I was having a heart attack. They loaded me up into an ambulance and took me to Bemidji. They ended up doing open heart surgery in Fargo. The day I got home we walked into the cabin and the water heater had broken, and the cabin was flooded with water. We went to the mailbox and got a letter from Environmental Services about the fact that we built the deck with no permit. As soon as I felt well enough, I made an appointment with them to look through everything and see how we would get it all resolved. My son-in-law was there that weekend, and he looked up my variance and printed it out. The following week Environmental Services told me that my variance was no good because it did not have the decks on it. I had to start all over with a new variance. I noticed that the previous variance did not include my garage or breezeway. I found out later on that there were permits issued for the garage and breezeway, just no permits for the deck. What really matters is what we do now. I am asking you to approve my variance for two reasons. Number one is that I want to clean up the mistakes from the past. Secondly, I am asking that you grant me, as a disabled person, a reasonable accommodation so that I might be able to continue to use my lake home.

Grob asked how large was the previous deck that was not permitted?

Robert Comeau replied I don't know the exact measurements. I can tell you that we extended 3' on each side and 4' out.

Grob continued 39' x 30'. You definitely built it larger while knowing that you didn't have a permit for the first one. How did you not know that you needed a permit or variance to build this deck given all the history?

Robert Comeau stated I thought my original variance would cover this. I thought the variance that David Stearns got to begin with provided me adequate space from the setback to do this.

Grob added you said that you learned back a long time ago that there was no permit for the deck.

Robert Comeau replied about 5 years ago we did, but at that time nothing was ever mentioned about a variance.

Grob stated a permit was mentioned, and that the original deck didn't have a permit. I would think that you would know you needed a permit to change it.

Joan Comeau added the advice was that we could either rip it down and apply for a permit, or you can rebuild it and apply for an after-the-fact. Part of it was all the events that happened in our life this summer. We didn't get a chance to apply for the after-the-fact variance as quickly as we would have normally done.

Grob explained it is not a normal process to go ahead and do it with the intent of doing an after-the-fact. That it not a process step that one takes.

Robert Comeau said we didn't know that.

Petersen asked who advised you that you could either get a variance up front or build the deck and get an after-the-fact? Who were you relying on for that advice?

Robert Comeau clarified nothing was mentioned about a variance. They were talking about the building permit itself.

Petersen questioned you were told that you could either get a building permit to rebuild the deck, or build it and get an after-the-fact variance?

Robert Comeau stated Roger Petersen told me that he was told that at the Environmental Services Office.

Petersen asked is he a contractor?

Robert Comeau agreed.

Petersen continued is he the one that built the deck?

Robert Comeau replied no, I couldn't get him because he was too busy.

Grob asked who built the deck?

Robert Comeau answered two carpenters who were working on the Simonson's Store.

Grob questioned why wouldn't they know that they should get a permit?

Robert Comeau replied I have no idea.

Petersen stated you have made reference a few times to the fact that your shoreline is continuing to erode.

Joan Comeau added we have done rip rap to try to prevent that.

Petersen continued that rock that we are seeing now in the picture, does there need to be a permit for that to be done?

Buitenwerf replied he received a permit for that in 2010 if I remember correctly.

Petersen clarified so that was permitted. With that rock there, you are telling us that the shoreline is continuing to push back with the rock in place?

Robert Comeau agreed.

Petersen asked what is happening with the rock?

Robert Comeau explained it just gets pushed up. In 2015 a guy with the bobcat took about 4 loads of material out of there that had been pushed up by the rocks. I don't know how to stop that.

Petersen asked is this ice that is doing this?

Robert Comeau agreed. It is like a bulldozer.

Andres clarified I believe the main reason that he is having such an erosion problem and ice ridge push is the removal of the cattails. He has caused an issue by getting that removed.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Grob stated my problem with this is that there is no doubt that a deck would be appropriate. Especially with some physical limitation. My issue with it is that you proceeded to expand the size of a deck that was never permitted. If you had replaced it 1 for 1, something that had been there for 30 or 40 years, I wouldn't have a problem. I am just not particularly sympathetic to the fact that it was on a spur of the moment, maybe from uncertified local contractors, and was substantially enlarged.

Joan Comeau added I think you are trying to make it sound like we were trying to do something against the rules, but that was really not what was in our hearts all along. We were trying to replace a deck that was literally falling off the house and make it so that Bob

could go out in his wheelchair or his walker and get around the table and the chairs comfortably. It seemed like it needed to be a bit wider.

Robert Comeau stated this wasn't any kind of a clandestine operation. I ordered the lumber from Menards. It sat in stacks beside my house for weeks. People were driving by and watching us build it. I wasn't trying to hide anything. I clearly thought that if I built the thing I could come in and get an after-the-fact permit.

Johnson asked has the Board ever made a condition that you have to replace cattails?

Buitenwerf replied not that I can recall. That may be due to the fact that the Shoreland Ordinance jurisdiction would end at the ordinary high water mark.

Johnson continued any vegetative buffer would have to be landward of the ordinary high water mark?

Buitenwerf responded correct.

Andres commented it is clear that the applicants did not go the proper route in getting the permits or variance, whatever was needed. And now here we are with the after-the-fact. I will comment that the deck now does sufficiently allow access from both sliding glass doors. Did your previous deck only cover one?

Robert Comeau answered it was both.

Joan Comeau added but it was very narrow.

Robert Comeau stated the top one wasn't usable at all.

Andres said I agree that the applicants did not take the proper route, and that is unfortunate. I also think that what is there is reasonable. I would definitely be in favor of some type of vegetative buffer.

Petersen asked would that be right along the shore where that rip rap is now placed?

Buitenwerf replied yes. I would find that would offer aesthetic screening. It offers mitigation for any additional impervious area that generates more stormwater runoff. Then, planting of substance would certainly aid in keeping the shore from continuing to be affected by ice push. It is by no means going to be the best solution. Getting emergent vegetation back in the lake would be ideal, but it certainly would help.

Petersen asked would you be able to suggest plantings there?

Buitenwerf answered you would ideally want trees. As many trees as you could.

Petersen continued does anybody have any ideas about the rip rap there and how to stop this, or is it beyond help?

Joan Comeau commented we did hire a landscaper and built what they call a rain garden. We had Environmental Services come out and examined the area. There is a big area that was added for that very purpose, to hold things in place.

Grob asked when you had a landscaper there three or four years ago to level things out, was there an ice ridge behind the rocks there? You are saying it was pushing it up. You were getting an ice ridge build up that you had them smooth out?

Robert Comeau stated if you remember in 2015, there was an article in the paper by the Environmental Services Office that allowed people to repair their shorelines without asking for a permit.

Buitenwerf replied I don't remember an article. The Ordinance has allowed that for several years to repair ice push damage.

Robert Comeau said we hired a contractor. They came and took a lot of material out.

Joan Comeau explained they took material out of the part that was humped up.

Grob commented that was the best buffer there is.

Petersen asked would you be open to a vegetative planting of trees along your shoreline as part of the solution to this?

Robert Comeau stated I would think that we want to work with the DNR about that, but yes, we could look at that.

Kovacovich added I think that Buitenwerf's office has a lot of experience in this kind of case. I would certainly be comfortable with a condition on this, if we are so moved to approve, that a plan from Environmental Services be implemented.

Joan Comeau stated several years ago we lost a bunch of poplars to the beavers.

Johnson commented I think that we should be a little more definitive of what we want along that shore for Buitenwerf's office to deal with, and just make it a condition. If he doesn't agree to it, then let's just vote on this.

Grob added I don't think any vegetative cover or any change from the grass is going to make a material difference in the particular case, other than not allowing removal of any ice ridge humps in the future, which is probably the best solution.

Johnson explained what is happening right there, I have actually installed this before on Garfield Lake. It will be a reoccurring problem for eternity. It will push right up to the house eventually.

Robert Comeau asked is there a possibility of putting more rock in front of it or not?

Johnson stated anything lakeward is DNR.

Grob added if the lake doesn't get much higher than that, it is not going to push too much further.

Johnson commented replanting the vegetation in the water so that the ice gets held would be the ideal answer.

Buitenwerf stated the problem when shoreline gets pushed back like that is the DNR says that the ordinary high water mark follows the water, and unfortunately they don't allow you to put the fill back lakeward to try to reestablish what was pushed up.

Robert Comeau responded I would be very open to that.

Buitenwerf repeated they don't allow that.

Joan Comeau stated the people that we hired were supposed to be experts on doing rip rap and putting it at the right angle so that the ice would go up over the rock.

Kovacovich added there is no guarantee on any rip rap that it is going to hold. It is all dependent on the ice push. With a clear path of least resistance, looking at shorelines on either side, this is where it is going to push. I would be in favor of a buffer with trees and shrubs planted and then maintaining a small pathway to access the dock. If circumstances allow those trees to take root and we start to get bigger trees down the road before we get more substantial push, it will help hold things.

Joan Comeau stated there is a lot of shoreline along our side of the lake that have never been required to do that.

Johnson explained what did slow it down is when it did create an ice ridge. The ice couldn't push it as easily. Conditions should be added of not removing the ice ridge and letting it build up a hump to hold that and then hold some root system on the landward side.

Grob said a vegetative buffer is to prevent runoff into the lake. Trees aren't the answer, it is other deep rooted plants that would help with the buffer. The thing to do is to not remove any future humps of ice ridge.

Petersen asked prior there was a suggestion about this vegetative buffer? I am not clear on what you want.

Johnson stated I am saying that we should say something, otherwise we are going to get one tree every ten feet along there, which is useless. I am thinking a root system that is going to go down and hold that bank when the ice comes in, and then leaving the push up as it pushes up.

Petersen clarified are you saying we should design this?

Johnson replied I think we should say a certain amount, yes.

Petersen asked do you have any idea in mind?

Johnson answered I would say the deepest rooted tree that you could use. I wouldn't worry about upsetting the visual from the house to the lake. I would just say that it has to be there to hold that shoreline. Put brush every three feet and then grasses and a "no-mow" zone for the first 10' from the ordinary high water mark for the width of the lot except for an access to the dock.

Grob stated we have two choices. We could request that they have professional people make a recommendation as to what they should do. The other one, to me, is that we try not to get into that long-term sort of thing. From my perspective I wouldn't do anything with vegetative there at all. It is not an erosion problem. I would put the condition that they can't remove any build up from an ice ridge in the future.

Johnson stated I agree with that. I don't agree with letting them pick out a professional because they are going to do what the checkbook is telling them to do. I am not in favor of getting a professional unless it is Environmental Services.

Kovacovich asked Buitenwerf are you comfortable with having us put a condition on that Environmental Services design the vegetative plan for whatever best practices are for this situation?

Buitenwerf replied ideally, I would rather the Board give some guidance on how many trees, how many shrubs, and what grasses you want. The only other thing I would say is that what is being entertained for a condition would have to be reasonable in scale relative to what is before you with the application. I would probably say that you would want to keep that area to the width of the deck. That will help some, but it won't fully help the whole issue with the shoreline and the constant loss of the lot to that.

Petersen clarified because this variance is about the deck.

Buitenwerf stated you want to have a nexus so that the condition is reasonable in scale and appropriate for what is being granted with the variance. To go beyond the width of the deck would be viewed as not in scale to what is there for the deck. It is really in the Comeaus' best interest to pursue long-term solutions for stabilizing that shoreline.

Johnson asked so a condition of no removal of the push up the width of the deck?

Buitenwerf replied that seems reasonable and easily implemented.

Grob said we would approve the deck, and in the future they could not alter the push up for a distance the width of the deck.

Robert Comeau asked is there anything to prevent putting more rock out to make it a more gradual slope to the ice?

Grob stated my understanding is that the push up comes from freezing down under the water's surface, and the ice expands and pushes up underneath. I am not so sure how much rock you would have to put in to stop it from doing that. When did you put those rocks in, about 10 years ago?

Robert Comeau replied I think so.

Grob asked have you lost any shore since? Has it changed much?

Robert Comeau answered it has slowed down.

Grob continued how high was the ridge that you had smoothed off? There wasn't much of a hump there, just a little swale. That happens all the time on everyone's shorelines.

Joan Comeau asked does everyone just leave it then?

Johnson answered a lot do.

Grob stated you can't do much with it.

Robert Comeau asked the other question would be the size of rock to use.

Grob replied I don't want to get into designing your rocks.

Andres said we just highly suggest that you speak to a professional to really secure your shoreline.

Kovacovich made a motion to approve the application as presented with the condition that in front of the lakeside deck, for the width of the deck, any future ice ridge push cannot be removed.

Petersen seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact with a slight change to the answer for question 1.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The house was allowed to be placed at a 60' OHW setback by Variance 86-24. The house layout includes two sliding glass doors that face the lake and require some means of safe ingress/egress. The deck depth is reasonable for having sufficient workable space on it. In lieu of a buffer, the ice ridge or future push not be removed for the width of the deck in front of the deck.

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? A 12' deep deck is reasonable for allowing placement of typical chairs and table and providing enough room to maneuver around these items. The house also has two sliding glass doors that open out onto the deck so a safe means of ingress/egress to these entrance doors is needed and 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 (X) No ()

Why or why not? A variance is needed for the deck because the structure to which it is attached was allowed to be placed at a 60' OHW setback by Variance 86-24.

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

Why or why not? Most of the neighboring lots to the east were created prior to the ordinance's adoption and have single family dwellings on them at a similar OHW setback to that of the structure on this property due to the Township road running along their rear lot line and their lack of depth. Many of these other homes have similar lakeside decks. The deck that is the subject of the application thus does not pose any harm to the locality's seasonal and year-round residential feel.

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

Why or why not? Economic considerations are not cited in the application. The difficulty involves the residential dwelling's being allowed to be placed at a 60' OHW setback by Variance 86-24 and the house layout having two sliding glass doors that face the lake and require some means of safe ingress/egress.

Variance Application 59-V-21 by Jon Sivald: Lot 1, Bannister's Stony Lake Addition, Section 1, Township 139, Range 34, Hubbard Township on Big Stony Lake, a recreational development lake. Parcel 14.48.00100. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed detached garage to be placed within the 100' ordinary high water mark structure setback.

Kovacovich stated this application has been amended, and because of the nature of the amendment it requires renoticing. So, this is tabled until the November meeting.

Miscellaneous:

Communications: Buitenwerf stated the November agenda is shaping up to have 8 – 10 agenda items. There will likely be a preliminary plat, and the rest will be Old Business variances as well as New Business variance applications. The iCompass software that you saw and are first starting to use this evening with the monitors will continue to be utilized. We will still do hard copy packets for November, and then we will see how that goes with everyone's fluency with the new software. We will gauge whether to continue with the paper copies in December. By January, please plan on making the switch to digital only. That is the direction that our Administrator would like us to go with conducting the meetings.

Discussion ensued about the new software.

Adjournment:

Andres made the motion to adjourn.

Petersen seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 7:59 p.m.

Respectfully submitted,

Staci Lee

Recording Secretary