

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
February 16, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:10 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Dick Berndt. Staff included Tracy Pelky, Chris Mrdutt, and Judith Liebe, Planning and Zoning Department, and Dan O'Connell, Senior Technician, Land Conservation Section of the Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Mark A Fredrickson, Owner/Jay Schrank (Fibernet), Agent (A09-02)

The Fredrickson/Schrank special exception from provisions of the Portage County Wireless Facility Ordinance to construct a 145-foot tall self-supporting tower and variance from the provisions of Portage County Wireless Facility Ordinance to construct a tower within 500-feet of a residence, in the C4 Highway Commercial Zoning District, Town of Eau Pleine, was opened by Rutta, who read the public hearing notice.

Pelky stated the special exception is for constructing a 145-foot self-support tower and the variance is for locating the tower within 500 feet of a residence.

Rutta read letters into the record stating the Eau Pleine Plan Commission and Town Board recommend approval of this request (copies in file).

Rutta swore in Jay Schrank and asked him to explain what they wanted to do. Schrank replied there is a tower currently located on the Fredrickson site without a permit and not constructed according to the Wireless Facility Ordinance. They would like permission to construct a new tower correctly and remove the existing tower from the site.

Potratz asked Schrank how close the new tower would be to the existing tower. Schrank replied about two to three feet from the old tower, closer to the road. The height will be 145 feet. Potratz stated the proposed tower does not have a breaking point to allow collapsing on itself. It must be at least 145 feet from the road. Mrdutt stated the tower is 145 feet tall and the distance between the tower and road right-of-way is 148 feet.

Casey asked Schrank how many additional locaters could be on the tower. Schrank replied it would be constructed to allow for three additional locaters. Casey stated lights should not be necessary on the tower.

Berndt stated he does not see any study done for the tower. Schrank replied they looked at all other towers in the area and tried to collocate, but the other towers are too far from the site they need to be at.

Casey stated page 18 of the packet tells where all surrounding towers are located in that area.

Berndt stated there is a possibility of problems with migratory birds. Rutta stated guyed towers are more of a problem than self-support towers.

Berndt stated there seems to be no problem with screening because there are no close neighbors. Berndt asked what color the tower would be. Schrank replied it would be a galvanized tower.

Scheider asked Schrank how large of an area they serve from that site. Schrank replied this is a relay tower for calls coming from Stevens Point, approximately 12 miles, to this tower and then to Marshfield, which is 20 miles away.

Rutta stated the elevation is quite high, it is a good site. Rutta stated the variance request is for 401 feet from an existing home and asked who owns it. Schrank replied it is owned by Mark Fredrickson's son Jake. There is a letter of support from Jake.

Rutta asked Schrank why the tower must be in the same spot. If it would be moved back somewhat, a variance would not be needed. Schrank replied the Fredrickson's building has a separate room that houses all the equipment, cables, and power. If they moved the tower further back, it would be very costly. They would need to construct an equipment house, move all the cables, etc. Schrank stated they would be doing a "hot cut" to switch from the existing tower to the new tower when it is completed.

Rutta stated the special exception and variance are entwined and it is hard to consider them separately. Rutta read the variance criteria.

Potratz asked if the tower should be fenced in. Mrdutt replied that would be a condition if they were leasing the property from someone where there would be separate ownership of the property and tower. Potratz asked if the Ordinance states that. Rutta stated fencing would be only for security. Mrdutt stated a fence should be placed around the concrete area surrounding the tower. Potratz stated he thinks it should be part of the conditions, if approval is granted.

Casey asked if Roen was the engineer. Schrank replied no, they are the company that makes the tower. Casey asked Schrank if they have an engineering firm. Rutta stated Roen would contact an engineering firm to construct the tower.

Berndt asked if the owner of the adjoining house owned part of the business. Schrank replied he is not sure if he is part owner, he is the owner's son, but the house is on a separate parcel.

Rutta read a letter into the record from Jake Fredrickson recommending approval for the tower (copy in file).

Casey asked Schrank if BOA gave them a start date of March 1, 2009 and a completion date of October 31, 2009 would it be adequate. Schrank replied that is an adequate timeframe; he was informed it would take 90 to 120 days to erect the tower.

Rutta asked if anyone in the audience would like to testify or comment.

Mark Wadina stated he has been a customer of Fibernet since he moved to the DuBay area. He stated he is a radiologist at the hospital and is on-call for emergency cases. He said he would be out of luck if he doesn't have 24/7 service availability through Fibernet. He is required to use a BPN login for the hospital and satellite does not work. If he didn't have Fibernet, he would not be able to leave the hospital on his off time. He would like to see approval of this request. The cell phone is a very necessary part of his job.

Rutta asked Schrank how many customers he has in that area. Schrank replied approximately forty in the DuBay area, and from there it serves other towers to the Stevens Point and Marshfield areas.

There being no other testimony, comments or questions, Rutta closed the public hearing portion.

Deliberation and Decision:

Potratz stated he would like to see the tower located further back from the side lot line to eliminate the need for a variance. He would like to see a fence around the tower. Mrdutt stated it could be a condition of approval.

Rutta stated it would be a considerable amount of money to move the tower and construct an equipment building.

Casey stated he does not think the tower would affect the Jake Fredrickson property.

Berndt stated he does not see much of a problem with this request; as long as the tower meets the highway setback he sees no problem with the house location.

Scheider stated she agrees with Berndt.

Rutta stated he agrees with Potratz, he would like to see the tower set further back so as not to need a variance.

Rutta stated BOA would consider the special exception and variance separately.

Rutta entertained a motion for approval of the special exception.

Casey moved to approve the SPECIAL EXCEPTION with the following conditions:

1. Approval is granted to construct a 145 foot high self-support communication tower.
2. The tower will be available to hold three additional co-locators.
3. It will be a galvanized tower and not painted.
4. There must be fencing at the base of the tower.
5. The existing guyed tower must be removed by October 31, 2009.
6. The start date of the new tower is March 1, 2009 – Completion date October 31, 2009.
7. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Scheider seconded the motion, which passed unanimously by a roll call vote.

Rutta stated he would entertain a motion to approve the variance.

Casey moved to approve the VARIANCE with the following conditions:

1. Approval is granted for a variance to construct the 145 foot high self-support communication tower 401 feet from the nearest residence.
2. The added cost of the equipment building and tower would be too costly to move the tower further away from the nearest residence.
3. A Zoning Permit must be obtained within one year of this decision or the approval becomes null and void.

Scheider seconded the motion which, passed by a three to two roll call vote, Potratz and Rutta voting nay.

DuBay Ventures, Owner/Brett & Amy Springer, Agents (A09-02)

The DuBay Ventures request for a special exception from the provisions of the Portage County Shoreland Ordinance to create a cutting plan to exceed a 30 foot wide clear-cut area in the C3 Commercial and Conservancy Zoning Districts, Town of Dewey, was opened by Rutta, who read the public hearing notice.

Pelky explained this is a special exception from the Shoreland Ordinance. The owners have requested to cut an area to exceed the 30 foot maximum width of clear-cut on the shoreland area and cutting back away 35 feet from the water. This needs BOA approval.

Rutta read letters into the record from the Dewey Plan Commission and Town Board, both recommending approval. A letter from Bradford and Linda Barick, surrounding property owner was read into the record stating opposition to clear-cutting all the vegetation, and a letter from Dan O'Connell, Senior Conservation Technician, Land Conservation Section of the Planning and Zoning Department, stating their recommendations (copies in file).

Rutta swore in Brett and Amy Springer and asked them to explain what their plans were. B. Springer replied they are asking for a special exception to clear-cut up to 180 feet of their water frontage. They own 650 feet of river

frontage and would like to combine the allowed cuttings to one large area instead of smaller 30 foot cuttings. This would channel the prospective customers to one area instead of trampling down the entire 650 feet of water frontage. Rutta asked Springer if the area he wants to clear-cut would become a beach. Springer replied no. Rutta asked if the clear-cut frontage would be to encourage boaters to come to their place of business. Springer replied yes. Rutta asked how high the retaining wall would be. Springer replied they are not sure; they would leave that to the engineers.

Rutta stated all surface water from the roofs and parking lot would run directly into the river without a drainage plan.

Rutta asked O'Connell, to give BOA information regarding a drainage plan. O'Connell stated there are several means to slow down surface water drainage to the river. As stated in his letter, he explained that to meet DNR requirements for the construction phase, there should be two swales on each side, those swales end at the setback from the body of water. He would like to continue those through some type of good grass medium without having it trampled or beaten down; something that can slow the water down. O'Connell stated what he would want to review from an engineering standpoint, is that the water from the parking lots above, as well as the buildings, and all impervious surfaces, could be safely conveyed to the river. The slower it gets there, the better it is for everyone. Rutta asked if it would be logical to construct a rise going toward the river, creating a small holding area, so when the water came down, it would be held and move through the ground slowly. O'Connell replied it could be done that way. Land Conservation has done that with a lot of their holding ponds on other sites. You create a small area, based on a storm event, which would hold back that amount. It is usually a smaller storm event, two to four inches over twenty-four hours. The rest of the water that isn't stored there is conveyed to the river. Rutta asked O'Connell when dealing with runoff water from asphalt parking lots and roofs, does it present a more formidable problem than water running down a grassy slope does. O'Connell replied yes, obviously, there are different contaminants and pollutants that would be in that runoff water vs. just something that runs off a lawn. It is a totally different type of contaminant.

O'Connell stated in his discussions with Springer regarding open space, he thinks they are going to need at least a couple of areas left natural to treat the storm water. It will need to be kept separate from whatever they are proposing to do in the middle of the lot. Some type of storm treatment must be done for that area also.

Rutta stated storm water runoff is potentially the most contaminated because of the asphalt parking lot, car oil, etc. O'Connell replied an engineer should be able to come up with a design to handle possible pollution running directly to the river. The engineer could design the size of the swales.

Rutta asked Springer if all ingress and egress of prospective customers would be from the floating dock only on the river side. Springer replied that is correct.

Rutta stated there are some trees as large as 24 inches around the trunk; some are down to an inch and everything in between. Rutta asked Springer if they planned clear-cutting all trees, including the large White Pines. Springer replied they would leave all trees BOA recommends and asked if someone would come out and mark them. Mrdutt stated he would mark the ones that should be kept.

Rutta asked Springer if they are concerned with the view of the river from their dining room. Springer replied yes. Rutta asked what the other side of the building would be used for. Springer replied for overflow dining.

Scheider stated she would prefer the large trees be preserved; she is concerned with what degree of clearing would be done next to the river bank. Rutta stated nothing is to be disturbed on the edge of the water. The bank will remain as is. Scheider stated there are three trees to the left of the building she would like to see remain. Rutta stated there is a total of seven large trees.

Berndt asked where the 35 foot strip would come into play. Rutta replied from the OHWM inland 35 feet in the clear-cut area. Berndt asked if a large amount of fill would be brought in. Springer replied only if necessary; the engineer would decide what is needed.

Berndt stated the path going down to the river must be constructed with a surface that would prevent erosion. Rutta asked what Springer was proposing for the walkway going down to the floating dock. Springer replied they have talked about wood chips being used.

Casey stated he does not want to see any mature trees eliminated. Some weak trees in a clump could be eliminated, but the large mature pines and oak should be preserved. Any dead branches on the bottoms could be removed. All immature brush could be eliminated.

Potratz stated it would be nice if the engineering firm could provide BOA with some sort of computer generated printout showing what it will look like. It is hard to make a judgment on this request, when in reality we cannot imagine what it will look like.

Rutta stated this is a beautiful site with big mature trees, which should be kept. They could be limbed up and left on site. The first 35 feet inland from the OHWM must be left natural. He sees no problems with removing the brush and feels that any trees with a trunk greater than 12 inches should remain.

Scheider asked how close to the river the parking lot would be. Springer replied no part of the parking lot is on the water side, it is on the opposite side of the building. Scheider asked how the prospective patrons would reach the restaurant from the floating dock. Springer replied there would be a back door with a patio and wooden steps down to the floating dock. They stayed far enough from the 100 foot setback from the OHWM to allow for the patio.

Rutta asked if there would be any other patio areas. Springer replied yes, they would all be outside the 100 foot setback.

Mrdutt stated there is a little finger of land north of the development which he and O'Connell discussed revegetation. Mrdutt stated BOA should consider keeping that area natural, if the property would be sold in the future. Springer stated they do not want a deed restriction on the property. Mrdutt replied staff would attach the information to the parcel so when we look at it, we know what could and could not be developed.

Rutta asked Springer if there would be any new lighting. Springer replied there is already lighting on the site and it points downward, he does not plan on putting up any more lights on the water side.

There being no further questions, Rutta opened the request to the audience. Rutta swore in Ardell Steines.

Steines stated he lives directly across the river from this site. He has a view of the bar. He has no objection to removing the brush, but does not want to see the large trees removed. They provide a filtered view of the site and he feels that is a good compromise. Steines stated he is a member of the DuBay Property Owners Association and is a Board member. They would like to see the area from the OHWM inward to the 100 foot setback left natural. He agrees the 180 foot clear-cut is a better idea than 30 foot clear-cutting intermittently. He asked how Springer would keep proposed customers from walking in the swale areas. O'Connell stated there would probably be some type of fencing to prohibit it. Steins stated the DNR would probably not let them remove a tree leaning over the water because it is good habitat for all types of wildlife.

Derrick Zagrzebeski stated he is Steine's neighbor, and has owned his property since 1987. He has kept his site natural and would like to encourage Springer to do the same.

Al Wirth, Lake DuBay resident, stated he also belongs to the DuBay Property Owners Association as a Board member. He commended the Springers for opening a business there. He would like to see the large trees remain. How well they blend in with the neighborhood will determine who will support them.

Rutta stated DNR rule NR115 would probably require natural revegetation kept 35 feet inward from the OHWM.

Mrdutt stated there could be small signage stating, "natural area, please keep off". Signage should direct access to the walking path. Mrdutt stated any required DNR permits must be obtained prior to issuance of a Zoning Permit.

There being no further testimony or questions, Rutta closed the hearing portion of this request.

Deliberation and Decision

Berndt stated he is concerned by O'Connell's statement "if the storm water plan is accepted." Rutta replied what they are saying is the special exception would be granted upon approval of a storm water plan. If Springer cannot get an approved storm water plan, the special exception would be null and void. It should be a condition of approval.

Berndt stated he would like to see the trees remain. Rutta stated BOA must make a determination of what must stay and what can be removed. He stated he would make a proposal that any tree with an eight inch diameter trunk or larger must stay. Berndt stated some of those trees are right on the water and does not want to see them removed.

Mrduitt stated the trees are up on land so they can be cut. Berndt replied they are within that 35 foot buffer zone. Mrduitt stated that is the purpose of this meeting, BOA, and staff are only looking at the 35 foot depth by 180 foot wide area. Everything 35 feet or further from the water may be removed.

Casey stated he agrees any trees with an eight inch or larger trunk should stay and lower branches could be trimmed up.

Mrduitt stated Springer is asking permission to use this space, all the other areas will be determined by the engineers, deciding on what type and where the swales will be. You can either approve the 180 foot width (showed BOA on the plans where it would be located) or have a 30 foot opening every 100 feet of water frontage.

Potratz stated he would suggest anything 12 inches or larger not be cut, the rest may be brushed out. The large trees must remain.

Mrduitt asked what should be done with the cluster trees. Rutta replied as long as they meet the 8 inch diameter, keep them.

There being no further discussion, Rutta entertained a motion to approve the request.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a clear-cut plan not to exceed 180 feet wide.
2. All trees with a 10 inch diameter trunk at diameter breast height (DBH) or greater must remain.
3. The lower limbs may be trimmed.
4. A Storm Water Management Plan must be approved by Daniel O'Connell, Senior Conservation Technician, Land Conservation Section of Planning and Zoning Department.
5. Signage should be placed along the shoreline area that is left in a natural state informing the public of no trespassing in that natural area. Access to the establishment from the river is to be from the floating boat landing via the stairs only.
6. Any and all permits from the Department of Natural Resources and Army Corps of Engineers must be obtained prior to issuance of the Zoning Permit.
7. No structures will be allowed within the ordinary high water mark setback.
8. Any request to change the area left natural must be brought back to the Board of Adjustment for consideration.
9. Everything must be on file in the Planning and Zoning District prior to obtaining a Zoning Permit.
10. The permit must be applied for within one year of Board of Adjustment approval or the approval becomes null and void.
11. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Potratz seconded the motion, which passed unanimously by a roll call vote.

Approval of Minutes:

August 18, 2008 Minutes – Berndt moved to approve the minutes as presented, Casey seconded the motion, which passed by a voice vote.

Approval of December 15, 2008 Minutes – Berndt moved to approve the minutes as presented, Scheider seconded the motion, which passed by a voice vote.

Correspondence/Updates:

- Pelky stated the next regular meeting for BOA would be March 16, with possible on-sites prior to the meeting, depending on the number of requests.

- Rutta stated he would be gone the month of March 2009.

- Pelky updated BOA on the Thomas & Rosalie Modrzewski (A08-24) court case regarding their request to remove an existing deck and construct a home addition within the water setback of the Plover River. The Judge referred it back to BOA. The Judge stated one issue, shoreline averaging, was not considered, other reason is that the property does not abut the water, but abuts property that abuts the water within the 100 foot setback. He will keep BOA updated.

- Casey, Berndt, and Scheider will be attending the BOA training in Marshfield on March 4, 2009.

- Rutta stated BOA member Dick Berndt will be running for Town of Linwood Supervisor. One problem BOA has is if Berndt would vote on a request on the Township level, he could not vote on the same request if it comes before BOA. Dennis Meis, a BOA alternate is in the same position, he is a Supervisor for the Town of Dewey. Those BOA members must recuse themselves from voting on a request they acted on for their Township. Rutta stated this should be added in the Board of Adjustment Bylaws.

Portage County Corporation Counsel stated this is permitted under State Statutes.

Adjournment

Casey moved to adjourn, Potratz second, all in favor. Meeting adjourned at 6:20 pm.

Respectfully,

Judith J Liebe, Recording Sec.

James Potratz, BOA Secretary

April 20, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
March 16, 2009

Call to Order

Vice-Chairman Berndt called the Portage County Board of Adjustment (BOA) to order at 4:10 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Patrick Casey, James Potratz, Joan Scheider, Dick Berndt, and Alternate Phil Janowski. Rutta was excused. Staff included Tracy Pelky and Judith Liebe, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Berndt explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Midwest Renewable Energy Association (MREA), Owner/Mike White, Agent (A09-03)

The MREA/White special exception from the provisions of the Portage County Zoning Ordinance to construct a 36 foot by 50 foot classroom/storage structure and to increase the number of educational workshops in Zone C of the Wellhead Protection Ordinance, Conservancy Zoning District, Town of Stockton, was opened by Berndt, who read the public hearing notice and swore in Mike White and Terri Parker representing MREA.

Pelky stated in 1999, BOA approved Appeal No. (A99-01), condition #3: "Twelve workshops per year with up to twenty participants per workshop are allowed." MREA would like to have that condition changed to allow for up to eighty workshops per year, with thirty participants per workshop. The Town of Stockton sent a letter with recommendations

Berndt read the Stockton Board letter into the record recommending approval with conditions (copy in file).

White explained MREA needs a lab workshop and storage area to house all their equipment. The class room area in the main building is carpeted and mostly for lectures. They need a hands-on workshop for participants to assemble projects, get down on the floor, and actually see how things work. There would be a cement floor in this workshop. Half of the building would be used for classroom and laboratory, and the other half will be for storage. It would be located behind the current building and have a very low profile.

Pelky stated the 12 foot by 12 foot storage shed presently on the site does not need to be acted on by BOA. Berndt stated he wanted it in the record that BOA was aware of it being there.

Berndt asked if the existing septic system and water would be connected to the proposed building. White replied yes.

Potratz asked what the maximum height of the proposed addition would be. White replied maximum 35 feet high, no basement, and the building will be on a cement slab.

Potratz stated MREA is located in the Conservancy Zoning District and asked how a commercial operation can take place in that Zoning District. Parker replied MREA is a nonprofit educational association. All of the funds get rolled back into the nonprofit education fund; it is not a commercial business. Pelky stated the Ordinance says under general provisions it is specified a special exception because it is an educational nonprofit association.

Casey asked if part of this site is used as a campground. Parker replied they allow for participants to camp in their woods behind the building, approximately a five acre site. They are out there very rarely. While attending our workshops they may stay overnight. Casey stated they should limit the area of camping close to the proposed

building as a fire safety area. There are a lot of pines and it would be easy for a campfire start and move quickly. Parker replied they do not allow any campfires ever. They do not allow any campfires on the 40-acre campground on the corner of Rolling Hills Road and County Road QQ either.

Casey asked if there would be heat in the proposed building. White replied there would be an in-floor heating system and a wood stove, but it will be mostly a three season building.

Casey asked staff if the west lot line problems with Foss had been corrected. Pelky replied Foss purchased the 12 foot width strip he needed to bring his site into compliance and allow for his quonset storage buildings to remain where they are. There is a certified survey map (CSM) on file.

Scheider asked why Stockton Town Board asked MREA to come back before the Town Board for reconsideration in five years. Mike Bronk, Stockton Chairman, replied it is a way the Town could monitor MREA's growth. They might outgrow this site in that time frame, if they do, they would need to find a properly zoned area to operate from.

Berndt stated MREA is asking for 80 workshops per year with a maximum of 30 participants per workshop. He asked if that would be for the new or old building. Parker replied it would be for both buildings, the classrooms are about the same size in each building. Berndt asked how many employees MREA has. Parker replied there are thirteen at present, but it could increase up to thirty.

Berndt asked if the 12 foot by 12 foot storage building mentioned is strictly for storage. White replied that is correct. Berndt asked if it is on skids. White replied yes, it is a temporary structure; it will be moved after completion of the new building. Berndt asked if anyone could stay in the buildings overnight. White replied no, there are no living quarters in any buildings.

Berndt stated the request shows that some waste oil may be kept on site. White replied yes, possibly a can or two after he changes the oil in the yard equipment. Berndt stated if it is kept, it must be stored in a container 150% volume of the material to be stored and must be disposed of properly. White replied he takes it to the County for recycling.

Pelky asked what the starting and completion dates would be. Parker replied starting date would be March 16, 2009 and completed by November 1, 2009. The building will be put out for bids in the next week and construction would start as soon as possible. Pelky stated the start date is not that critical, the completion date is the important one. Pelky stated all State, Department of Health, and Department of Commerce permits must be obtained prior to issuance of a Zoning Permit.

Potratz asked if any provisions for storm water runoff have been made. White replied they have rain barrels that collect the rain water from the roof and use in landscaping the grounds. Berndt stated Dan O'Connell, Senior Conservation Technician, Land Conservation Section of Planning and Zoning, should be contacted to be sure the runoff plan is correct.

Casey asked if the Central Wisconsin Wildlife Center is still located in the building. Parker replied no, just the MREA is located in the building. The building was originally built by the Wildlife Center, they went bankrupt, and MREA purchased the building from them. The Wildlife Center did continue to function in the building with them for a while, but they just didn't have the finances to continue. They removed the last of their items approximately two years ago.

Berndt opened the hearing to the public. There being none, he closed the public hearing portion of the request.

Deliberation & Decision

Berndt stated the Ordinance allows this function, if approved by BOA as a special exception.

Casey stated a septic evaluation must be completed. All plans must be State approved. A storm water plan must be approved by O'Connell.

Potratz stated all permits must be obtained prior to November 1, 2009. If the construction cannot be done by that date, MREA may come back for an extension.

There being no further deliberation, Berndt stated he would entertain a motion for approval.

Janowski moved to approve the request with the following conditions:

1. Approval is granted for a 36 foot by 50 foot classroom/storage room addition to be constructed as plans presented. All setbacks must be adhered to.
2. A septic system evaluation must be completed prior to issuance of a Zoning Permit.
3. All construction plans must be State approved and any other permits and or approvals must be obtained prior to issuance of a Zoning Permit. (Sam Solberg, Department of Commerce 345-5226).
4. Condition #3 of the January 19, 1999 request (A99-01) is null and void. A maximum of 80 workshops per year are allowed.
5. A maximum of 30 employees are allowed.
6. A maximum of 30 students per training session is allowed.
7. All hazmat materials (oil, fuel, etc.) must be stored in a container 150% volume of the stored material and disposed of properly in a timely manner.
8. Proposed start date March 17, 2009 – completion date November 1, 2009.
9. The 12 foot by 12 foot storage building will be moved to a new location.
10. All conditions set by the Stockton Town Board must be adhered to.
11. A storm water drainage plan must be approved by Dan O'Connell, Senior Conservation Technician, Land Conservation Section, Planning and Zoning Department.
12. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Scheider seconded the motion, which passed unanimously by a roll call vote.

Joseph & Tonia Simmons, Owners/Allan Shepard, Agent (A09-04)

The Simmons/Shepard special exception request from the provisions of the Portage County Zoning Ordinance to operate a home occupation for retail use, manufacturing cookies and roasting coffee, in the R1 Rural and Urban Fringe Residence Zoning District, Town of Dewey, was opened by Berndt, who read the public hearing notice and swore in Allan Shepard.

Pelky explained the site is zoned R1 and if the home occupation would be conducted inside the home, it would not need a special exception, but it will be conducted in one of two ways: an attached addition on the back of the garage, or a self standing building behind the garage. They have not decided as of this date.

Berndt read Town of Dewey letters into the record recommending approval with conditions and a letter from a surrounding property owner, Dennis Schneider, recommending denial (copies in file).

Shepard stated he and his wife would like to operate a subscription delivery business for fresh roasted coffee and home made cookies. The only reason they would like the garage addition is so they would have some place to bake cookies and roast coffee beans. They would take orders and deliver the completed products. There would be no one coming to the house to pick up the products. He would deliver products to Stevens Point, Marshfield, and Wausau areas. There would be minimum impact on the area. He plans on installing an afterburner, which would eliminate all odors from roasting green coffee beans and baking cookies, the noise from the roaster and afterburner would be minimal. There might be a few small deliveries of supplies to his house, but nothing larger than a van would come down their street. It would allow them the ability of not going to the grocery store for ingredients. Green coffee beans are more of a problem with delivery. He is looking at a couple places, but they only deliver in full size semi-trucks. They would not have the semi driving in the subdivision, he will make provisions to pick up the beans outside of River Road and bring them to the house himself. They come in 150 pound bags, on pallets. Hopefully, they would go through at least one pallet a month. There would be no more than one pallet's worth of green beans on site at one time.

Casey asked how they would wash the accessories used in baking, etc. Shepard replied they would meet all standards set by the Health Department. They are going to take a manager training course as required by the

Department of Health. They will have a hand washing sink and a larger three compartment sink to wash all accessories they use. Casey asked Shepard if there would be a cooler in the addition. Shepard replied he is not sure at this time; they may have a small refrigerator/freezer, where they could freeze some things as needed.

Casey asked Shepard if the addition would match the existing home. Shepard replied yes. Casey asked if there would be any signage by the road. Shepard replied only what is allowed. Pelky stated one six square foot sign is allowed, and must be out of the road right-of-way.

Casey stated there would be no vehicles larger than a UPS delivery truck coming to the site and not more than once a day. Shepard replied that is correct, but it would probably be only once a week with cookie supplies and once a month with coffee beans.

Scheider asked Shepard what his hours of operation would be. Shepard replied on the request they stated Monday through Saturday, 8:00 am to 5:00 pm. Scheider said they are requesting to be allowed to deliver completed products seven days a week. Shepard replied yes, they are anticipating that. Scheider asked how many days of the week they would be roasting coffee beans and baking cookies. Shepard replied usually just one day a week and after that, they would be packaging products and delivering.

Berndt asked if it would be feasible to state there would be no roasting on weekends and holidays. Shepard replied no one would be able to smell it anyway with the afterburner which removes 95% of the smell. Berndt asked if there would be any outside lighting added to the site. Shepard replied no.

Janowski stated it sounds like this will be a very discrete quiet business.

Berndt asked how many vehicles would be on the site at one time. Shepard replied they have two personal vehicles and may purchase a small van for delivery purposes.

Berndt asked Shepard if this would be an attached or detached addition. Shepard replied he is not sure, he is hoping BOA would approve the request for either way. There are positive and negative reasons for each. Casey said that whatever Shepard would do he must have the plans on file with the Planning and Zoning Department prior to construction in order to get a Zoning Permit. Berndt stated the positive reason for attaching to the house would be the plumbing, it is already there, he would just need to connect to the existing system. He asked Shepard if he constructed the building separately, would he plan on connecting it to the existing system. Shepard replied he is not sure at this time. Casey stated there would need to be a septic evaluation whichever way Shepard went.

Berndt asked Shepard if there would be any outside employees. Shepard replied no, just his wife and himself. Berndt asked what type of oven Shepard would have. Shepard replied a Hobart commercial gas oven. Berndt asked if the mobile home on site would be removed. Shepard replied yes.

There being no other testimony or questions, Berndt opened the request to the audience for comments, testimony, or questions.

Berndt swore in Robert D. Sheahan. Sheahan stated he has a number of concerns regarding this business venture. He feels there would not be enough volume for this venture to succeed and for Shepard to recoup the costs of operating the business. He does not want to see any semis on River Road because it is not constructed to handle that type of load. Sheahan stated he could live with this request, if it does not increase in size. If Shepard's business would grow, he would insist Shepard move into an area with the correct zoning for that type of operation.

Scheider stated BOA is not here to determine if the business would be profitable. If Shepard finds he needs to expand, BOA would most likely want to reconsider the request. Pelky stated if Shepard would want to add more square footage than what he is asking for at this time, if there would be any noise or smell complaints, increase in the number of employees, excessive traffic complaints, etc., Shepard would need to come back before BOA for reconsideration. Shepard stated his long range plans are stated on page four of the application packet.

Scheider asked Shepard if he anticipated any customers coming to their house. Shepard replied no. Pelky stated BOA could list that as a condition of approval.

Casey stated he does not want to see any semis or vehicles larger than ¾ ton delivery trucks on River Road.

There being no further testimony, Berndt closed the public hearing portion of the request.

Deliberation & Decision:

Berndt stated Shepard had mentioned a sign on the corner of River Road and County Road B. Pelky stated they would need a permit from the Planning and Zoning Department for the off site sign.

Casey stated all storm water runoff must remain on their site. Any lighting must shine downward and inward. There must be a septic system evaluation for the proposed business. All final plans must be on file with the Planning and Zoning Department prior to issuance of a Zoning Permit. Any and all conditions set by the State and Department of Health must be obtained prior to the Zoning Permit.

Berndt stated start of construction would be April 1, 2009, completion April 1, 2010. If a sign is to be constructed on their site, it must meet all County Ordinances.

There being no further deliberation, Berndt entertained a motion for approval.

Janowski moved to approve the request with the following conditions:

1. Approval is granted for a 24 foot by 24 foot detached or attached addition with eight foot sidewalls to be constructed with a 5:12 pitched roof. It has not been decided if it will be attached or detached as of this meeting date. All setbacks must be adhered to and any new lighting must shine downward onto the property.
2. A complete set of plans must be submitted prior to issuance of a Zoning Permit.
3. Start date is April 1, 2009 – completion date April 1, 2010.
4. All siding and roofing must match the existing home.
5. All State, Health Department, and any other approvals and permits needed must be obtained prior to issuance of a Zoning Permit. (Gary Garski, Health & Human Services 345-5350).
6. A septic evaluation must be completed.
7. Storm water runoff must be checked by Dan O'Connell, Senior Conservation Technician, Land Conservation Section of the Planning and Zoning Department. All recommendations must be adhered to, keeping all storm water runoff on site.
8. Signage up to six square feet and outside of the road right-of-way is allowed on site.
9. Delivery vehicles to site are limited to a maximum of ¾ ton. No semis are allowed on West River Road.
10. Hours of operation are Monday through Saturday, 8:00 am to 6:00 pm.
11. No sales are allowed out of this proposed addition. All deliveries of finished products are to be delivered to customers by appellant.
12. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Potratz seconded the motion which, passed unanimously by a roll call vote.

Correspondence-Updates

Pelky informed BOA the next meeting will be Monday, March 23, 2009, with the on-site prior to the meeting.

Adjournment

There being no further business to come before BOA, Janowski moved to adjourn, Potratz seconded the motion, which passed by a voice vote. Meeting adjourned at 5:20 pm.

Respectfully submitted,

Judith J Liebe, Recording Sec.

James Potratz, BOA Secretary

April 20, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, March 23, 2009

Call to Order

Vice-Chairman Dick Berndt called the Portage County Board of Adjustment (BOA) to order at 4:05 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Patrick Casey, James Potratz, Joan Scheider, Dick Berndt, and Phil Janowski. Rutta was excused. Staff included Tracy Pelky, Chris Mrdutt, and Judith Liebe, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Berndt explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Simone & Joseph Okray, Owners/Ray Higgins, Agent (A09-05)

The Okray/Higgins request for a variance from provisions of the Portage County Zoning Ordinance and Portage County Shoreland Ordinance to remodel an existing house within the 100 foot setback from the Wisconsin River and 25 foot setback from the rear property line, Town of Plover, was opened by Berndt, who read the public hearing notice.

Pelky explained the applicant discussed the proposal with him and they reviewed the request. This one is a little unusual. Okray is not requesting to add any square footage to the home, but would like to remove existing trusses and replace them with steeper pitched ones. Interior wise, they would be putting in a cathedral ceiling. There was some debate as to whether or not a variance was needed or if this is just routine maintenance. He decided to run it through as a variance because it is a structural alteration to the building. They are not adding any square footage to the home. The variance is for the roof structure being within the 100 foot setback of the Wisconsin River. Staff measured 42 feet from the closest part of the home to the River. There is a secondary variance where the house is 16 feet to the closest part of the rear property line. Okray does not own frontage to the River, it is land owned by Consolidated Water & Power Company. BOA must consider the property line between Okray's house and the River. In reality, there are two variances, one within the 100 foot setback from the water, and one for the setback from a property line.

Pelky stated the Town of Plover Plan Commission and Town Board approved the request; there is a copy of the approval letter on page 4 of the packet. On page 11 of the packet, there is an aerial photo showing a lean-to on the west side of the garage. No permit was issued for that lean-to. It appears it is too close to the side property line and would need to be removed to bring the site into compliance, if the variance would be granted.

Berndt read the Town of Plover letters into the record (copy in file).

Berndt swore in Jackson Case and Ray Higgins, both representing Okray.

Higgins stated Okray would like to replace the existing roof with steeper cathedral type trusses. The cathedral ceiling would be on the inside, they are energy efficient trusses. The shingles would be removed from the existing roof. Case stated this whole issue is because of problems with ice build up, creating ice dams on older homes like this one during the winter. The only way to solve such a problem

is to add more insulation directly above the wall. You cannot keep the same roof line and fix the problem. What they propose to do to is take off the existing roof structure and put on a new roof structure that is a little steeper. It has a different pitch on the inside to create the cathedral ceiling, but also to enlarge the space between the top of the wall and the roof sheeting so they can get enough insulation in there to stop heat loss and prevent ice dams. It is referred to as an "energy heal." It would also be vented better to get the proper air flow, preventing heat loss.

Higgins stated at this time the house is high maintenance. By replacing the roof, they would eliminate a lot of problems resulting in less maintenance.

Casey asked Higgins how deep the overhang would be. Higgins replied he is going to try and keep it the same, or maybe even shorter, two feet would be the maximum for the eaves, and the overhang on the gables will be twelve inches. The river side overhang would be maintained at two feet. Casey stated the overhang is three feet now. Higgins replied it would be shortened, depending on the trusses.

Janowski asked Higgins what the new roof pitch would be. Higgins replied it would be 8:12; the existing roof pitch is 4:12 to 5:12.

Potratz asked if any repairs would be made to the existing deck. Case replied there are a few boards that need to be replaced along with the railing. It is over 20 years old and there is a safety issue with it.

Casey asked Pelky to update BOA on the lean-to he mentioned. Pelky stated an Ordinance violation could hold up a Zoning Permit until the violation is brought into compliance. The maximum height of a sidewall for the lean-to in that zoning district is ten feet. This lean-to is approximately 18 feet high. Pelky said in speaking with Higgins and Case at the on-site inspection, the owner does not want to remove it, but would in order to get BOA approval for the roof. Case stated the neighbors were all at the Plover Town Board meeting and no complaints were voiced. He would ask to keep the lean-to, if possible. Casey replied it must meet side yard setbacks.

Berndt stated the lean-to was constructed without a permit. It is nonconforming in height and setbacks from the side lot line. The site must be brought into compliance before a Zoning Permit can be issued.

Berndt asked if there would be any ground disturbed with this request. Case replied no. Berndt asked if there would be any downspouts or gutters placed on the new roof. Higgins replied it had not been bought up before, but if it can be done, Okray would probably want gutters put up. Casey stated gutters and downspouts would help direct the roof runoff away from the house's foundation. If there are downspouts, the water can be diverted to an area that could be controlled. If it just runs off the roof, it has the potential of creating its own path to the water and erosion will occur. Pelky stated that is something that can be worked out with the Land Conservation Section when they come in for a permit.

Berndt asked if they would put a new roof over the bedroom toward the river. Higgins replied yes, and showed BOA on the plans how it would be done.

Scheider asked if the deck was part of the original structure. Higgins replied no, the deck was built approximately 20 years ago, three to four years prior to the addition being put on. Scheider asked if the deck required a permit. Higgins replied he does not know. Pelky stated one should have been obtained because the site is in the Shoreland Zoning District. Scheider asked if this would be considered a zoning violation. She is somewhat concerned about this setting precedence with neighbors by allowing the deck to remain. Pelky replied there is a provision in State Statutes regarding Shoreland violations. The violation in this case, the deck, has been there over ten years. There is nothing that can be done. The deck being over twenty years old is considered legal nonconforming, just like the house. The deck cannot be removed and rebuilt or enclosed. If this is just routine maintenance with the replacement of the railing and a few floorboards, there is no problem. If there would be a problem and major work would need to be done on the deck, Okray must contact Planning and Zoning and would probably need to come

before BOA for consideration. He does not want to inspect the site upon completion of the roof and find a new deck has been constructed.

Pelky asked Higgins if he would be putting in any new windows. Higgins replied yes, he is not sure which windows will be replaced, but a few of the old ones will be to help conserve energy. Pelky stated if they would be rebuilding any of the walls because they are not square after removing the existing roof, or making the walls taller, it should be made known to Planning and Zoning staff prior to construction so it would become part of the record. Higgins stated they are extending the height of the roof; the walls will remain the same.

Potratz asked if the Army Corps of Engineers (COE) or Department of Natural Resources (DNR) had an opinion on this request. Pelky replied he contacted DNR and they indicated there was no problem as long as Okray received a permit from Portage County.

Scheider stated she did not attend any Town meetings regarding this request and would like to know if neighbors expressed concerns regarding the lean-to. Higgins replied no, he did not even know that was an issue, there will be nothing added to the house from the garage gables or anywhere else. There was one woman who asked if there would be any addition to the house, but she did not mention the lean-to.

Berndt opened the request to the public and there were no questions or comments.

Deliberation and Decision:

Casey stated he would like to see no remodeling with the new trusses; the overhang should be a foot closer to the house than the existing three foot overhang. The decks should remain the same square footage, a new railing and replacement of a few floorboards is considered maintenance.

Potratz stated the roof runoff should be as far from the river as possible. Okray should consult with Land Conservation regarding this issue.

Berndt stated the lean-to must be brought into compliance prior to obtaining a Zoning Permit for the new trusses.

Pelky stated Planning and Zoning staff has the authority to refuse issuing a Zoning Permit for a site that has a violation. If Okray is not sure of the side property line, the Register of Deeds Office should be contacted for a copy of the certified survey map (CSM). Okray does not want to remove the lean-to, but if it is a condition of approval for the new trusses, he will remove it. If the lean-to does not meet the side yard setback, he could consider purchasing the footage needed to bring it into compliance from his neighbor. Okray is limited to 2,000 square feet of accessory building space in that Zoning District. Case stated he sort of checked the square footage of the garage and lean-to, and is almost positive it is less than 2,000 square feet. Pelky asked if there was a lower level to the garage. Higgins replied there might be some, but not under the whole garage. Case replied he did not take that into consideration. Pelky stated if the lean-to would be allowed, it would need to match the house, not as it is with mismatched materials. The roofing, siding, etc. must match the existing house. The sidewall height requirement must be brought down to ten feet. As it stands at this time, it does not meet Ordinance requirements.

Potratz asked if a CSM is needed. Pelky replied there is a CSM and Okray needs to find the corners. The parcel was surveyed in 1987.

Berndt asked Pelky if the lean-to would meet setbacks and be lowered to meet Ordinance requirements, would it be allowed to remain on the site. Pelky replied yes, but it must meet all requirements.

Scheider stated the Town of Plover approved the project, if it complied with Portage County Ordinance.

There being no further discussion, Berndt stated there are two variances to consider, and he would entertain a motion for approval of the rear yard setback.

Casey moved to approve the rear yard setback with the following conditions:

REAR YARD SETBACK:

1. Approval is granted for replacement of a new roof on the existing home sixteen feet from the Consolidated Power and Water Company property line. Approval is also granted for repairs only on the existing deck, which is four feet to the Consolidated Power and Water Company property line.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Berndt entertained a motion for approval of the shoreland setback.

Casey moved to approve the shoreland setback with the following conditions:

SHORELAND SETBACK:

1. Approval is granted for replacement of a new roof within the water setback.
2. The roofline must be no closer than 42 feet from the ordinary high water mark (OHWM).
3. The overhang on the new roof must be no wider than 24 inches.
4. The deck must remain in the existing footprint. Repair to the railing and replacing a few floor boards on the deck is allowed. Any proposed change in deck size or shape must be brought to the attention of Planning and Zoning Department staff for consideration.
5. The groundwater runoff plan is to be approved by Dan O'Connell, Senior Conservation Technician, Land Conservation Section, Planning and Zoning Department.
6. The lean-to on the west side of the garage must be brought into compliance with the Portage County Zoning Ordinance, by meeting the side yard setbacks and maximum height of ten feet, or be removed prior to issuance of a Zoning Permit.
7. Start date is April 1, 2009 with completion date October 31, 2009.
8. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.
9. **A Zoning Permit must be obtained prior to start of any activity within one year of obtaining Board of Adjustment approval.**

Scheider seconded the motion, which passed unanimously by a roll call vote.

Case asked Pelky if he could start removing the inside ceiling prior to obtaining a permit for the roof. Pelky replied the inside work can start without a permit, but a permit must be obtained prior to replacing the roof with new struts.

Reconsideration:

Julia R. Cornwell Estate, Owner/Audrey Glodowski, Agent (A08-31)

The reconsideration request of the Cornwell Estate was opened by Berndt, who read a letter into the record stating the Cornwell Estate would like reconsideration of Condition #4.b. of the original conditions set by BOA at the August 18, 2008 meeting. Condition #4.b. states: "The underground storage tanks must be removed and site tested for contamination. If contamination is found, it must be cleaned-up prior to Planning and Zoning staff signing the CSM."

Attorney Paul Anderson stated there is not enough money in the Cornwell estate to pay for clean-up after the tanks were removed. If the estate would be allowed to sell the tillable portion (approximately 64 acres) for farming, the money would go to clean-up of the contaminated area. There is funding through the Department of Commerce for help in the clean-up. It is called Petroleum Environmental Clean-up Fund Award Program (PECFA). A final determination of site eligibility would be made upon the amount of money in the estate to cover clean-up costs of the contaminated site (copy in file).

Anderson stated there is a lot of other debris and a mobile home on the site, which will be removed.

He stated LaVerne Lepak has made an offer to purchase the tillable land. He and Lepak inspected the site. There is an accepted offer and financing is contingent on removal of the debris, etc. Richard Gagas owns most of the items on the site. He told them he would remove them prior to March 19, 2009. All the items that need removal are listed in the M & I Bank letter dated March 12, 2009 and signed by Thomas Domaszek, Vice-President (copy in file). The property is in foreclosure.

Anderson and Lepak are planning another inspection prior to loan closing and any remaining items will be removed at the expense of the seller (Cornwell estate) or the Lepaks would withhold money based on the estimated costs to have the items removed or buried.

Pelky stated the reconsideration/rehearing could be at the April 20, 2009 BOA meeting. This is a request asking for reconsideration. All the other conditions set at the August 18, 2008 meeting must be adhered to.

Berndt stated he would entertain a motion for approval to hold a reconsideration/rehearing of Condition #4.b.

Casey moved to approve reconsideration of the request at the April 20, 2009 meeting.

Janowski seconded the motion, which passed by a four to one roll call vote, with Potratz voting nay.

Correspondence/Updates

- Pelky stated the next regular meeting is April 20, with on-sites on April 17.

- Mrdutt informed BOA that the next six miles of the USH 10 road project west toward Marshfield, needs an additional three million cubic yards of material. There will be approximately 18 to 20 requests for fill in the near future. He would like to hold separate meetings regarding these requests.

Adjournment

There being no further business to come before BOA, Casey moved to adjourn, Janowski seconded, all in favor. Meeting adjourned at 5:15 pm.

Respectfully submitted,

Judith J Liebe, Rec. Sec.

approved
James Potratz, Secretary

April 22, 2004
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, April 20, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Dick Berndt. Staff included Tracy Pelky, Chris Mrdutt, Judith Liebe, Planning and Zoning Department, and J Blair Ward, Portage County Corporation Counsel.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

REHEARING:

Julia R. Cornwell Estate, Owner/Paul Anderson, Agent (A08-31)

Rutta stated this is a rehearing of a special exception from the provisions of the Portage County Zoning Ordinance requested to create a parcel of land as the result of a farm consolidation in A1 Exclusive Agricultural Zoning District, Town of Sharon – Parcel #032-24-0913-03 & 032-24-0913-08. The request will be to amend Condition #4.b from the August 18, 2008 Request. **Condition #4.b states:** “The underground storage tanks must be removed and site tested for contamination. If contamination is found, it must be cleaned up prior to signing the CSM.”

Pelky explained that at the March 23, 2009 BOA meeting, a request to reconsider Condition #4.b was sought. BOA members approved reconsideration for this meeting. The reconsideration request is for condition #4.b only. That is all BOA needs to act on regarding this request. Paul Anderson is representing the Cornwell Estate. Pelky said two letters were received regarding this hearing, one from a landowner and one from the Town of Sharon Board.

Rutta read the letters into the record, the one from the landowner stated all conditions BOA set at the original hearing should be adhered to. The Sharon Town Board passed a motion to support the request with conditions (copies in file).

Rutta swore in Anderson. Anderson explained initially this all came about when the estate wanted to split the property. The five acre site includes the home and outbuildings where the tanks were located. The other lot would be the balance of the property. They now have a buyer for the balance of the property and allowed to close on that sale, they would have funds available for cleanup of the contamination on the site. It was determined that there is contamination. The estate made an application to the Petroleum Environmental Cleanup Fund Award (PECFA). PECFA fund requires a \$10,000 deductible that must be paid and then it will cover the remainder of costs for the cleanup. There is a cap though; \$190,000 would be the maximum PECFA would pay. Basically, he is before BOA because the Cornwell estate has no assets. All it has is the real estate. The real estate is in foreclosure and there is a lien against the property. The hospital also has a lien against the property. The possibility of obtaining funding for cleanup of this site is nonexistent. This would allow the estate, if the request were approved, to take the net proceeds from the sale of that one piece of property and put it in an escrow account. They would make the County and Town a party to that agreement. It would state the funds could only be used to pay the environmental consulting firm to do cleanup. He estimates that he would have between \$40,000 and \$45,000 to put in that escrow account. The first \$10,000 would come out of the estate escrow to pay the deductible and above that, the

estate would also have to pay those costs to the environmental company doing the cleanup and if the estate would run out of funds, they would then submit the claim to PECFA, get reimbursed, and that would build the account back up.

Anderson stated at this point there is no estimate of cost because the environmental company needs to do borings before they can determine the cost. Based on what Mr. Ramczyk told him, if they had money in escrow, he would have no problem moving forward. The estate could make claims to reimburse Ramczyk on a six month basis with PECFA. He has been in touch with staff at PECFA (copy of PECFA letter in file), and was informed they do reimbursements within 30 to 45 days. It is not like Ramczyk would be waiting for six months or a year for reimbursement.

Anderson stated that would allow them to move forward with the cleanup. He does not see a lot of alternatives, if they can not self-fund this, no bank would finance this situation. He feels unless the estate is allowed to do this, cleanup will never get done.

Anderson stated he received a letter from Citizen's Bank (copy in file). They are the mortgage holder for this site and foreclosed on the property. If he cannot conclude this deal, Citizen's Bank will proceed with a Sheriff's sale on the back 31 acres, which is the portion that is not contaminated. That parcel is landlocked and this letter may just be a threat so they get their money. They intend to sell the back 31 acres, get their money, and walk away. He would be left with the front 35 acres, which is contaminated, and if that happens, he does not know if the site would ever get cleaned up.

Rutta asked Anderson if the amount of contamination has been determined. Anderson replied there had been some testing done and a report that states there is contamination, but without doing additional work, borings, etc., they cannot tell the extent of contamination, or what it would cost for cleanup.

Potratz asked if the property has enough value to place a lien against it to secure the \$10,000 funding. Anderson replied not when it is in foreclosure.

Rutta asked Anderson if they would sell 63 acres and retain the five acre parcel with contamination, what would prevent the organizations (i.e. IRS, Bank, St. Michaels Hospital, etc.) that have liens on it exercise their powers to get that money. Anderson replied there would be no money left. The bank and IRS would be satisfied from the sale of the property, the remaining money would be given to the hospital, who has been dealing with their attorney to give the estate a partial release of the money owed them. If this cannot be accomplished, the hospital's chances of getting paid decreases. Rutta asked Anderson if he knew the total amount of liens on the property. Anderson replied around \$80,000. There are also debts that are unsecured. Rutta asked if the sale would cover the \$80,000 in adjusted liens and still have \$40,000 remaining in escrow. Anderson replied that is correct. Rutta asked how Anderson proposed to put \$40,000 toward the cleanup. Anderson replied that money would be in an escrow account with McDonald Title Co. for cleanup, the only reasons to draw on it would be for liens against the estate, the environmental company that would be doing cleanup, and Town and County. It would be specified that the escrow agent, McDonald Title could only pay those funds out to the environmental company for their invoices. They would submit invoices to the State and the County would need to sign off. The reimbursement received from PECFA by the State would mandate the money be put in the escrow account.

Rutta stated BOA has not dealt with many requests like this and referred to J Blair Ward, Portage County Deputy Corporation Counsel, for some guidance asking him the proper procedure for handling something like this. Ward replied it could be done, but he has a couple of questions. Rutta asked what the risks are for BOA. Ward replied if cleanup costs go beyond \$40,000 to \$45,000, which is not fully known at this point, is one risk. Anderson replied that is where PECFA would come in. If all the funding would be used, they would need to submit a claim to PECFA; they pick up the balance within 30 to 45 days.

Casey stated he has gone through this and would like to know how many tanks were there. Anderson replied two tanks, only one led to contamination. Casey asked how many occurrences would be on this site, one or

two. Anderson replied one occurrence. Casey stated there could be two occurrences, which would cost \$20,000 for the initial deductible. Anderson replied he has an eligibility letter from PECFA stating they consider this one occurrence and it is one deductible. Casey stated PECFA does not pay 100%, they pay a percentage of every bill that is allowable, and not all items on the bills are allowable under PECFA. Casey stated he is not sure \$40,000 would be enough.

Rutta asked Ward who would be responsible if there is not enough money in this fund for cleanup. Ward replied it would be the owner of the 5-acre parcel with contamination. An action could be brought against them for cleanup.

Potratz stated it almost sounds simpler to let the bank foreclose and then before it could change hands it must be cleaned-up.

(inaudible)

Anderson stated there are two parcels, not one. Potratz replied he is not sure BOA was made aware there were two parcels at the time they acted on the request.

Rutta stated this cleanup could be quite costly. Casey replied he went through this and had one tank; it cost him \$75,000 and had less than 50 gallons of contamination under the tank. PECFA can disallow so many things that it can really add up and this was fifteen years ago. Anderson replied he understands what Casey is saying, that is why they hired the environmental firm to do this, and they understand what the estate is doing and cannot be overcharging for what is allowed under PECFA. The firm informed him they would not have a lot of unnecessary charges. Anderson feels if they have \$40,000 in escrow, they would be perfectly fine.

Rutta asked if the tanks were removed or still on-site. Casey replied the tanks were removed already.

Berndt stated first of all, there is a \$10,000 deductible, but then you stated PECFA would pay \$190,000. Anderson replied yes, up to \$190,000. The estate would pay the environmental firm for the invoices they submit to the estate, and then the estate would submit the bills to PECFA for reimbursement. Would the \$40,000 you're talking about include the \$10,000 deductible? Anderson replied that is correct.

Rutta asked if final determination of eligible costs for reimbursement would be made at the time of claim review. Anderson replied yes.

Rutta asked Ward if BOA ever used this procedure in other areas of the County, where an amount of money was set aside, and the Town and County would sign off. Ward replied nothing exactly like this. There has been bonding, but nothing requiring a payment being made from an escrow account.

Casey asked if there would be wells put in. Anderson replied it is possible, but it depends on how the site comes out after cleanup.

Scheider asked the value of the five-acres after contamination has been cleaned up. Anderson replied when he initially started appraising the estate, the entire parcel was appraised at \$200,000.

Berndt asked what assurance is there that other debris, tires, etc. on the site will be removed. Anderson replied some has already been cleaned up. Pelky stated the CSM would not be signed until the entire parcel is brought into compliance with County Ordinances. Berndt asked if there are plans to cleanup the contamination immediately or within the very near future. Anderson replied yes.

Anderson stated he realizes there is a certain amount of risk, but they have a chance to take advantage of PECFA funding. He doesn't know of any other means because of the situation with the property and liens. He sees a lot of risk if they do not do it; the cleanup might not get done at all. Rutta stated whoever purchases that property must clean it up. Anderson asked who would purchase the site.

Potratz stated if it would be foreclosed on, the bank would be responsible. Ward replied he does not see the bank foreclosing on that parcel with the contaminations. Banks do not want anything to do with properties with contamination and junk.

Anderson stated if the bank would be able to foreclose on the back piece and get their money and leave, he is sure they would do everything in their power to go that route. The bank would not want to risk ownership of that parcel.

Casey asked why, out of the \$135,000 offered, would there only be \$40,000 left. Anderson replied the estate would pay the bank, IRS, back real estate taxes, and other closing costs, which would leave them with approximately \$40,000.

Rutta opened the request to the public for input.

Rutta swore in Lonnie Firkus. Firkus stated he is speaking on behalf of himself regarding this property. He is interested in purchasing the whole estate, unsplit, as is. He was not aware of the sale until this past Thursday and has only had a couple of days to work on the offer. He has obtained financial approval, but has not been able to get the offer on paper because of such short notice. Rutta asked Firkus if he is aware he would be responsible for cleanup. Firkus replied he understands that. He has made a number of phone calls and did a lot of research; there is still a lot of unknowns. He needs a couple of days to get paperwork together.

Potratz stated upon purchasing the site, he would assume responsibility for cleanup of the contamination. Firkus replied there would need to be contingencies regarding the escrow account and the intent of the estate to do cleanup.

Rutta asked Firkus if he would not purchase the property until the cleanup is done. Firkus replied that would not be the case, the estate needs funds to initiate cleanup. Pelky stated if Firkus purchases the property as a whole, as is, there is no lot split for farmland consolidation. There would be no reason for BOA to consider this request. Permanent staff would still make sure all the junk would be removed from the site. The cleanup of underground tanks would be something Firkus would need to deal with on his own.

Rutta asked Firkus how long it would take him to get paperwork done on this proposal. Firkus replied he would need a couple days.

Anderson stated they have an accepted offer. The only way they could move forward with Firkus' offer would be if the first offer could not be fulfilled.

Rutta stated the person who made the initial offer wants the property for this year's planting, and if the request would be postponed, it would be marginal for this planting year. Anderson replied there is an agreement in place that he can plant this year regardless. It is a simple rental agreement. Berndt asked who that person would be paying rent to. Anderson replied the estate.

Pat Wanserski, Town of Sharon Chairman, stated this issue was considered at a Town meeting. The Town does not want to be handed the cleanup problem. This is a request to get cleanup going. They have an ID number and gotten the ball rolling for PECFA funding. The sooner the cleanup starts, the better.

Rutta swore in Ward Wolfe, realtor. Wolf stated he is co-listed as the realtor with Charlotte Hensler for this property. Wolf stated the Town Chairman summarized the situation, if nothing does happen and the estate walks away from it, there is no equity in the estate. He would encourage BOA to move forward with this request. They have offers to purchase on both parcels. It has been a struggle getting the site cleaned up, but they are moving forward and the job is getting done, slow but sure. They understand the urgency to get the site clean. The site is zoned A1, will be farmed by a local farmer, and remain in A1 Zoning.

Firkus stated he is a local farmer and his intent is to farm the land. Anderson stated the first offer is a binding offer on five acres, which must remain unless something would happen to change that.

There being no further discussion or questions, Rutta closed the public hearing portion of this request.

Deliberation and Decision

Rutta stated he would like the Corporation Counsel's advice on which proposal would be best for the County. Ward replied he shares the concerns with the public, that if nothing were done, there would be a contaminated parcel of property that would just sit there. He is concerned the bank would not foreclose. It is important to do something. When looking at both sides, he thinks the proposal made would be a valid option. If BOA would grant permission to sell, he would like to review the escrow agreement regarding cleanup and any escrow agreement regarding funds used to settle the estate. He would like to be allowed to review and approve the request by his office. He was given a draft by Anderson. There are a lot of blank lines that need to be filled in and he would need time to review it. If there were a written proposal or agreement that would be consistent with what Anderson stated, that would be an option for BOA to consider getting the site cleaned up.

Rutta stated if the existing offer to purchase part of the estate and Firkus were allowed to purchase the site in its entirety, BOA would not need to consider the request.

Berndt asked Anderson with having an offer on the property at this time, could he accept a second offer. Anderson replied they have an offer that has been accepted and they must honor that first offer, contingent on the split.

Rutta stated he would like to see this request held open for one month to see whether the first offer goes through or if Firkus could purchase the entire property. If Firkus would purchase the entire property, it would be an ideal solution. That would be his preferable way to go. All BOA members agreed with Rutta.

Rutta stated he would entertain a motion to hold open this request for one month.

Casey moved to hold open the Julia Cornwell Estate (A08-31) Condition #4 for one month until the May 18, 2009 BOA regular meeting for the following reasons:

1. Appeal No. A08-31 will be held open until the May 18, 2009 Board of Adjustment meeting to allow the Julia Cornwell Estate's attorney time to obtain all information needed.
2. The interested buyer just became aware of the site being for sale and has not had time to draw up the papers necessary to submit an offer to purchase.
3. The escrow needed for cleanup of the contaminated site needs to be set up.

Scheider seconded the motion, which passed unanimously by a roll call vote.

PUBLIC HEARINGS & DECISIONS:

Irene Kostuchowski, Owner/Bruce Morter, Agent (A09-06)

The Kostuchowski/Morter special exception from the provisions of the Portage County Zoning Ordinance and Portage County Nonmetallic Mining Reclamation Ordinance is requested to excavate a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Buena Vista, was opened by Rutta, who read the public hearing notice. Rutta swore in Bruce Morter.

Pelky stated they received a letter from the Buena Vista Town Board recommending approval of this request. The owners would like to excavate a pond exceeding 30,000 square feet. The materials would be removed from the site and sold. This is a twofold request. BOA would be acting on the special exception for exceeding 30,000 square foot pond and the Nonmetallic Reclamation Ordinance would be handled by permanent staff.

Morter explained he would like to dig a three acre pond. The top couple of feet is muck and the muck is what would be sold. Everything will be taken by Paramount Farms. Paramount Farms will be selling the muck and using the sand to put under the wheels of their irrigation systems to keep them from sinking. The mining permit is for the removal of muck.

Casey asked Morter what roads would be used as haul roads. Morter replied they would be using the roads mentioned in the Town Board's letter. They may need to install a culvert for one of the ditches and would remove or leave it, whatever the Portage County Drainage District requests.

Morter stated the muck would be dewatered upgradient of the ditches prior to going to Paramount Farms.

Berndt asked if there would be any County roads used as haul roads. Mrdutt replied County roads are designed to handle that type of traffic. Berndt asked if there would be any bonding required for this request. Pelky replied yes, it would be figured out according to the Reclamation Ordinance.

Rutta read the Buena Vista Town Board letter into the record approving the request and use of Isherwood and/or Crooked Roads as haul roads (copy in file). Rutta stated it sounds as if the Town has no objection to use of Town roads as haul roads.

Morter stated he is working with the Army Corps of Engineers (COE) and Department of Natural Resources (DNR) regarding the ponds. Mrdutt stated they are both aware of the proposal. Berndt stated that any permits, etc. needed from the COE and/or DNR must be on file prior to issuance of a Zoning Permit.

Casey stated the proposed start date is June 1, 2009 with completion by 2013. Morter stated they figure it will take approximately three years to do all of the digging and fill moved to where it needs to be. The muck will be removed within the first year. There is almost 100,000 yards of sand and it will take a lot of time to remove it. Paramount Farms needs to do this in their off time, when they are not working the fields. They thought it could be finished in three years, but it would be better if they got approval for four years to be on the safe side. Casey said BOA usually approves a request for three years max, and if more time is needed, they need to come back and ask for an extension. Permanent staff could approve the extension. Pelky stated according to the Nonmetallic Mining Ordinance, an inspection of the site is done on a yearly basis.

Rutta stated slopes, dewatering, and spoils handling could be done by permanent staff. There is to be no stockpiling, the pond will be approximately three acres, 12 to 14 feet deep. Staff will be allowed random inspections.

Berndt stated upon completion of the pond, topsoil should be spread and seeded according to DNR's requirement.

Scheider asked the purpose of the proposed culvert. Morter replied Paramount has the field directly north of the pond site and the culvert will allow them to get across the ditch directly to their field. Scheider stated she understood that, but she also understood there would be traffic on Crooked Road and asked if having the culvert, would there really be any need for traffic on Crooked Road. Morter replied no, probably not, he doesn't know where that came from. Scheider then asked if there would be a need for use of Isherwood Road. Morter replied, probably not, but there might be a little, they may be taking some of the spoils to a field across the road.

There being no further questions or comments, Rutta opened the request to the public. There being none, Rutta closed the public hearing portion.

Deliberation and Decision:

Scheider stated this is probably an appropriate use for the property owner. She would like to see him not use Crooked Road at all and only use Isherwood Road as little as possible.

Berndt stated all slopes should be seeded upon completion of the project.

Casey stated permanent staff should determine whether an extension would be needed after 2012.

There being no other comments, Rutta entertained a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a pond approximately three acres in size.
2. Maximum depth is 12 to 14 feet. There will be no stockpiling on site.
3. All slopes will be 3:1 (three feet horizontal to one foot vertical) or greater.
4. The topsoil (muck) will be sold and the sand will be used by Paramount Farms.
5. All dewatering will be north of Coddington Road.
6. Town haul road(s) have been approved by Buena Vista Town Board.
7. Start date is June 1, 2009 with completion date December 31, 2012. If additional time is needed, appellant must contact the permanent staff of Planning and Zoning for an extension. There is no need to come back before BOA.
8. Permanent staff is allowed to do unannounced inspections.
9. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Berndt seconded the motion, which passed unanimously by a roll call vote.

Chester & Caroline Eron (A09-07)

The Eron special exception from the provisions of the Portage County Zoning Ordinance is requested to excavate a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Carson, Parcel #012-24-0614-03, was opened by Rutta, who read the public hearing notice. Rutta stated this hearing and the next are related.

Pelky stated the Town acted on this request. The property is zoned A4, which allows for this activity, and he would like to dig an irrigation pond exceeding 30,000 square feet, which is a special exception that needs to be acted on by BOA. The second Eron request is the same, except it is on another parcel, which is why they are considered separately.

Rutta swore in John Eron. Eron explained materials from this pond would stay on the property. The existing pond is approximately 24,000 square feet and he would like to enlarge it to get enough water to irrigate a 40 acre field. Ken Schroeder, Agricultural Agent, informed him that in order to maintain a crop on that field, he needs approximately three inches of rain water. A pond a little over 30,000 square feet, would give him enough water to have a substantial crop. The topsoil will be spread on a field across from this one. He had Simone Kolb, COE and Keith Patrick, DNR check the site. He is the first one to irrigate in that area; there were some issues involved which have resolved. The DNR and COE were concerned this would be a recreational pond, but once they were aware of Schroeder's calculations for an irrigation pond, they had no concerns, as long as it was used for agriculture.

Berndt asked if there would be enough topsoil kept on the site to be spread and seeded upon completion of the pond. Eron replied yes. Berndt asked if there would be any haul roads involved. Eron replied no. Berndt stated slopes should be 3:1 (three feet horizontal to one foot vertical), with a maximum depth of 15 feet. Berndt stated starting date would be May 1, 2009, with completion by December 31, 2009. Eron replied correct.

Scheider asked how large of an area would the pivot irrigation system cover. Eron replied it would cover approximately 38.75 acres, with the use of the irrigation equipment because it does not cover corners; the field is 44.9 acres.

There being no other questions, Rutta opened the request to the public for input. There was none.

Deliberation and Decision:

Casey stated this is just an expansion of an irrigation pond and the plans submitted were self explanatory. BOA members agreed with Casey and had no questions.

Rutta stated there being no further questions or deliberation, he would entertain a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a pond expansion exceeding 30,000 square feet on Parcel #012-24-0614-03 according to plans submitted.
2. All slopes must be 3:1 (three feet horizontal to one foot vertical) or greater.
3. Topsoil is to be respread and seeded upon completion of the pond.
4. Spoils are to be kept on site.
5. Maximum depth of the pond is 15 feet.
6. All DNR and COE approvals and/or permits must be obtained and on file in the Planning and Zoning Department.
7. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Potratz seconded the motion, which passed unanimously by a roll call vote.

Chester & Caroline Eron (A09-08)

The Eron special exception from the provisions of the Portage County Zoning Ordinance is requested to excavate a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Carson, Parcel #012-24-0614-12, was opened by Rutta, who read the public hearing notice. This request is a carbon copy of the previous request. Pelky replied that is correct.

Rutta informed Eron to consider himself sworn in from the previous request and explain his plans for the second pond expansion.

Eron stated he had an existing permit for a pond up to 30,000 square feet. At this time, it is approximately 27,000 square feet. Last year he did not have the irrigation system, he used a traveling gun and the water was metered, he realized he was going to be short of water. He checked the level this spring, there is less than 3 feet of water in it, and that would be equal to less than one inch of rain on the field. He would like to expand that pond as large as he can and stay out of the path of the circular irrigator.

Rutta asked if spoils would be trucked away. Eron replied yes, topsoil would be used on the field directly across the road. The subsoil would be trucked on a town road approximately the length of a 40 acre parcel. He is constructing two granaries on the home farm and needs fill for that project.

Mrduitt stated staff spoke with Town personnel and were informed the Town would document the condition of the road prior to Eron's use as a haul road and again upon completion of the project. An agreement had been made between the Town and Eron. He would repair any damage done to the road during hauling spoils on that stretch of road.

Mrduitt stated staff did receive a letter recommending approval.

Rutta stated the maximum size of the proposed pond would be 70,000 square feet. Eron stated, realistically, he would probably go 45,000 to 50,000 square feet at this time. He is limited as to what he can do, but would like the option if he could not get enough water. He would be done by December 31, 2009 with this project also.

Potratz stated he has no questions, the only difference between the two requests is the location and use of a haul road, and that has already been taken care of.

Casey stated this pond would be a maximum of 20 feet deep. Eron stated he is limited by the depth of bedrock, which is as far as he can go with his equipment. Casey stated enough topsoil should remain on site to respread and seed the completed pond. Documentation between Eron and Town of Carson will be on file in the Planning and Zoning Department.

Rutta asked if there were any more comments or questions. BOA members all agreed they have enough information to move forward with this request.

Rutta opened the hearing to the public for input, questions, or comments. There being none, Rutta entertained a motion for approval of this request.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a pond expansion exceeding 30,000 square feet (approximately 70,000 square feet on Parcel #012-24-0614-12) according to plans submitted. Start date would be May 1, 2009 and completed by December 31, 2010.
2. All slopes must be 3:1 (three feet horizontal to one foot vertical) or greater.
3. Topsoil is to be respread and seeded upon completion of the pond.
4. Carson Town Board approved a haul road for removal of materials to be used on part of the home farm for a base to construct grain bins (copy in file).
5. Maximum depth of the pond is 20 feet.
6. All DNR and COE approvals and/or permits must be obtained and on file in the Planning and Zoning Department.
7. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Potratz seconded the motion, which passed unanimously by a roll call vote.

Rutta entertained a motion for a five minute recess at 5:40, Berndt seconded, motion passed. Rutta called BOA back to order at 5:45 pm.

Patrick & Laura Planton (A09-09)

Variances from the provisions of the Portage County Zoning and Shoreland Zoning Ordinances are requested to rebuild a home within the rear yard setback and 100 foot setback from Tree Lake, Recreational Zoning District, Town of Alban, was opened by Rutta, who read the public hearing notice.

Rutta stated variance requirements are a little harder than special exception requirements. The granting of a variance to an appellant gives them the right to use the property in a manner that is not permitted by the Portage County Ordinance.

Rutta stated for BOA to grant a variance, the appellant must satisfy several conditions. The three main requirements must be met in order for BOA to grant approval of a variance: 1) is the use contrary to the public interest; 2) does the property have unique limitations; and 3) the property must have an unnecessary burdensome hardship.

There are additional standards set by DNR and the court system:

1. The hardship cannot be self imposed.
2. Economic loss or financial hardship to the appellant does not justify a variance.
3. The entire parcel must be considered when applying the hardship test.
4. Nearby violations are not factors for a variance.
5. A lack of objections from neighbors is not a basis for a variance.
6. Economic circumstances or other circumstances of the appellant are not a factor for variances.

Rutta continued the intended use must be permitted in the Zoning District and not be detrimental to nearby property owners. The use cannot be contrary to State Law or Administrative Code. The spirit of the

Ordinance must be maintained and substantial justice must be done by allowing the appeal. Limitations include granting only the minimum amount of relief for reasonable use and consideration of alternatives to the proposal. Conditions may be placed on the approval to eliminate or reduce adverse impacts of the proposal.

Rutta asked Pelky why Planton is here. Pelky replied Planton would like to construct a home within water and road setbacks. Pelky stated there is no documentation as to whether this is a road or driveway, so staff will call it the rear yard. There is no way to construct any type of home on the site because construction would be too close to the water and too close to the rear yard setback, this is a twofold variance. Pelky gave Rutta a letter from the Town of Alban recommending approval of this request.

Rutta read the Town letter into the record (copy in file). Both the Town Plan Commission and Town Board recommend approval of this request.

Rutta stated all BOA members received a letter from Brian Formella, Anderson Law Firm, representing Planton, and he read parts of it into the record (copy in file). The letter gave background to case law that has taken place in the last four years. Rutta thanked Attorney Formella for the information and told him it was very generous of him.

Rutta swore in Patrick Planton.

Planton set up a display showing his plans to BOA and the audience. He stated he was before BOA two years ago under similar circumstances. He was given instruction by BOA at that time as to what he needed to do. Their cottage is on Tree Lake and there is very little room to build a new structure on the site. Planton gave BOA a history of his property. He explained there is nothing he could build on the property without a variance. His lot is approximately 90 feet at its deepest and further south only 75 feet deep. He feels he meets all hardship criteria. He wants to replace a 50 year old septic system, which would improve groundwater and lake water quality. He would put the well on the opposite side of the home. He plans to build his home just a little less than 1,300 square feet, with the garage on the north side. The home would be 41 feet from the water's edge. The existing cottage is 25 feet from the water. He would be making the home smaller and setting it further back from the Lake, as BOA asked him to do. They are planning a small deck on the water side and it would be no closer than 35 feet to the water. No trees would be removed; everything to the water's edge would be left natural. He is pushing the home back from the water as far as possible. That was the direction BOA gave him two years ago, to push his house plans further back from the water and that is what he did. He designed the home smaller and further from the water. He showed BOA what the home would look like on plans submitted. Rutta asked if the approximate 1,300 square feet included the second floor or just the ground floor. Planton replied that is the footprint of the first floor only; there would be approximately 500 square feet for the second floor. This will be their fulltime residence. In the last two years, he did research on all properties surrounding the Lake, just to give BOA some assistance when they are looking at how large a structure he is planning on building. He got the information from the Portage County website; there are a lot of great tools on it. He looked property by property on the Lake to get to get information on every structure on each lot. There are fifty structures or homes and garages on these lots. Seventeen are more than 2,000 square feet and the smaller cottages have 1,000 square feet or less, with none less than 650 square feet. These cottages range from fifty to seventy years old. There are some cottages close to his site that run about 1,900 square feet; he would not be the largest home on the Lake.

Planton stated he looked at a variance that was granted on Spring Lake last year because they wanted some idea of how big it was. That site is surrounded by water. They did not meet any variance criteria and BOA approved the request. Rutta stated just because approval was granted for one request, it does not mean they need to approve all variance requests. Planton replied he understands that, he is just using it to get some facts to BOA.

Formella asked Planton to show BOA how the home would improve surface water runoff into the Lake. Planton explained where the runoff would go, nothing would be disturbed in the first 35 feet inward from the water. No surface water would run into the Lake. He plans to work with Dan O'Connell, Senior Conservation Tech, Land Conservation Section of Planning and Zoning Department; to be sure he contains all surface water runoff from the 1,950 square feet of impervious surface on the property. He has hired Bergman Builders, who have experience in Portage County working with lake properties.

Rutta stated the width of the private road was never defined. Planton replied it is one rod. Rutta asked how he found the information. Planton replied he worked with McDonald Title and found the information through them. The Town does not recognize it as a Town road and does not own it. The Town does not get road aid for it and it is not listed as a road. Mrdutt stated we are acknowledging it as a public driveway. Rutta stated he would like to commend Planton on the new plans submitted, moving everything back from the water. That is one of the things BOA was looking for two years ago. Rutta stated they are pretty much in agreement, it was recognized this lot is unbuildable without a variance. All BOA members previously agreed that Planton should come back with a design that would meet the legal requirement showing that is the only way a house could be built on the site with a variance.

Casey asked Planton if he considered shifting the home to the wider side of the lot. Planton stated part of the concern would be access to the driveway from the north, because the septic system and drain field would be in that area. Casey stated his concern is trying to get the home every inch he can away from the Lake. The house may need to be angled, and maybe eliminate the deck because it brings the house closer to the Lake. There are a lot of things needing discussion at this time. Casey stated he would rather see the home set within 10 feet of the private driveway. Planton replied he would prefer not removing large trees in that area. Casey stated Planton might need to reverse the whole home by switching the driveway and septic system to opposite sides. We may have to make some more changes. The State says the setback should be 75 feet; Planton is trying to build on a non-buildable lot. Casey noted the request on Spring Lake was very difficult.

Rutta stated he thinks the drawing is not to scale and explained why. A discussion was held as to the width of the lot and distance from water for the proposed home. Planton stated if he moved the house further north, he would be forced to remove some very large, old, trees and he does not want to do that. His intention is not to remove any trees, and if he moves the proposed home to the north, he will be forced to remove them.

Rutta stated if the whole cottage would be moved northeast, it would increase the distance from the water, have a larger area for the garage, and then drive in from the front instead of entering the garage from the side. Rutta stated by law BOA is required to preserve shore cover and natural beauty of the area by restricting removal of natural shoreland cover and prevent shoreline encroachment with structures. Those are two things BOA should do. The other thing that presents a problem is the DNR has stated if a variance must be granted, either to allow reasonable use of the property, or because not granting the variance would be a burden on the property owner, which is your site in both cases. BOA also needs to determine what minimum relief is necessary to give reasonable use and what conditions, if any, are necessary to insure public interest will not be adversely affected by water runoff and the spirit of the ordinance will be observed. Rutta explained DNR is saying grant minimal relief, where necessary. Rutta stated Planton currently has a cottage that is 1,000 square feet and a garage that is 270 square feet, approximately 1,300 square feet of existing structure on that property. Rutta stated Planton wants to replace the house with approximately 1,282 square feet plus 668 square feet for the garage, the total approximately 2,400 square feet. Planton replied it is approximately 1,300 square feet with the garage. Rutta replied that is the footprint, but now you need to add the square footage of the second story, which would make it approximately 2,400 square feet total, including the garage. Planton replied the second story does not add to the impervious surface on the lot. Rutta replied you are absolutely correct. The problem is BOA must adhere to and enforce the Zoning Ordinance, and go by guidelines of the DNR. Rutta stated BOA must decide what minimum amount of

relief is necessary to allow reasonable use of that property. It is difficult because the lot is very long and shallow. He thinks Planton could build a house that would suit his needs and still stay 40-41 feet from the water. Rutta said he thought the last time BOA was out there they instructed Planton to come back with a smaller plan and they would deal with it.

Potratz stated when this land was plotted; it was never intended to support a structure the size that is proposed. These lots were plotted for cottages or seasonal structures between 700 and 1,000 square feet. To put that large of a house on that size lot is where the problem comes in. Planton replied he owns 2½ lots, the lots get smaller as you go down the road. They are very small and deep, and they all have cottages on them. Planton said he owns 2½ lots and is asking for only one home.

Rutta stated if any staff has questions at this time, they should present them.

Casey asked Planton when he purchased the site. Planton replied in 1994. Casey asked Planton if he was aware of all setbacks at that time. Planton replied not all setbacks.

Casey asked Pelky if a new letter was received from the DNR. Pelky replied not on this request. Casey asked if the previous letter from the last decision would apply to this new request. Pelky replied the request is somewhat similar. He contacted Keith Patrick, DNR, today. Patrick informed him a different individual sent that letter two years ago. He discussed the case with Patrick. Pelky stated he did email the information to Patrick. They went over the variance criteria. Patrick informed Pelky the applicant must show he meets the three criteria needed for a variance. Patrick felt Planton did a very good job at showing he does meet the criteria. It seems the variance criteria can be met and when BOA makes a decision, it would be imperative they state how Planton does or does not meet the criteria. It appears that DNR will only send a form letter, if an applicant does not meet criteria. If they have no problem with it, they usually do not send a letter; which implies the variance should be approved and the variance criteria are justified in this case. Pelky stated staff agrees that all criteria would be met.

Rutta asked Pelky for the February 19, 2007 DNR letter and read it into the record (copy in file). Rutta stated: "The applicants must prove they would suffer unnecessary hardship, if the request would be denied. The Wisconsin Supreme Court has made it clear that proof of unnecessary hardship by itself, does not entitle an applicant to a variance, and so signs the letter to you, Mr. Attorney."

Formella stated he has a lot to say about that opinion. The DNR lost the Waushara County case. This opinion is based on faulty logic; they lost in front of the Supreme Court. Formella stated Pelky agrees that letter, if it is to be part of the record, is based on faulty logic. The DNR did not like the Waushara County decision. They appealed it, but the Supreme Court ruled against the DNR. That letter from the DNR reflects their bitterness because they lost in Supreme Court. A discussion was held regarding the *Ziervogel vs Waushara County* decision.

Berndt stated Planton did move the house back away from the water and then ruined it by putting a deck on, bringing it back to 35 feet from the water. Berndt stated he does not understand why he did that. Planton replied he received endorsement two years ago from BOA that the first 35 feet was the primary buffer zone and should be avoided at all cost. Planton stated his thought was that BOA would allow a wooden type deck, so rainwater would work its way through the deck and away from the Lake. Berndt asked why it is impossible to flip-flop the house. Patton replied nothing is impossible. Berndt stated he would rather see the narrow part of the house on the narrow part of the property; the contractor could come up with a plan. Rutta stated he is sure each BOA member has their own idea as to how to correct this situation, but it is not BOA's job to do that. All BOA can do is give some indication as to how each member feels.

Planton stated his understanding is that he now meets the criteria. Rutta replied he thought Planton did the last time; he does not have any question about it. As a BOA, we all agree Planton meets the variance criteria. Planton stated at the last meeting Potratz motioned to deny the request because he felt Planton did not meet the criteria (copy in file). Planton stated according to that he obviously did not meet the criteria.

Rutta stated the structure being proposed needed a variance. Planton asked if what he proposed now, meets the three variance criteria. Rutta replied that would be discussed at today's meeting. Rutta stated everyone knows Planton cannot build on this site without a variance, but he must meet all other DNR criteria as stated earlier. Planton asked if he does not meet the three criteria now, why not. Rutta replied BOA agrees as a Board, that he needs a variance to construct anything on that parcel, but each member must decide if he does or does not meet the three criteria. The things that need to be agreed on are the size of the house, position of house on the lot, etc.

Mrduitt stated staff agrees a variance is needed. When looking at storm water runoff on an impervious surface, you are looking at square footage, (the footprint of the house); a second story does not add square footage to the impervious surface. You can have a smaller house with more square footage by having a second story or basement; it does not necessarily mean smaller square footage, just the footprint. From Zoning's perspective, BOA should consider the square footage of the footprint only. Mrduitt stated he is sure Keith Patrick, DNR, would agree.

Rutta stated one thing BOA is concerned with is protecting fish, aquatic life, and spawning grounds through regulating pollution sources and controlling shoreline alterations. Rutta stated Planton has already stated he will be collecting runoff water and would move it to another part of the lot, which pretty much eliminates that problem. By the same token, if the house had a smaller footprint and larger second story, instead of 500 square feet on the second story, have 800 square feet on the first floor and 800 square feet on the second floor, you would have 1,600 square feet of living space with a different configuration and less impervious area. Rutta stated if the whole house were smaller, there would be less storm water coming off the roof. We are talking about volumes of water. Planton replied if he contains the runoff on site that should not be a concern to the County or State. Rutta replied only if everything is working right, if not, we have problems.

Scheider asked Planton how he would accomplish water retention on his site. Planton explained where the gutters would be along both ends (showed BOA on plans submitted). The gutters would be directed to a catch basin on site and than to rain gardens. Mrduitt stated O'Connell and the permanent Planning and Zoning staff would work out details of the retention plan with Planton. The plan would need approval by O'Connell.

Rutta stated there are concrete steps that lead toward the water and a retaining wall, and asked Planton if he had any plans for removing that wall. Planton replied not at this point. His options were discussed with their builder. The wall being within 35 feet of the water's edge, they do not want to touch anything. Rutta asked Planton if he would consider restoring it back to its natural state. Planton replied he would consider it. Pelky replied O'Connell would want to know how and what would be used. The retaining wall serves a purpose and if there would be a requirement that it be reversed to its natural state, you need to be careful as far as what it is replaced with. Pelky stated the existing retaining wall seems to be holding everything back as it should. Rutta asked what holds the retaining wall in place, what keeps the wall up there. There was a discussion regarding that issue. Pelky asked Planton when the retaining wall was put in. Planton replied it was there when they bought the property. He stated he does not want to create another problem by removing it. Rutta stated one of BOA's concerns is to preserve natural beauty. Rutta stated personally, he does not like retaining walls.

Casey asked Planton what size the deck would be on the second floor. Planton replied six feet wide, and probably twelve feet across, it would match the deck below.

Rutta stated the Zoning Ordinance does not discuss the setback from the road side. Mrduitt replied that is why we consider it a rear property line. Mrduitt stated the Lake side would be the front property line and road side the rear property line. The setback for the rear property line would be 25 feet. Planning and Zoning would rather see a variance for the home to be closer to the road than the Lake. Rutta stated it seems the State is going in that same direction.

Casey asked Planton if they have a floor plan. Planton replied not yet, they have an idea where some things are going to be. Rutta asked Casey if he was interested in any particular part of the house. Casey replied it is easier to know what you are talking about if you have a floor plan. Berndt stated he is looking at the north view and sees a projection from the house and asked Planton what that was. Planton replied that is an entryway.

Planton stated if he can't build on his property, he would wait until NR 115 is revised; there are thousands of nonconforming structures along lakes in Wisconsin. NR 115 is talking about allowing people to build within the same footprint of an existing home and allow them to be as close to the water as they are now. He could wait, but he doesn't want to wait until that happens. He could build up three stories, but that would not enhance the beauty of the lake.

Rutta swore in Kurt Bergman. Bergman stated Bergman Builders have been in business for over 35 years. He is Planton's contractor helping him design his home. Bergman has been involved with numerous homes on waterfront properties over the years. The latest one was last fall on Lake DuBay. He has worked with Pelky and Planning and Zoning Department staff regarding retaining surface water runoff in the past, including Pelky's own home on the Little Plover River. Regarding the DNR letter, a lot of that had to do with the first plan, they had a basement walkout planned and it was within the 35 foot setback to the water. This time they will not be touching anything in that area. There is plenty of area on site to retain groundwater runoff. They could make the structure longer and still have plenty of retention areas. Bergman stated the best place for the septic system is to relocate it in the same general area on the north side. They must keep 50 feet from the well, which is on the south side. That keeps them from pushing the house too much further to the north. Rutta stated by the same token, if the garage doors were not on the north side of the house, but on the east side, you would not need all that space for a driveway. Bergman replied that is correct. Rutta asked Bergman why it is so important the garage doors face the northeast corner of the house versus facing the road. Bergman replied to give Planton some place to park; it was the homeowner's request. He stated Bergman Builders are contractors; they try to do what homeowners request. Planton stated the distance from the house and the road is minimal right now. He has no place to park any vehicles, especially if anyone visits; there is no place to park anything. They would have a little more room to park their own two vehicles. Rutta replied it looks like the garage is about 20 feet off the road. Casey stated he scaled it off and it comes to about 24 to 25 feet.

Mrdutt asked Planton if he was planning pavement or gravel for the driveway. Planton stated he is looking at something like grass pavers, depending on what is allowed.

Casey asked Planton the length and width of the proposed home. Planton replied 26 feet wide by 72 feet long, plus the four foot bump out for the entrance, which would be 30 feet wide in that area. Rutta asked what the purpose of the bump out was. Bergman replied to stop the front door from facing straight at the road; it would be in that four foot offset. Bergman stated he understands BOA is looking at the deck as being in part of the setback, other areas of the State, Waushara County is one, does not consider decks as part of their setback. Rutta replied we do. Rutta asked where the living and dining rooms would be located and Bergman explained where the rooms would be. You would enter into the living room and behind that; the dining room would be located. Rutta asked what would be the difficulty of putting the deck off to the left side of the house. Bergman replied you would not have a view of the Lake. They are trying not to disturb the large trees around the perimeter. Rutta stated if the deck wouldn't be there, it would give them six more feet from the water. Bergman replied that is correct, but no one will be able see the house or deck from the water with the deck on the south end.

Mrdutt asked Rutta if instead of getting down to what is where and why, would BOA be comfortable giving a length and width of the proposed home that would be acceptable and let the appellant design what they want to within that envelope. Our Department would take care of surface water issues, which is a more appropriate way to look at this. Rutta replied it could be. Casey stated that is what he was thinking.. Rutta stated that is where he is coming from also. Mrdutt replied he does not want to get to a point that BOA would tell the appellant where doors, windows, etc., should be located. Mrdutt stated BOA could say here is the envelope, work with it. Rutta replied that would require BOA to postpone this request. Mrdutt and Pelky replied no, it would not.

Pelky stated Casey was probably on BOA when they gave another person an envelope to work within; he had a chance to discuss this with legal counsel today. One thing legal counsel would want is that the applicant would agree to come up with a plan or it might get a little messy, with BOA denying this request and then make a motion for a second phase. Rutta replied he would rather not do that. A discussion was held as to whether the appellant could or would agree to certain dimensions for construction of his proposed home. Casey stated that is an unbuildable lot and BOA gave him "X" number of square feet, no closer than "X" number of feet to the river, and BOA would lower the setback from the road.

Planton asked their basis for coming up with that envelope. Casey replied it is the same basis as BOA has here, an unbuildable lot and BOA wanted to get him as far away from the water as possible. It was two variances, which included all decks, garages, everything on the site; he was allowed to put a stoop in for the front door.

Scheider asked if the appellant would benefit by BOA giving him a setback for "X" number of feet from the water and road, and let him build what he wants. Rutta replied, what we have here is a distance from the water. Scheider replied she agreed. Rutta stated with the distance from the road and water you only have "X" number of feet to work with. Scheider replied she agrees, but let Planton design his own house. Rutta stated he had written down his own numbers at home before he got here. He came up with 26 feet by 40 feet long for the ground floor of the house and a garage 24 feet by 26 feet. Planton asked Rutta what his thought process was on that. Rutta replied we are trying to prevent shoreline encroachment of structures, which is a requirement of our Ordinance. Rutta stated you do not have room to build a home without a variance, without building a house ten feet wide by 80 feet long, you do not have a lot of place to put it. Nowadays, a 26 foot wide house is very common. If you get much narrower, you have problems with stairs, etc. Planton asked Rutta if what we are debating here is 26 feet by 40 feet vs 24 feet by 40 feet. Rutta replied the numbers he thought would work are 24 feet by 40 feet, which is just a set of numbers he came up with. There was discussion regarding width and length of proposed home. Planton stated Rutta's numbers are based on his opinion of what should be built. Rutta replied it is based on the minimum amount of relief needed for reasonable use; that is the criteria. A building that is 26 feet by 40 feet would be 1,040 square feet; the present cottage is 1,000 square feet. It would change nothing regarding the footprint; if it were changed, he would be further from the water and be far more acceptable. The fact that Planton could put on a second floor, would be no issue regarding that; it would give him the capability of 2,100 square feet. Rutta stated BOA is obligated to provide minimal relief necessary to give reasonable use. He stated that is where he is coming from; he does not know what other BOA members are thinking.

Planton asked if they should ask BOA now or wait until later. He stated he meets variance criteria, and are now talking about details. Rutta stated as far as he is concerned, he had it last time, but that is not how the vote went.

Bergman stated the average size of a bedroom is 12 feet by 12 feet, if there was one in the front of the house and one in the back of the house, with a 4 foot stairway, it will not work. Rutta replied it will work; he has books at home, if he wants to see them. Bergman stated for today's standards, a person needs to think of resale down the road. Rutta replied Bergman is an imaginative fellow, he will figure it out. Bergman asked Rutta if his bedrooms were larger than 12 foot. Rutta replied yes they are, but not 12 feet by 12 feet and that is of no concern here. Rutta stated he feels with that size envelope, you could construct a home that would give you everything you want and still meet criteria of the Ordinance.

Rutta asked Potratz what his thoughts were. Potratz replied he would like to see the road side of the house be parallel with the road as opposed to being parallel to the Lake, by keeping it to the north as much as possible would give a much larger setback from the Lake.

Pelky stated if you are polling the Board, one question would be, are Planatons comfortable with the plan in front of them, if they need to modify things. Rutta asked what the setback for a septic system is from the house. Pelky replied the septic system size would be based on the number of bedrooms, if it is a three

bedroom home, a 1,000 gallon tank, and with a two bedroom home, a 750 gallon tank would be needed, the main thing is the drainfield. The code nowadays looks at types of soils; you could get by with a smaller drainfield depending on the location of the neighbors well and potential septic. Rutta stated he thinks what Casey and Potratz are saying is if the house were moved further east you would be maximizing the distance between the house and water. A discussion was held as to where to place the septic system, well, rain garden(s), and where the neighbors septic system and well are located.

Planton asked if before BOA redesigns his home, could he have his attorney address some of these issues first. Rutta replied certainly. Rutta swore in Attorney Brian Formella. Formella apologized to Scheider, stating he did not think she would be at this meeting that is why here name was not copied in; he thought the alternate would be at this meeting.

Formella stated what he would like to present has a lot to do with flexibility. There has been a lot of talk about *Ziervogel v. Washington County Board of Adjustment*. He has a lot of cases that talk about flexibility in area variances. There are people here and not here, particularly DNR, who still state this is a rigid standard that has to be met. There are two Supreme Court cases within the last couple of years, where they said the new variance mechanism is suppose to be a relief valve to allow people, like the Plantons, to be able to get relief from the Ordinance. That is exactly the purpose here. When there is a use variance, we get all bent out of shape and get very restrictive. Formella stated, with all due respect, the DNR letter from 2007, in his opinion, is very impeachable. When they talk about hardship in the 2007 letter, it is no hardship because they have the resources to put up a \$220,000 home. That is the due process of an equal protection problem, if you are going to base hardship on how much money somebody does or does not have. He was surprised to see it in the 2007 letter. Rutta replied that argument does not apply to this case. Formella stated you are quoting from the letter, and the reason why he brings that up is because you are relying on Patrick's opinion on faulty logic throughout the letter, with all due respect. The thing he finds interesting, Mrdutt and Pelky said they had conversations with the successor of the gentleman who wrote the 2007 letter. Formella asked them if they passed the letter on to the DNR that he (Formella) sent. Pelky replied no. Formella stated he was just wondering if DNR had seen it, the reason being, he sent the letter that there is flexibility that is now going on, not rigidity in terms of an area variance. The DNR lost the *Waushara County* case that Casey referred to. They lost the *Ziervogel* case as well, and one in St Croix County on very similar facts that this hearing is referring to.

Formella stated BOA's job is to see if "Unnecessary Burdensome" elements are met. You have all said yes, it is a burden. Is it an unnecessary burden is the next question. That is when other elements come into play. The purpose of the Ordinance, we know is to push a structure back as far as possible from the shoreline. The Plantons' have done that. They have been very respectful of the Ordinance and what BOA asked them to do two years ago. They thought long and hard and took two years to think about it, they invested in a builder, legal counsel, and talking with permanent staff. BOA is in the same position as the Waushara County Board of Adjustment was. The State reversed their decision because they found the injustice in the decision of the Board of Adjustment regarding that case. Formella stated BOA should keep in mind this case does not serve as precedence for them; each case has to stand on its own merits. He stated that whatever BOA does, to keep in mind Plantons have been considerate, thoughtful to what BOA wanted two years ago, and are good stewards of the Lake. Formella asked what the effect would be on the Lake, the neighborhood, and the County. They would improve the standards of the Lake, neighborhood and County (public interest) that are there now by keeping all surface water on their site, putting in a new updated septic system, keeping the proposed home the same size footprint as the existing cottage, keeping the 35 foot setback natural as DNR has requested, and not disturbing the large pines on the site. Formella stated if things stay just as they are, it is worse than what is proposed. The Plantons have done everything BOA asked them to do two years ago. He stated the Supreme Court said it should not be impossible; it is about what is an unnecessary burden. It would be an unnecessary burden to deny this because of all the protection put in place to make sure this works. Formella asked if this is perfect, no it is not perfect, but within the standards of variance, that is what BOA's charge is. With all due respect, he asked BOA not to outsmart themselves; they are all very smart people. It is hard to do what they are doing, but it is really hard to do what they are doing, if they try to fine print every small point. The Supreme Court is asking BOA to find the

standards that are met here. Formella asked Rutta where the “minimum amount of variance necessary for minimal relief” comes from. Rutta replied it comes from the Zoning Board Handbook for Wisconsin Zoning Boards of Adjustment and Appeals, Chapter 15, Variances. Area and Use Variances and Changes, the Standard for Area Variances, by Lynn Markham, Land Use Specialist. Formella asked what Markham’s credentials are. Casey replied she works for the University of Wisconsin, Stevens Point. Formella asked if this comes from a case, or just from Markham. Rutta replied this is going to require a lot more research on his part. He has to go through his book of court cases and see where it came from. Formella stated his concern, as an attorney speaking for the Plantons, is that when he looked through Portage County Ordinances for variance standards, there are none. He cannot find the phrase Rutta keeps quoting in the Ordinance or any law books or court cases, maybe it is Markham’s idea, and it’s a nice idea. What Plantons came to BOA with was the conditions BOA set for them two years ago. He also looked at court cases that apply here; the minimum relief necessary for reasonable use is not in the *Ziervogel* case. Formella stated it is not easy being BOA members, but when people come before BOA with a project that has improved over two years, there is good faith with what is going on in the neighborhood, when there are no objections from neighbors, when there is not even an objection from the DNR after they have been notified, something has changed. The DNR either does not have the resources to respond, or more likely, the Plantons have done what they need to do to even satisfy them. He thanked BOA for listening to his presentation and stated if they need him to address more legal information regarding the request he will be happy to. Rutta thanked Formella.

Rutta asked BOA members if they had any questions for the attorney. There being none, he opened the request to the public for testimony, comments, or statements.

Clark Blumke, member of the Alban Plan Commission, stated knowing the property as he does, this would be a huge improvement to what is there now. Planton’s plan would be preserving and improving the natural beauty of the Lake. Rutta replied he may be right, but that is his opinion. Blumke stated yes, that is his opinion.

There being no further testimony or questions, Rutta closed the public hearing portion of the request.

Mrduitt asked Rutta if it would be appropriate that when setbacks cannot be met, BOA set a building envelope, whatever size it may be, and then the applicant can decide whatever they want to construct as long as it fits in that envelope. Rutta replied BOA is only giving the appellants guidance. Formella stated he thinks the answer may be yes, when and if Portage County would revamp their Ordinance to apply that as an option in cases like this. Formella stated Mrduitt has a great idea and it should be implemented.

Rutta stated no one is challenging our Ordinance. The Ordinance is correct. We don’t have the power to change the Ordinance; we can only accept it for what it is. Rutta quoted a section of it as follows: “To insure shore cover and natural beauty through (a) restricting the removal of natural shoreland cover; (b) preventing shoreline encroachment of structures.” If we can move a building two feet further away from the water, it might be a desirable thing to do, if we can do it without changing much else. That will be decided by other BOA members. We will close the hearing portion at this time.

Deliberation and Decision

Rutta stated he has another document that talks about reasonable use in the absence of a variance. *State v Kenosha County*, he has to do a lot more research on this, but it says variances should only apply reasonable amount for reasonable use. That has always been one of the guidelines for BOA. We use that as a guideline, if we are going to throw that guideline out, then BOA is making a big change in the way we do things. Rutta stated he personally is not prepared to do that, but that is his opinion. He would need a more definitive interpretation of the law. Formella asked Rutta to restate what he just said. Rutta replied the use variances vs area variances, what they are talking about is the applicant has the burden of proving the request meets all statutory requirements for granting a variance. The applicant must prove they will

suffer unnecessary hardship and we know the applicant will not suffer unnecessary hardship if the variance is not granted. It has been used so many times in so many places that we as a BOA accept that as correct. Formella stated the problem with *Kenosha County* is that it was overruled twice within a day of *Ziervogel* and once by the *Waushara County* case. Rutta stated *Ziervogel* changed the definition of unreasonable burden. It has to be an unreasonable burden, not reasonable use. Formella replied that is exactly why it was overturned. Rutta stated BOA agreed that it is unnecessarily burdensome, but the problem he has is the minimum relief for reasonable use. That is still part of the law or interpretation, therein is the problem. Rutta said this is not the time for him to be doing research on his legal interpretation.

Rutta asked Potratz for his opinion. Potratz stated he agrees that the appellant has a problem constructing a reasonable residence on that property. He would be inclined to go along, if the structure would be placed parallel to the private driveway/road. It would create a more favorable condition than the way it is shown on the plans presented.

Casey stated his thoughts are to give Plantons an envelope to work within, a 26 foot by 72 foot footprint, to include all decks on the home, and the setback from the road/driveway be ten feet, the home to run parallel to the road, and be 25 feet off the northeast property line.

Berndt stated he would like to see the house flipped, with the driveway and garage on the opposite side. The little projection that is on the home on the roadside, by flipping the house, would be on the other side of the house and Planton would gain some distance there. He agrees with Casey. He would gain distance from the Lake and have the same home.

Rutta asked Berndt if Planton makes changes to move it, flip it, whatever, how much distance he would gain from the water. Berndt replied he has no idea because there are no dimensions on the plans. There was a discussion regarding distance from the water, distance from the road, and plans submitted. It was agreed by BOA that Planton would gain some more distance from the water. Berndt stated he is not sure if it is feasible to do that. Planton stated he wants to keep as many of the large, old trees on site as possible. Planton showed where trees are located on his site and the ones he would need to remove, if he moved the house as BOA suggests. He also explained that you can not see any part of his home from the shoreline or road; you would not be able to see the proposed house either

Rutta stated we cannot always get what we ask for. That is where the problem comes.

Planton stated Casey said the envelope should be 26 feet by 72 feet, which would be 1,872 square feet and he is proposing 1,950 square feet, the difference is 12%. Casey asked Planton if he included the deck. Mrdutt asked BOA members if they were including the amount of square footage of the second story. Casey replied it would not change anything, the runoff would be the same. Rutta stated he does like the approach from what you would see from the water. A discussion was held on the size, height, decks, and sight of proposed construction from the water.

Rutta asked if the appellant would accept the envelope if given him by BOA. Planton replied he would like the proposal repeated so he would understand it correctly. Rutta instructed Casey to make a proposal to Planton.

Casey stated his proposal would be to give Planton a footprint of 26 feet by 72 feet to include all decks, parallel with the road, road setback to be 12 feet, and setback from the northeast lot line be 25 feet.

Pelky stated that is a side property line and Planton could get as close as 10 feet to the side property line. Pelky stated he would like to bring up the fact that if it were moved 25 feet, it would shift the house approximately 17 feet. If it is moved 25 feet to the north, Planton would probably need to remove some of the large, old pine trees on the site and he would be able to clear another 30 foot wide opening to the lake. They would have the right to do that.

Casey stated his big concern is keeping construction as far back from the water as possible. Rutta stated it has always been BOA's concern. Pelky stated if the home stays in the same location and shifted toward the road, Planton would still have the living room view of the water from the existing corridor. It may not require tree removal, but if it is shifted toward the north, he understands it is wider there and further away from the lake, but then Planton would be inclined to get his view of the water by cutting trees and opening up the area. They have the right to open a 30 foot corridor to the water. Mrdutt stated another important aspect is to get the septic system as far away from the water as possible. Pelky stated they may not have enough area to locate a septic system, if they move the house. Rutta replied he might have to go to the other side of the house with the septic system, to the southwest corner. Potratz stated there is enough room on the other side for the well and septic. Rutta stated the old septic system does not make any difference where the well would be put in. Pelky stated the well must be at least 50 feet from the septic system.

Planton asked Casey if he would finish his proposal, seeing they got into the discussion of the septic system and well. He asked which direction Casey recommended he move the house. Casey replied northeast. Planton stated if that is the decision, he would appeal it.

Rutta stated everyone should let him come up with something he can accept. He stated when he first got to the meeting today, he thought a window of 26 feet by 72 feet would be sufficient, and no closer than 42 feet from the water, he will fight for one foot. Planton replied Rutta would be surprised what that one foot would do to him on the road side. Rutta stated it shouldn't affect him much at all.

Planton asked what part of his proposal presents such a problem that they are now debating 12 inches. Rutta stated this is what he came in with, it was on his mind, he wrote it down. If it is a difference of one foot across the front of the house, he can live with 41 feet from the water. Rutta stated he had 42 feet in his mind, that would keep the house in the exact footprint as now located.

Planton stated to move things along, what if hypothetically speaking, BOA's proposal is different from his and he does not accept it. He asked where they would go from there. Rutta replied that was a good question. Planton stated that is probably what is going to happen. Rutta replied BOA members will have to come up with a postponement, or acceptance of what Planton presented, or a denial.

Planton asked if BOA would give them some guidance as to what they would accept. Planton asked Rutta if they could put the request to a vote right now, their proposal as it stands. Rutta replied they could. Planton stated if it is voted down, it would give them some guidance as to what would be acceptable to them and BOA. Rutta asked Planton if they were sure they want to do it that way. Planton replied yes.

Rutta stated what the appellant is saying is forget all conversation had about moving, flipping, changing the footprint, and everything else. They are to deal with the proposal as it stands alone.

Rutta stated he would entertain a motion to approve the request as it stands, if there is no motion to approve or second, or if the vote does not reach a majority, he will entertain a motion to deny and repeat the process.

Rutta entertained a motion for approval, and then stated he could not do that because BOA needs to deal with all the issues regarding the variance requirements, or he asked if they had already done that. Planton stated Rutta said they met all variance requirements. Rutta replied, as far as he is concerned, yes, but he does not know how other BOA members feel. Rutta stated personally, he feels the only way Planton can build on this property is with two variances, one from the water and one from the road.

Rutta stated now the question is if BOA knows Planton needs a variance, does he meet the three basic criteria for a variance. He stated the proposal is not contrary to State law or Administrative Code. It is permitted in this Zoning District. There are alternatives to placement of the proposed building. Rutta stated

Planton meets the first two criteria, but there are alternatives to placement of this request. The proposed home could be moved back from the water a little more, moved northeast or southeast to meet suggested setbacks. The variance would not be detrimental to nearby surrounding property owners. The spirit of the Ordinance would be maintained. Rutta stated he feels substantial justice would not be done by granting this variance. He feels the appeal is contrary to public interest because the proposed home is still too close to the water in his estimation. There would be only 12 feet from the home foundation to a very steep drop to the water. Six percent of this space would be used by a deck, so there would be approximately four to six feet to the retaining wall. He stated a second story on the building might not be desirable because of the view it presents from the water. The unique property limitations would be adequate to satisfy the requirement for a variance. Any construction would require a variance because the lot is very narrow and does not meet setbacks between the road and water. Lots on either side of this property are all about the same size. This proposal does meet the unnecessary hardship test. The difficulties are that his proposal is too large for this lot.

Rutta stated Planton has a home on the site that he has been using for many many years. Planton replied it is a three season cottage. Rutta agreed and stated Planton wants to replace it with a 1,282 square foot house and he feels anything over 1,000 square feet is an unnecessary hardship. Mrs. Planton stated this will be their permanent home. Rutta stated he still stands by what he said. Planton replied the Spring Lake variance allowed a person to rebuild a 600 square foot home without meeting any variance requirements. He knows it has no bearing on his request, but BOA did allow him to rebuild, and he's only asking for a 6% increase in footage from a cottage to a year-round home. Rutta stated Planton wanted to know how he felt about this request and continued with criteria summary. Rutta stated this request does not meet the minimum variance needed for reasonable use test, it could be made smaller and moved northeast. The hardship is not self-imposed. The circumstances of the appellant do not appear to be a factor, economically or socially. Economic hardship or loss is not a factor. Nearby violations are not factors. Rutta stated that is how he feels.

Potratz stated he would think of not approving it the way it was presented because there are alternatives.

Casey stated he cannot vote for the appeal the way it is because there are other alternatives and one of them that he proposed has not been considered, which would be moving back toward the road. You need to roll with the punches.

Berndt stated he could not approve the situation according to the plan presented to BOA. He could not support the request.

Scheider stated she supports the plan.

Rutta entertained a motion to approve the request as presented today.

Scheider moved to approve the request as present today. There was no second. Rutta stated the motion to approve the appeal has failed.

Rutta stated he would then entertain a motion to deny the request as presented today. Pelky stated there are two variances, one from the water and one from the road, and asked Rutta if he was going to consider them together or separate. Rutta replied they would consider them separately.

Rutta entertained a motion to deny the variance request from the Portage County Shoreland Zoning Ordinance, which is the 100 foot setback from the water.

VARIANCE FROM TREE LAKE - DENIED:

Berndt moved to deny the request for the 100 foot setback variance from Tree Lake for a new home to be constructed on the site for the following reasons:

1. Failure to meet required setback from the Shoreland Zoning Ordinance.

2. The public interest portion of the variance can not be met because the house could not be constructed without minimal variance requirements for reasonable use test. The home and deck would be too close to Tree Lake.
3. There are alternative sites on the parcel(s) to construct a home further away from the water.
4. Encroachment could be reduced by altering the design and placement of the home.
5. The unnecessary hardship and unique property requirements have been met. A building could not be constructed without a variance.

Potratz seconded the motion, which passed by a roll call vote four to one, with Scheider voting nay.

Rutta entertained a motion to deny the request from the rear yard setback, which is 25 feet. If there is no motion or second to deny the approval, he will then entertain a motion to approve rear yard setback as requested. Berndt so moved, there was no second, motion failed.

Rutta entertained a motion for approval of the variance request from the rear yard setback.

VARIANCE FROM THE REAR YARD SETBACK - APPROVED:

Casey moved to approve the request with the following conditions:

1. Approval is granted for construction up to 12 feet of the rear property line.
2. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Potratz seconded the motion, which passed by a roll call vote of four to one, with Berndt voting nay.

Rutta stated that concludes the business as far as variance requests A09-09, Patrick and Laura Planton.

Formella asked Rutta if BOA would elaborate on what it would accept; this is the second phase. Rutta replied Planton asked BOA to act on this as presented today. He can give some guidance on what he would accept, but this is a board and he cannot say what they will accept because there are so many different opinions.

Formella stated Plantons and BOA have been here twice regarding the request. He stated BOA was going back and forth several times as to what they wanted to see, but toward the end, they were very close to saying they might be willing to give Planton an envelope to work within.

Rutta stated, let the record show, that at the request of the appellant it would be desirable for BOA to give some direction as to what they are looking for to eliminate any future appeals of BOA and Planton. We need to determine what we will accept.

Pelky stated just as food for thought, he does not know if BOA can set themselves up for approval of another request. Rutta replied he can not do it. Pelky stated he felt BOA should not even be discussing this legally after the request has been closed. Rutta stated he personally would like to see the house narrower and moved closer to the road (rear yard setback). He thinks BOA might accept that. Rutta stated if Planton comes back before BOA, there may be different board members and they may not think the same as this membership.

Formella stated they would go forward with this request for reconsideration. A discussion was held regarding the layout of the plans presented today and whether BOA would consider approval if Planton moves things around just a little, (i.e., garage, house, septic system, well, etc.).

Approval of February 16 and March 16, 2009 Minutes

Scheider moved to approve the February 16, 2009 minutes as presented. Casey seconded the motion, which passed by a voice vote.

Casey moved to approve the March 16, 2009 minutes as presented. Potratz seconded the motion, which passed by a voice vote

Correspondence/Updates

Pelky informed BOA the next scheduled meeting is May 18, 2009 with on-sites on May 15, 2009.

Adjournment

There being no further business to come before BOA, Scheider moved to adjourn, Casey seconded the motion, which passed by a voice vote. Meeting adjourned at 8:30 pm.

Respectfully submitted,

Judith J. Liebe, Recording Sec.

James Potratz, Board Secretary

September 21, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Wednesday, April 22, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 2:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Rutta: It is ten past two, we have to apologize because we ran a little late at the on-sites. But it is ten past two in the afternoon. We will start by calling this meeting of the Board of Adjustment to order. Would everyone please rise for the Pledge of Allegiance? Jim would you lead the Pledge, please?

Potratz led the Pledge.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Phil Janowski, and Dick Berndt. Scheider was excused. Staff included Stephen Brazzale, Tracy Pelky, Christopher Mrdutt and Judith Liebe, Planning and Zoning Department. Ray Schmidt, Water Quality Specialist, and J Blair Ward, Deputy Corporation Counsel were also present.

Rutta: Let the records show that today's date is Wednesday, April 22, 2009... and that all the members of the, regular members of BOA are present except Joan Scheider and she is being replaced by first alternate Phil Janowski. Let the record also show that this meeting has been properly noted in Stevens Point Daily Journal with a Class 2 notice. If there are any members of the public that wish to give testimony or comment, please sign in on the sheet so the secretary can get your name and pertinent information correct. Ummm..... agenda for tonight's or this afternoon meeting is uh... consists of the following items. We have a rehearing of a case that has been remanded back to BOA by, from the Circuit Court Appeal (A08-24) for Thomas & Rosalie Modrzewsk. Did I get that right? And we have hearings for (A09-10) Dennis Fliss/Hoffman Construction, (A09-11) for Jeffrey and Bonnie VanderZanden/Hoffman Construction, (Appeal A09-12) for Joe Hopfensperger/Hoffman Construction, and Appeal (A09-13) Lucy Skrzezkowski/Hoffman Construction Company. The last four uhh...items are all related to the USH 10 construction west of Stevens Point, in the Junction City area.

Rutta: The Board of Adjustment of Portage County is an appellate board required by State law in any municipality that has adopted a zoning ordinance. The board does not have authority to amend or repeal any provision of the Zoning Ordinance. Its authority is limited to appeals regarding interpretations of ordinance provisions and consideration of variance or special exceptions.

The board functions like a court. Its purpose is to give a full and fair hearing to any person whose property interests are affected by these matters. Its job is to apply the Zoning Ordinance and appropriate legal standards to the facts of each case. The board meeting and public hearings are open to the public. A taped recording is being made of the proceedings.

Any permission to develop, granted by a decision of the board, must be authorized by obtaining the necessary building, zoning and other permits within one year of the date of approval. Time extensions may be requested from the Planning and Zoning Department before the one year period has elapsed. Permission to develop may be revoked for violation of any of the conditions imposed by the board. The appellant will be given notice of the violation and an opportunity to be heard.

A decision of the board may be appealed by commencing an action in the circuit court for this county within 30 days after the date of filing of the decision in the office of the board. An appellant that commences construction prior to expiration of the appeal period assumes the risk of having the board decision overturned.

Each hearing will be opened by reading the application or appeal. The Zoning Administrator will present the reason for denial. The appellant will be sworn in, and they will make their statement. Witnesses will be sworn in and allowed to give testimony. Comments or questions from members of the public will be taken last. The board members will question each of the testimony presenters and members of the public as they appear before the board. If the board has all the necessary facts, it will close testimony for that appeal. The board will then deliberate and decide this matter. It will proceed in a like manner until all the hearings are completed.

So... Our first item of business today is a umm... Appeal (A08-24) Thomas & Rosalie Modrzewsk, did I get the correct pronunciation. I'll get it right before the end of the hearing.

REHEARING OF CIRCUIT COURT CASE No. 08-V-444 REMANDED CIRCUIT COURT DECISION:

Thomas & Rosalie Modrzewski (A08-24)

Variance from the provisions of the Portage County Shoreland Zoning Ordinance is requested to construct an addition within the 100 foot setback of the Wisconsin River in the Town of Plover, R2 Single Family Zoning District – Parcel #030-23-0726-10.19.

Rutta: This is an appeal that came through last year in 2008, and it was a request for a variance from the provisions of the Portage County Shoreland Ordinance to construct an addition within the 100 foot setback of the Wisconsin River in the Town of Plover, R2 Single Family Zoning District – Parcel #030-23-0726-10.19. The ah... BOA acted on the decision and the decision was denied ah... for three, three reasons. The appellant umm... umm... filed an ah... action with the Circuit Court in this County and the ah... Judge, ah... who, ah... who chaired, who heard that hearing ah... ah... remanded the ah... the ah... item case back to BOA with a letter of recommendation and ah... asking BOA to take another look at it. The fundamental ah... contents of the letter I will read. It umm... comes from... this letter comes from Bernadette Flatoff, Clerk of Courts, and Thomas & Rosalie Modrzewski, are the petitioners. And the case is Petitioners vs Portage County Board of Adjustment, Respondent.

Rutta: It states as follows:

“The above-referenced matter came before Branch II Circuit Court for Portage County, the Honorable Judge V. Finn, John V... V Finn presiding, for a hearing following the issuance of a Writ of Certiorari and Order, which followed the Portage County Board of Adjustment's denial of a special exception permit sought by Thomas and Rosalie Modrzewski. Such hearing was held on February 11, 2009. Thomas Modrzewski, Modrzewski appeared in person and and by Attorney Brian G. Formella. The Portage County Board of Adjustment appeared by Deputy Corporation Counsel J. Blair, J. Blair Ward.

Following such hearing, the Court made, and does hereby now reiterate, the following:

Rutta: This is the order.

1. The decision of the Board of Adjustment denying the petitioners' special exception permit is vacated and the matter remanded to the Portage County Board of Adjustment for additional action consistent with this Order.
2. The Board of Adjustment shall specifically consider whether the petitioners' property indeed abuts on navigable water and the legal effect that such abutment or nonabutment has on the special exception permit, or the need for such a permit, given the language of the Portage County Shoreland Ordinance in effect at the time its original decision ("Ordinance").
3. The Board of Adjustment shall consider the issue of setback averaging and apply such averaging techniques to the facts and circumstances of this case, as applicable.
4. The Board of Adjustment shall consider all of the available evidence and consider same in light of the language of the Ordinance in effect at the time of its original decision in this matter. The Board of Adjustment may receive additional evidence, as necessary.
5. This Court shall retain jurisdiction over this matter in the event that either party requests further relief from this Court.

Dated this 10 day of April, 2009, but given in open Court on February 11, 2009.”

This document was signed: BY THE COURT: The Honorable John V. Finn (copy in file).

Rutta: That is where we sit at the present time. That brings us to today's action, which is a... revisiting this particular appeal because of the remand order. If you heard me read the order, a little problem shows up. The ah... request for the original appeal was for a variance, nowhere in the remand order does it address a variance, it addresses a much looser requirement action called a special exception. The requirements to grant a variance are much much tighter than that of a special exception. Now, it will be up to this board to decide whether or not we even want to hear ah... this in view of the fact that the remand order never addresses the fact that the petitioner asked for a variance. The remand order orders BOA to revisit a special exception. Did the Judge know that this was a special exception, or rather a variance? Or for what reason, what was the reason why the correct language was not used in this particular remand order? It seems to me that when BOA makes a decision we are held accountable by all the people, by all the attorneys that are representing those people to uhh... make sure that the language that we use is ah... reasonably correct. I, personally, don't think this language is reasonably correct. The first thing BOA has to do is address this issue to see whether or not the remaining BOA members, the other BOA members how they feel about the fact that ummm...we are not addressing a remand order for a special exception, but we are addressing a variance incorrectly. Did you guys, all the guys, read the

letter. (BOA members replied yes.) Did you guys catch that? (BOA members replied yes.) OK, my questions is, how do you feel umm... could you give me some input on proceeding on how you feel umm ...proceeding given the circumstances of the language being used.

Rutta: Jim?

Potratz: I guess the way we voted; we denied a variance, did we not?

Rutta: Yes, we did. OK, is it your feelings BOA can accept this language or should we not accept this language and request the correct language?

Potratz: I guess if there is a ruling made, the ruling should be made on the proper uhh..... language situation.

Rutta: Patrick?

Casey: I don't know legally if we can act on a special exception after we made the decision on a variance on the same piece of property. Legally um.....

Rutta: This could come back and bite BOA later, depending on how this turns out. I see a problem.

Casey: I guess originally uhhh... what was acted on back eleven years ago, what I recall 15, or whenever it was, that was for a special exception.

Rutta: Yes, that was for the garage in 1989.

Casey: This is for a variance and I don't know legally uhhh.... what the ramifications are.

Rutta: This order is not addressing the one from 1989. This one is from 2007.

Casey: I realize that.

Rutta: I mean 2008.

Rutta: Dick, how do you feel?

Berndt: I feel the same way the other fellows do about it. We are not acting on what we should be acting on. If we act on this variance, we are not in compliance with the Judge's order.

Rutta: OK, Phil?

Janowski: I agree with the rest of BOA, the language should be corrected.

Rutta: OK, umm... we have our legal counsel here. Mr. Ward?

Ward: All the documents that led to the Circuit Court action referenced a variance. The appeal to the Circuit Court was appealing the denial of a variance by BOA. All of the arguments in court that day, dealt with the denial of the variance and all of the standard argued as far as what BOA should consider dealt with the standards applicable to a variance. When Judge Finn then issued his order from the bench, he was referring to and addressed a variance as far as why it should be sent back to BOA to reconsider the variance denial as specifically stated in the order. The order that was generated incorrectly, stated special exception use, that was a clerical error, and I understand BOA's concerns and appreciates' their concerns. I ask that BOA move forward with the variance denial or reconsideration of the variance denial provided that Mr. Formella state to BOA, for the record, that the standards BOA will be considering will be for a variance and that term special exception used in the Judge's written order was a clerical error.

Rutta: My question would be why was it not corrected, why we had ample opportunity to correct this problem. It should have been corrected before it got this far. Now, lets just say this turns out that so it... it... it goes through circuit court again and gets appealed to the appellate court. Let's just say it does, these things do happen. How are they going to look at this document?. They are going to say what a bunch of doo fuses Portage County's got on their BOA acting on this thing. In all honesty, it isn't fair to ask BOA to act on an incorrect order, a remand order from the Judge. I don't believe it is.

Ward: The order from the bench, from Judge Finn, on the bench that day, pertained to a variance. This, what you have in front of you is a written record of what the Judge should have said.

Rutta: His signature is on it.

Ward: Correct, he signed it, that is what he signed. If you would go back to the transcript of that day in court, it had to deal with the variance. This is a clerical error; I don't think anyone here today would believe we are really sending this order back here to consider a special exception. If anyone would make that argument, then I would encourage BOA not to address... address that issue today because it is clearly a variance. There are two different standards.

Rutta: Completely different. There is the problem, ok. The standard for a variance is much much tougher than it is for a special exception. I am just going by what BOA members have umm... expressed their opinions and ahhh.... rather than waste a lot of time on this....

Brian Formella: Mr. Chairman, I don't want to appear disrespectful or out of order.

Rutta: No, that's fine, proceed.

Formella: I am prepared to speak on the issues unless you don't want me to.

Rutta: Not really, I really don't care about what you have to say right now.

Formella: Then I would just ask that the record reflect that I, Formella, came to speak on behalf of Mr. & Mrs. Modrzewski. Thank you.

Rutta: ummm..... The easiest way to handle this is to have this document go back to Judge Finn, with the correct language inserted in that document, which would require a postponement of one month. Right, ok..... To me that sounds like the most logical way to solve this.

Rutta: Sir. (acknowledging Formella).

Formella: Again, I would like to state just for the record, if the Chairman and the rest of BOA would allow me to be heard, I would echo what Mr. Ward has already indicated. Thank you.

Rutta: BOA members do you still felt the same as when you gave your first indication? (BOA members all nodded that they did)

Rutta: Then, the Chair will entertain a motion to postpone this rehearing until the May meeting, May 18th meeting. Is there a motion to that effect?

Berndt: I so move

Rutta: A motion has been made to postpone the rehearing of the Thomas and Rosalie Modrzewski ah... Remand Order until May 18, 2009. Is there a second?

Janowski: I seconded the motion.

Rutta: I will poll the BOA members to find if you agree. Please respond with an aye or no if you disagree.

Rutta: Jim?

Potratz: Aye.

Rutta: Patrick?

Casey: Aye.

Rutta: Dick?

Berndt: Aye.

Rutta: Phil?

Janowski: Aye.

Rutta: The Chair concurs, motion passes five to zero. We will dispense with this and take it up next month. Thank you all.

(End of verbatim minutes for Modrzewski – April 22, 2009)

PUBLIC HEARINGS & DECISIONS:

Dennis W. Fliss/Owner, Hoffman Construction Co., Agent (A09-10)

The Fliss/Hoffman special exception appeal from provisions of the Portage County Zoning Ordinance is requested to excavate and blast rock for fill, creating a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Eau Pleine, was opened by Rutta, who read the public hearing notice.

Pelky explained this request is to excavate 30,000 cubic yards of fill exclusively for the USH 10 road project. No materials will be sold, all materials must be used for the USH 10 road project. This appeal and the three following appeals would not fall under Portage County's Nonmetallic Mining Ordinance. This is a Department of Transportation (DOT) project and will all be handled by the DOT. BOA needs to act on the site of the operations.

Pelky stated there is a letter from the Town of Eau Pleine regarding this hearing and the VanderZanden/Hoffman request; they have recommended approval for both. Rutta read the letter into the record from the Eau Pleine Town Board & Plan Commission recommending approval of three requests in the township being considered at this meeting (copy in file).

Rutta swore in Paul Hoffman, Hoffman Construction Co. Hoffman stated the Fliss property abuts the new USH 10 road project. He would give a summary of what is going on out there. The project they are finishing at this time needs approximately one-million yards of fill. The new project needs three-million yards of fill. This is the beginning of the elevated highway and beginning of Hoffman Construction finding fill for this project. They usually apply and obtain permits ahead of time because when they put a bid in to the State, they are guaranteeing they will get that fill. If he came to BOA after the fact and for some reason was denied, he would need to approach the State for some help financially. He had an issue come up in another county that "after the fact", the township did not want a pond where Hoffman wanted to put it, so they needed to haul fill two miles further away. It was costly to his company because the extra cost came out of his pocket. On a job as large as this, when they put in a bid, they need to guarantee it. They hired a delineator to help establish wetland issues, and are having the parcels rezoned. This site is adjacent to new USH 10 and there is a large amount of fill needed for this portion of the job, going west to new USH 34 intersection. The four areas he is requesting approval for fill are geologically in a dip. They never hit rock when they did the borings. It is heavy, thick, red clay. The owners are willing to sell and being adjacent to the highway, is the best price for the State, and most economical for Hoffman to move it.

Rutta stated the material from this site is to be used exclusively for the USH 10 project, and asked if it was the portion of USH 34 north to Trestik Road or further west. Hoffman replied the new project will start at Long Road, where the old project is ending and proceed west past the USH 34 interchange to the County Line, all the way to County Road N and ends, then swings north, around Milladore, where it ends. He thinks there will be an at-grade crossing beyond that. This is the last elevated portion in this County. Rutta stated this request asks for blasting approval also. Hoffman stated he included blasting because he did not want to come back for another hearing. Some sites are going to need blasting. Hoffman stated they would have a bonded, licensed blaster.

Berndt stated there would be no County or Town roads used as haul roads. Hoffman replied that is correct, Clover Road is going to be abandoned. All heavy equipment will be adjacent to the new highway; no roads will be used. Berndt asked if they would be blasting on a large scale. Hoffman replied no, if they blast, it would be in small areas to control the systemic effect.

Berndt stated there is a lot of scrap, wood, and other old items on the site and asked a condition be placed on the decision to cleanup the site prior to issuing the permit. Mrdutt stated the Zoning Ordinance is set up in such way that a person cannot obtain a Zoning Permit on a parcel that is in violation until it is brought into compliance. Mrdutt stated there is a lot of old, rusted machinery that is not usable, old rotting wood, and other scrap and materials that must be cleaned up. Hoffman stated he is aware of that and so is the landowner. Mrdutt stated removal of scrap, white good, etc., could be one of the conditions set by BOA. Hoffman replied he has no problem with that.

Janowski stated he would like to see all surrounding property owners advised if there would be blasting, the times, and for approximately how long at one blasting. He asked if all structures and wells would be checked.

Hoffman replied yes, prior to any blasting, all structures and wells will be inspected. Wells are the main issue. It is called a preblast investigation.

Rutta asked if BOA would get involved with setting conditions regarding blasting. Mrdutt replied not on the requests for the new highway, the DOT and DNR regulate everyone and everything regarding this project. We have copies of all that information. Planning and Zoning will be sent copies of all preblast conditions of structures and wells for our records, as well as the post-blast information. Pelky stated that would be one of the conditions, if and when one parcel would need to be blasted. Pelky stated at this time Hoffman would not know what days blasting would be because that depends on when or if they would hit rock. Hoffman will inform the Town Chairman and Planning and Zoning Department prior to any blasting.

Casey stated this is self-explanatory and asked if topsoil would be kept on site and spread and seeded around the ponds upon completion of each one. Hoffman replied yes. Hoffman stated it is not only mandated by the State, but they pay for all of it.

Rutta asked Hoffman the proposed start and finish dates. Hoffman replied start date is July 2009 with completion by September 2011. He has not seen the actual contract yet. Rutta replied he could always get an extension. Rutta stated the plan shows a certified survey (CSM) will be done on two sides. Hoffman replied that is correct, sometimes when you go by a fence line, it is off. Pelky stated survey stakes should be placed every 100 feet along property lines. He would like to make it clear that none of the materials excavated could go to neighbors or sold. Pelky said he only mentions it so Hoffman and the neighbors know when it states "exclusively" for the USH 10 project, it cannot be given or be sold to any surrounding property owners or relatives. If the owner needs a field load, it could be left on site, but not moved off site except for the road project. Hoffman replied he and the owners are aware of it.

Rutta stated BOA was at the site and he cannot emphasize how strongly BOA feels about junk. Rutta stated BOA is going to insist that it be cleaned up prior to issuing a Zoning Permit. Potratz stated this site does not have all the junk on it. Hoffman replied there is some, and if BOA lists cleanup as a condition, it will be his job to clean it up.

Rutta opened the request to the public for testimony, questions, or comment. There being none, he closed the hearing portion of this request.

Deliberation and Decision:

Rutta asked Potratz what his thoughts were for deliberation purposes. Potratz replied BOA deliberated the request enough already. He would recommend approval of the request.

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Berndt stated everything has been laid out very clearly and Hoffman has a good set of plans. He has no objections to this request.

Janowski stated he has no comments either, it is self-explained and the DOT has covered all bases.

Casey stated he does not have any objections to the request.

Rutta stated he would entertain a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a pond, approximately 20 acres in size.
2. All material excavated will be used exclusively for the USH 10 road project.
3. The pond will have a maximum depth of 25 feet.
4. The pond is to be constructed as plans submitted.
5. A certified survey map (CSM) must be completed for two sides and staked every 100 feet.
6. All setbacks must be met.
7. The start date July 1, 2009 and completion date September 2011.

8. Approval is granted for blasting, if necessary. All blasting must be done by a Wisconsin licensed blaster and all blasting conditions must be met.
9. All preblast and post blast steps must be adhered to.
10. A copy of all blasting procedures must be on file in the Planning and Zoning Department.
11. Slopes must be 3:1 (three feet horizontal to one foot vertical), topsoil respread and seeded upon completion of the project.
12. The site must be brought into compliance prior to a Zoning Permit being issued.
13. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Berndt seconded the motion, which passed unanimously by a roll call vote.

Jeffery & Bonnie Vander Zanden, Owners/Hoffman Construction Co., Agent (A09-11)

The Vander Zanden/Hoffman request for a special exception from provisions of the Portage County Zoning Ordinance is requested to excavate and blast rock for fill exclusively for the USH 10 road project, creating a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Eau Pleine, was opened by Rutta, who read the public hearing notice.

Pelky explained this request is the same as the previous request. He explained the letter Rutta read for the Fliss/Hoffman request Town of Eau Pleine, included the Vander Zanden request. The Town recommended approval for both.

Rutta informed Hoffman that he would be under oath for this and remaining requests, and asked him to explain what was wanted. Hoffman stated this pond is basically for the east end of the project, 300,000 yards of fill. There is a small pond on the property. Rock is down 20 to 25 feet, that is why he requested blasting in case they need it. The material should be sufficient for what is needed. This is adjacent to the highway and no haul road would be needed. Rutta stated the pond would be approximately 24 acres in size. Hoffman stated this one might vary a little in size and/or design. There are wetlands in the area; they hired a certified wetland specialist to delineate wetlands located on the proposed sites. He will submit the delineation they feel DNR would ask them to observe. Mrdutt stated staff included both Vander Zanden's parcels on this request for that reason.

Rutta asked if staff or BOA members had any questions. There were none. Rutta opened the request to the public for testimony, questions, or comments. There were none. Rutta closed the hearing portion of the Vander Zanden request.

Deliberation and Decision:

Casey stated this request is a carbon copy of the previous proposal except there is no cleanup required. Potratz, Berndt, and Janowski agreed with Casey.

Rutta stated he would then entertain a motion for approval.

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Casey moved to approve the request with the following conditions:

1. Approval is granted for a pond, approximately 24 acres in size.
2. All material excavated will be used exclusively for the USH 10 road project.
3. The pond will have a maximum depth of 30 feet.
4. The pond is to be constructed as plans submitted.
5. A certified survey map (CSM) must be completed and staked every 100 feet.
6. All setbacks must be met.
7. The start date is July 1, 2009 and completion date is September 2011.
8. Approval is granted for blasting, if necessary. All blasting must be done by a Wisconsin licensed blaster and all conditions must be met.
9. All preblast and post blast steps must be adhered to.
10. A copy of all blasting procedures must be on file in the Planning and Zoning Department.
11. Slopes must be 3:1 (three feet horizontal to one foot vertical), topsoil respread and seeded upon completion of the project.

12. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion which passed unanimously by a roll call vote.

Joe Hopfensperger, Owner/Hoffman Construction Co., Agent (A09-12)

The Hopfensperger/Hoffman request for a special exception to excavate and blast rock for fill, creating a pond and leveling a hill, exclusively for the USH 10 road project, exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Carson, was opened by Rutta, who read the public hearing notice.

Pelky stated this is a slightly different request than the first two. The difference is removing a hill; all fill will be used for the USH 10 road project.

Rutta read the Town of Carson letter into the record (copy in file).

Hoffman stated this request is slightly different because the landowner wanted the pond on the hill, but has changed his mind. He wants to use the area for farming after the hill is leveled. Hoffman stated there might be a small amount of blasting. The owner has an existing pond and he is asking for approval on the condition his wetland specialist approves the site.

Janowski stated he only wants to see topsoil stockpiled and respread upon completion of the project. Hoffman replied that is exactly what they plan to do.

Berndt stated the pond would be approximately five acres in size. Hoffman replied yes, all setbacks would be met.

Rutta asked if he would be hauling fill directly to the proposed USH 10. Hoffman replied no, they will be using County Road O, and when the overpass is completed, it will result in a new County Road O going over the new highway.

Rutta opened the hearing to the public. There were no comments, testimony, or questions. Rutta closed the hearing portion of the Hopfensperger request.

Discussion and Decision:

Rutta stated since there was no further discussion needed, he would entertain a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted to level a hill, approximately 22 acres in size. All subsoil and topsoil must remain onsite and respread after the hill is removed. The site will be used for farming upon completion of project.
2. Approval is granted for a pond, approximately 5 acres in size with a maximum depth of 30 feet. Slopes must be 3:1 (three feet horizontal to one foot vertical), topsoil respread and seeded upon completion of the project
3. All materials excavated will be used exclusively for the USH 10 road project.
4. The pond is to be constructed as plans submitted.
5. A certified survey map (CSM) must be completed and staked every 100 feet.
6. All setbacks must be met.

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7. The start date is July 1, 2009 with completion by September 2011.
8. Approval is granted for blasting, if necessary. All blasting must be done by a Wisconsin Licensed blaster and all conditions must be met.
9. All preblast and post blast steps must be adhered to.
10. A copy of all blasting procedures must be on file in the Planning and Zoning Department. .
11. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Lucy D. Skrzezkowski, Owner/Hoffman Construction Co., Agent

The Skrzezkowski/Hoffman request for a special exception to excavate and blast rock for fill, to be used exclusively for the USH 10 road project, creating multiple ponds exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Carson, was opened by Rutta, who read the public hearing notice.

Rutta read a letter from an adjoining property owner stating his approval (copy in file).

Hoffman stated this property is needed for fill for the new highway interchange. There is going to be rock in the center, they will use the rock and fill. There are approximately 400,000 yards of fill and at least 100,000 yards of rock, maybe more, on this site. They will use it all for the highway project. It is needed for the south portion of the interchange. They will haul directly from the property to the project. Highway 34 is going to have a bridge over the railroad. Existing USH 10 will become a County road and will merge with HWY 34 at the stop sign. Hoffman stated he is expecting to blast on this site because the rock is so close to the ground. Some ponds may connect, resulting in 27 acres of total disturbance. Setbacks will be dictated by the wetland delineation. He will give Mrdutt a better sketch once that information is known. Hoffman stated he is short of fill in this area.

Janowski stated he is concerned with the railroad setback. Pelky replied there is a 25 foot setback from the railroad property line.

Mrdutt stated there is potential the site needs to be cleaned-up according to the 2005 aerial photos. Skrzeckoski stated the site has been completely cleaned-up.

Janowski stated his only concern was the setback from the railroad track regarding blasting. Hoffman replied that is being addressed and a railroad inspector would probably be on site during blasting in that area.

Rutta opened the request to the public for testimony, comments, or questions. Rutta swore in James Edwards. He stated he lives north of the existing USH 10 and wanted to know what was going to be done regarding drainage and how it will affect groundwater in that area. He has some questions. Everything in the whole area drains to his property. Rutta showed Edwards, on plans submitted, where the ponds will be located.

A discussion was held on which direction groundwater flows and which direction surface water will drain. Hoffman stated they drilled Edward's property last year testing for fill. Most of that site is wet most of the time; there is a lot of sub-drainage.

Rutta stated Mr. Schmidt could answer Edward's concerns regarding how much water will be affected and will the amount of water increase on his site.

Ray Schmidt, Portage County Groundwater Specialist, stated he could not answer what the surface drainage would be. Rutta stated if we dig a hole as a pond, wouldn't it be logical that the water level would stay the same and just fill up the pond. Schmidt replied yes. Rutta stated as long as the drainage area is undisturbed it should remain the same. Schmidt replied yes, but as far as Edwards site, he does not know how much would discharge to his property from the south side of the tracks. Edwards stated most of it goes to the north, but it is the groundwater that you cannot see that is the problem. It all comes bubbling up as springs when you disturb something that close. Rutta stated BOA had a lot of these requests and asked Schmidt if there was a big change in groundwater flow. Schmidt replied there is a potential, whenever you blast, to open fractures and that could definitely happen in this situation. That is one of the things he wants to discuss with BOA. Schmidt stated he has a concern for the potential of opening fractures in the bedrock and allowing contaminants that may have been put in the ground over the last 100 years along the railroad tracks and highway intersection to migrate. He doesn't feel

there will be any problems with removing the fill, but he does not know what blasting will do. Rutta replied one never knows until it is done. Berndt asked if this would be a DNR problem. Hoffman replied by keeping the buffer 50 feet from the railroad, anything in the railroad right-of-way would have a buffer of clay. There would not be any migration through the clay. Schmidt stated he is concerned with what contaminants may already be in the groundwater, and as you blast, fractures could open and contaminants could move. They are

pretty much in equilibrium where they are. Berndt asked Rutta which way the groundwater flows. Schmidt replied he does not know exactly, he can check his maps. Mrdutt stated surface water flows north. Hoffman stated Edwards does not have a well on this site. Edwards replied he does have a well. The DOT purchased the property except where the buildings and well are located. The blasting will be a long way from his site, but he is concerned. Hoffman replied they can do water sampling prior to and after blasting.

Rutta stated no matter where you blast, this possibility exists. Schmidt replied it does, but with the close proximity to the railroad right-of-way and highway intersection, it causes concern. He didn't comment on the previous three requests because they were further away. This one has a higher level of concern.

Janowski stated there is no way of knowing until you blast, it may help Edward's property.

Rutta asked Schmidt whether it would help if blasting were moved further away from the tracks. Schmidt replied he could not say. Hoffman stated this whole area is hard rock. He drilled several areas, hard red granite is right on top; it was very saturated and rock high. Berndt asked Hoffman if he would be testing wells in that area as well. Hoffman replied yes.

Mrdutt stated, depending on where the water table and grade are located, there are possible areas that could be used as detention ponds during spring thaw. There are other ponds constructed in that fashion.

Casey asked Hoffman if he would blast an entire wall or take it in tiers. Hoffman replied he is sure they will take it in tiers. Casey stated by blasting in tiers, it would be less likely to fracture toward the tracks. Hoffman replied the more sensitive the area is, the more they monitor and restrict blasting. Casey stated it is a concern.

Rutta stated one thing Towns and the County need is to show, in their Comprehensive Plans, is how the railroad would affect areas in the future should they put in a second line. Would this pond restrict their plans or be encroaching too close to the tracks. Pelky stated if they put in a spur or second track, they would just need to stay within the original right-of-way they have. The Ordinance only requires a 25 foot setback and Hoffman already stated he would keep 50 feet away from the railroad property line.

Mrdutt stated the railroad was notified of the request and staff received no response. Berndt stated that must mean they have no objections to the request.

Hoffman stated he would like to stay with his proposal of a 50 foot setback from the property line. This is a very important site for this span of highway. Pelky stated the railroad owns 50 feet on the north side and 100 feet on the south side of the existing tracks.

Casey asked Hoffman the width of the underside of the underpass that will go over the tracks. Hoffman replied it must be 200 to 250 feet. Casey stated he means over the railroad tracks, and asked Hoffman if the expansion is over the whole 200 to 250 feet owned by the railroad, or just over the existing track. Hoffman replied he does not have the plan with him, but assumes the overpass would be wide enough to accommodate two tracks.

Rutta opened the hearing to the public for comments, testimony, or questions. There being none, he closed the hearing portion of this request.

Deliberation and Decision:

Casey stated he would like to see the pit moved from 50 feet to 75 feet from the railroad property line on the north side of the tracks. It is doable, if done right.

There were no further comments from BOA members.

Rutta stated his concern is the railroad's growth. He asked Hoffman if there was another site nearby that was not as close to the railroad as this one. Hoffman replied proximity and location of this site are very important to them.

They are having issues with rock and farmers on the north side of the proposed highway. Pelky stated that by going 50 feet from the lot line, Hoffman would be 150 feet from the tracks.

Schmidt stated it would not make any difference if the blasting were 25 feet, 50 feet, or 75 feet from the railroad tracks regarding fractures from water standards. He is not concerned with extra water, just the pollution that may be disturbed during blasting.

Rutta asked Schmidt if he had received complaints regarding previous bastings done in Portage County. Schmidt replied he has not received any complaints and is not aware of any pollution or contaminants as a result of blasting.

Berndt asked Hoffman if it was possible to move the pond south a little. Hoffman replied there are wetlands in the area, he could move toward the woods, but is staying out of the woods purposely.

Rutta asked BOA if they had enough information to move forward with a decision. BOA members replied yes.

Rutta entertained a motion to approve the request.

Casey moved to approve the request with the following conditions:

1. Approval is granted for two ponds, one approximately 19½ acres in size with a maximum depth of 30 feet. The second pond will be approximately 6.88 acres in size with a maximum depth of 30 feet. All slopes must be 3:1 (three feet horizontal to one foot vertical), topsoil kept on site, respread and seeded upon completion of the project
2. Approximately 400,000 yards of fill and 100,000 yards of rock will be removed for the USH 10 project.
3. All material excavated will be used exclusively for the USH 10 road project.
4. The ponds are to be constructed as plans submitted.
5. A certified survey map (CSM) must be completed and site staked every 100 feet where needed
6. All setbacks must be met.
7. The start date is August 1, 2009 with completion by October 2011.
8. Approval is granted for blasting. All blasting must be done by a Wisconsin Licensed blaster and all conditions must be met.
9. All blasting and digging must remain a minimum of 50 feet from the railroad right-of-way. Blasting should be done in layers
10. All preblast and post blast steps must be adhered to.
11. A copy of all blasting procedures must be on file in the Planning and Zoning Department.
13. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion which passed unanimously by a roll call vote.

Approval of March 23, 2009 Minutes

Berndt moved to approve the March 23, 2009 minutes as presented. Janowski seconded, motion passed by a voice vote.

Correspondence/Updates

Pelky informed BOA the next meeting date is May 18, 2009, with on-sites on May 15, 2009.

Adjournment

There being no further business to come before the Board, Berndt moved to adjourn, Janowski seconded, motion passed. Adjournment 4:05 pm.

Respectfully submitted,

October 19, 2009

Judith J. Liebe, Rec. Secretary

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, May 18, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, Joan Scheider, Dick Berndt, and Phil Janowski. Jim Potratz excused. Staff included Stephen D. Brazzale, Tracy Pelky, Christopher Mrdutt, and Judith Liebe, Planning and Zoning Department, and J. Blair Ward, Deputy Corporation Counsel.

Pledge Allegiance to the Flag

Casey led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

Rutta asked the public to be sure and sign in on the sign up sheet, so if they would like to make a comment or testify, we would have the correct spelling of their names. Rutta read the agenda. The public hearing for Eric & Nancy Anderson (A09-09) has been postponed at the request of the applicant. The Thomas & Rosalie Modrzewski (A08-24) reconsideration will also be postponed. Mrdutt stated that appeal would also be postponed. Pelky stated BOA should give this one a two to three month window before it comes back. Rutta stated that anyone here for the Eric and Nancy Anderson appeal, it will be postponed until the BOA's June meeting. Also the appeal for reconsideration of Thomas & Rosalie Modrzewski would be postponed for as long as our July hearing.

PUBLIC HEARING:

Eric & Nancy Anderson (A09-14)

Rutta entertained a motion to postpone the Eric and Nancy Anderson hearing for one month, until the June meeting. Janowski moved to postpone the hearing until the June BOA meeting. Casey seconded the motion, which passed by a voice vote. The request is postponed for one month at the applicant's request.

Thomas & Rosalie Modrzewski (A08-24)

Rutta entertained a motion to postpone the Thomas & Rosalie Modrzewski at the request of the applicant for 60 days or until the July meeting. Janowski moved to postpone the hearing; for 60 days or until the July BOA meeting. Berndt seconded the motion, which passed by a voice vote.

RECONSIDERATIONS:

Julia Cornwell Estate, Owner/Paul Anderson, Agent (A08-31)

Rehearing of a special exception from the provisions of the Portage County Zoning Ordinance is requested to create a parcel of land as the result of a farm consolidation in the A1 Exclusive Agricultural Zoning District, Town of Sharon, Parcel #'s 032-24-0913-03 & 032-24-0913-08, The request is to amend condition 4b of the August 18, 2008 request. Condition 4b states: The Underground storage tanks must be removed and site tested for contamination. If contamination is found, it must be cleaned-up prior to signings the CSM (Certified Survey Map)."

Rutta stated since that time there has been an offer made on the property, contingent on getting a CSM approved and BOA's condition 4b states that no CSM will be signed until the site is cleaned up. It presents a bit

of a problem. Rutta asked who was representing the Anderson estate. Attorney Paul Anderson said he would. Rutta swore Anderson in and asked to explain the situation. Anderson explained they were here for the last meeting and it was tabled because Lonnie Firkus appeared and indicated he would like to put an offer in for the entire parcel. Since then he has made an offer to purchase the entire parcel with contingencies. It would require that \$70,000 of the proceeds be placed in escrow to be used solely for the cleanup of the contamination. The estate accepted that as a second offer. Mr. Lepak had put in an offer and he is still the primary offer. Lepak's offer requires a lot of splits. Unless BOA would improve the lot splits, they would not be able to close that transaction. This is the same place we were last month. Anderson informed BOA that the brokers are willing to delay their commission to allow the money to be put in escrow if the Lepak offer is allowed. That would be Lepak's offer, which was the first offer. Firkus has the second offer.

Rutta asked if all BOA members understood the situation. Rutta informed Janowski what had taken place at the previous BOA hearing regarding this request because he was not present at the original hearing. Janowski replied he knows the area in question and has no questions at this time.

Scheider stated she wanted to be sure she understood what Anderson said regarding the brokers relinquishing their fees right now there would be \$50,000 in the escrow. Anderson replied, yes, at least \$50,000.

Casey stated he thought he had heard \$70,000. Anderson replied \$70,000 would be if they sold the entire parcel to Firkus. These are both bonafied offers.

Rutta asked Anderson what was the limitation, why did they not consider Firkus' offer. Anderson replied they accepted the offer, but it was secondary because they are bound to the Lepak offer, he was first. Rutta asked Anderson if the offer Firkus was making was a bonified offer. Anderson replied yes, it is a bonified offer because it was signed by both parties.

Berndt stated that the realtors would delay their commission until the site was cleaned up. Anderson replied that was a verbal offer made by them, he's sure he could get it in writing. Berndt stated he would like something more than just verbal because of the seriousness of the request.

There was a long discussion as to how much money PECFA (Petroleum Environmental Clean-up Fund Award) would contribute towards the cleanup, who would do the cleanup, when, and the cost of it. Rutta asked how BOA could be assured of the cleanup. Anderson replied McDonald Law offices & realtors would undertake the distribution of the funds for the cleanup of the parcel when it is sold.

Rutta read a letter into the record from Ward Wolff & Charlotte Hensler, First Weber Group Realtor (copy in file). The First Weber Group would like BOA to finalize its decision.

Rutta opened the hearing to the audience.

Rutta swore in Tom Domaszek, M&I Bank. Domaszek stated he is here on behalf of his customer, Laverne and Cindy Lepak. He stated he would like to inform BOA that financing has been approved; there are no contingencies on the financing. He also said he's known them for a long time, good customers of the bank and have a County approved Nutrient Management Plan and has farmed 63 acres of the Cornwell property this year under a rental basis. There are no problems whatsoever. The funds advanced on the purchase of this parcel (63 acres) would be more than enough to cleanup the other parcel. The secondary offer having no contingencies, there is no guarantee the other property (5 acres) would get cleaned up.

Rutta asked how the contingency fund would be handled. Domaszek replied Anderson would handle it, it would be escrow. Rutta then asked Anderson how he would handle it. Anderson, most likely the closing would be at the McDonald Title Company and they would hold the funds and disperse the funds for cleanup.

Casey stated it is his understanding that the whole thing would be sold to two different parties, and asked if that was correct. Anderson replied yes, Lepak has the initial offer on 63 acres and there has been an offer accepted on the remaining 5 acres. An offer has been made by the party who has lived there and operated the farm.

Domaszek stated the money the bank would advance from the loan proceeds to purchase the 63 acres would go into escrow to help pay for the cleanup on the 5 acre parcel. There is nothing that really needs to get cleaned up on the 63 acres, other than maybe a burn pile. There were some old tires and a few things like that but he is sure most of it has been cleaned up.

Casey stated there was a list stating all the things that needed to be removed from the 63 acre parcel, has that all been taken care of. Domaszek replied yes, except the burn pile that needs to be hauled to the County landfill.

Rutta asked what assurance does the County have that this is going to be cleaned up if BOA follows through and allows for the amendment to condition 4b. Domaszek replied it would be up to the attorney and McDonald Title to disperse the money correctly to see that it is done.

Rutta asked J Blair Ward, Corporation Counsel how he feels about the legal ramifications to the County in view of the fact the contingency fund would be handled completely by an independent law firm. Ward replied there would be no problem with McDonald law offices administering the funds in escrow, but he would like to see some documentation of how this would be applied, some documentation from PECFA. His concern is that if it is sold as one parcel and the 5 acres are not parceled off and if it is sold as a single parcel, for example if BOA denies the request, then what obligation Firkus would have to cleanup that 5 acre parcel. He thinks it is a strong motivation to advise BOA, if Firkus purchases the property, State and Federal authorities would have to force the cleanup, it could go on forever. He stated he thinks it can be done in a way to protect the County's interest. He would like to see the paperwork and work with McDonald, the Town, and Attorney Anderson getting that done. He would also like to be sure there would be sufficient funds with PECFA to get it done. He would like to see some insurance that if something goes wrong with the deal, the County would not be left holding the bag. Rutta asked Ward if he felt the County should or not have input in the regulation of the contingency fund. Ward replied he would like input, at least see how it is going to be administered before granting approval. A performance bond would be an option assuring the cleanup.

Domaszek stated he would have no problems with that. If the County would want to approve each draw for the cleanup, that would be fine.

Domaszek stated the purchase price of the larger parcel, 63 acres, is \$135,000. He has no idea what liens are against the property at this point. Anderson stated it should take care of any outstanding leans and have approximately \$70,000 for cleanup.

Berndt stated the thing that bothers him is the letter dated February 12, 2009, from PECFA, signed by Renee L. Dickey, stating that the "final determination of site eligibility will be made at the time of claim review."

Janowski asked if the two environmental cleanup companies that would provide the cleanup seen the site. Anderson replied Endeavor Environmental Services, Inc. had taken the soil samples when they removed the tanks.

Mrdutt stated as part of this request, before the County would sign off, all the automobiles, junk automobiles, and solid waste must be cleaned up off that 5 acres prior to signing the CSM.

Rutta swore in Ryan Haney, Sandcreek Consultants. Haney stated their office is in Amherst. They removed the tanks and reported the contamination to the Department of Commerce (COMM). That is where enforcement is, the case that is there, how aggressively they enforce it, is up to them. They treat it with what is the highest level of priority, moderate to high priority is usually handled by COMM. They have internal mechanisms that keep these cases going. If it is a low rating case, it may take some time to get the case going. The tanks being removed, there is really no threat of liability that would come back to the County. The contamination would be tied to the responsible party, even through intervention, it could change hands several times, and it would be the person named, unless someone else would want to take responsibility. The Cornwell estate is and would be the responsible party for the cleanup. The Town of Sharon or the County is never liable for private property cleanup unless they would choose to be.

Rutta asked if the Cornwell Estate is an entity of itself. Ward replied that is correct. Scheider asked if the site is split and the 63 acres are sold and not the remaining 5. Who would be responsible for those 5 acres to cleanup. The existing owner, Cornwell Estate, will be responsible forever until it is cleaned up.

Casey asked if there is only one occurrence on this site. Haney said only one that he is aware of. Casey stated there were two tanks. Haney replied yes, there were two tanks; one was gas and the other diesel fuel. There were two samples taken under each tank. There was no detect under the gas tank that was removed, only the diesel. The gasoline tank was ruled clean.

Charlotte Hensler, First Weber Group, asked if BOA got the PECFA informational letters. Some of the concerns were from the past; it clearly states how PECFA will handle the cleanup. The money from the sales of the property will be kept in the escrow funds held to cover the cleanup, if BOA would like it in writing, they would be happy to put it in writing. They want this resolved as soon as possible.

Rutta read the letters into the record (copies in file). One letter was from Paul Anderson and the other letter from PECFA. Hensler stated the PECFA bills would be paid within 45 to 60 days after they are submitted.

Berndt stated it sounded like PECFA would not reimburse until the entire site is cleaned up. Hensler replied no, they would reimburse as the bill would be submitted. The maximum PECFA would pay for a cleanup would be \$180,000 to \$190,000, chances are the cleanup will cost nowhere that much.

Scheider asked when the sale is complete who will be responsible to initiate the cleanup. Hensler replied Anderson, under the direction of McDonald Title, who will be responsible for the estate funds.

Janowski stated he thought that it would take 10 to 12 years to complete and asked if that was so. Haney replied it varies case-by-case, depending on how deep they need to go and how extensive the contamination is. The initial excavation of the contaminated soil takes about a week, if it has affected groundwater, it could be monitored for years if the water is contaminated.

Casey stated the whole 68 acres is sold, if there is a buyer for the 63 acres and one for the 5 acres and asked if that was correct. Hensler replied they have not closed, just accepted offers. Casey stated Anderson indicated there would be \$70,000 in the escrow account. Hensler replied if the entire parcel would be sold to the second offer. Casey stated if the 5 acres with building would be sold separate, there would be more money in the escrow. Hensler replied he is correct, there would be more funds coming in but it would not take place until the entire cleanup has taken place, both the physical cleanup as well as the underground cleanup. Hensler stated they are looking to sell the 63 acres so they can get the funds to start with the cleanup.

Scheider asked what controls when the 5 acres are sold. Anderson replied they could not close on the 5 acres until the cleanup is complete.

Casey stated if they've been tenants for 35 years, that's where all the things have accumulated from. Anderson replied that's correct. Casey stated most of this has accumulated on the 5 acres; those are the people who want to purchase it and asked if that was correct. Anderson replied yes.

Hensler stated the occupants of the 5 acre parcel have done a tremendous job at cleanup. There have been at least two semis of tires that have gone off and a lot of stuff. Berndt stated it is not completely cleaned up but a lot of things have been removed. Hensler stated they want it done as much as everyone else does.

Rutta swore in Lonnie Firkus. Firkus stated he sees this going full circle again. The only reason the cleanup hasn't started is because of lack of funding from the estate. If the estate retains ownership, it will not be sold until the cleanup. He is hearing there is a second party, other than who is on the deed, could take responsibility. He's always been told just the opposite. The actual name on the deed would be responsible for the cleanup. Firkus stated he has the money to do that, there has been no establishment of how bad the contamination is. That is the next step. It has not been able to do because of the standoff here. I put no contingencies on my offer

because that's the way it has to be. It is being dragged out too long and as far as being a split down the road, it's not what buying the whole parcel means. The second sale of the 5 acres is way down the road. It just sounds like we're going to continue going in circles until someone takes responsibility. There has been some progress in a wooded area, it's not complete; the tires are pretty much gone. The whole property needs to be cleaned up and made to look nice. Rutta stated that is one of BOA's conditions, but we are not dealing with any of the other conditions at this time, only condition 4b. Firkus stated he would be willing to take that responsibility, I know the estate is trying to get the tenant to clean it up. If I owned the whole property, it would be cleaned up. Rutta asked Firkus what assurance could you give BOA that the contamination would be cleaned up and that the miscellaneous outdated equipment and junk that is out there would be taken care of. Firkus replied he would be willing to write that as a contingency, but he hadn't been asked to, he was just asked to make an offer. He feels like he didn't get all the information, he would have written the cleanup offer as a contingency on his offer to buy, that he will be responsible for the cleanup. Rutta asked Firkus how he would propose that be done. Firkus replied just give him a date and it will be done by that time, he doesn't know how else to do it. Rutta stated he doesn't either.

Scheider asked Firkus how he would finance cleanup of the contaminated area, if the money runs out. Firkus replied he can verify he has the money to get the site cleaned up PECFA or no PECFA, escrow or no escrow. Firkus state his understanding, when the money runs out, there needs to be equity, he wishes he'd known, because he would have brought his banker along to show he has the financial backing.

Scheider asked if the Anderson Law Firm would continue to be responsible for the cost. Rutta replied Anderson Law Firm is representing the Cornwell Estate. Scheider, regardless of who buys that property, Anderson would be responsible for the cleanup. Mrdutt replied that is correct, no matter who purchases the property, the estate would be responsible for the cleanup in one way or another.

Firkus feels this is moving way to slow he would like to get it cleaned up as soon as possible. Firkus stated this is all on hold because nothing has been established on what it will take to cleanup the contamination, how large it is, what it would cost to clean it up. Firkus stated again he is willing to put everything in writing.

Rutta asked Anderson if it made any difference to him as to who purchased the property. Anderson replied no, the amount of money needed for the cleanup would be put in escrow.

Berndt asked who controls what goes into escrow. Anderson replied it is by an escrow agreement or contract to be sure all the leans against the property are taken care of along with the cleanup.

Anderson stated McDonald would handle the funds and disperse the money for the leans and cleanup.

Scheider stated BOA needs to take a position on whether we allow the parcel to be split into two parcels and sold separately with the signature of a CSM or the whole parcel could be sold as a single parcel without our approval. Rutta replied that is correct.

Firkus stated he would like to get a letter approving his financing and ability to cleanup the contamination to Anderson immediately.

Rutta swore in Laverne Lepak. Lepak stated he was the first bidder and his offer was accepted. He was very upset that the estate was considering Firkus's offer. This property was for sale for a year and I had to wait for the cleanup. He didn't know anything about the underground tanks; he did know there was a lot of garbage on the property. The site has been cleaned up a lot. Lepak stated he understands that if the site was cleaned up, he should be in first to purchase this property. Lepak stated the bottom line is if the estate is responsible for cleaning up the contamination, he should be able to purchase this land.

Rutta asked if there were any questions for this witness, there being none, he was excused.

Rutta asked Ward if he saw any problems that would be created for the County if BOA voted either one way or the other. Ward replied he doesn't see any problems either way.

Casey asked if there is anyway the documents could be written so BOA is not in real-estate business, that whoever sells it is responsible for everything; just have the proper wording no matter how it is sold. Ward replied he thinks so, he said if BOA is inclined to grant the special exception request, it would be an appropriate condition to require that his office review all the paperwork, all the escrow paperwork, and sign off on it before it is finalized. That could be a condition and if for some reason his office is not able to come to terms with the estate or the other parties involved, they would be required to come back before BOA on that issue. There are a lot of complicated issues that need to be addressed and he questions whether BOA can address issues. There are a lot of questions that need to be answered.

Firkus asked if he could have a chance to rebut what just stated. Rutta told Firkus he was still under oath. Firkus stated he just heard Lepak say he was a potato farmer, that soil is not suited for potato farming, so it would be corn and soybeans that he would plant. He stated he is a hunter and fisherman, there is a very sensitive stream going through that property and Lepak just poured hundreds of tons of manure on that property. It is a sensitive stream going through there that he is concerned about.

Rutta stated the only issue here today is whether or not to remove condition 4b, no other issues. Firkus replied he appreciated that.

There being no further testimony or questions from the audience, Rutta closed the hearing portion.

Deliberation and Decision

There were no comments from permanent staff. Rutta asked if Ward had any additional comments. Ward replied no, but he would reiterate what he said a few minutes ago, that it would be an appropriate condition if BOA inclined to grant the special exception, have his office work with the Cornwell estate as well as the purchaser and McDonald title to be sure all the paperwork is correct and the County is protected.

Scheider stated she is inclined to stay with the August 18, 2008 conditions. She stated there is no reason BOA back away from it.

Berndt stated Lepak purchased the site, it may drag on, if Firkus purchases it, the cleanup will start quickly. There is still a problem with which offer will be accepted, he is not sure which one is the best.

Casey stated BOA is not interested in making the decision of who purchases the property. He stated BOA should remove condition 4b with the Corporation Counsel working out all the paperwork regarding the sale, cleanup of the contamination. He agrees with what Ward stated earlier.

Janowski stated he agrees with Casey, asked if a performance bond would work. Casey replied he thinks the PECFA fund would work faster than a bond.

Rutta stated there being no further discussion he would entertain a motion to removed condition 4b from August 18, 2008 decision, if there is not motion or second or enough votes to pass, he would then entertain a motion to deny the removal of condition 4b.

Rutta entertained a motion to approve the removal of condition 4b.

Casey moved to remove condition 4b with the following conditions:

1. The underground tanks be removed and site tested for contamination, if contamination found, it must be cleaned up prior to signing the CSM and that \$50,000 put in escrow with Corporate Counsel's conditions to review all legal papers prior to signing and also what the Town decides, if anything, to be added to the conditions. THE PECFA Fund is to be used.

Janowski seconded the motion. Rutta stated motion made and seconded and asked BOA members to vote aye if in favor of removing condition 4b and nay if favor leaving condition 4b as from the August 18, 2008 BOA meeting. Janowski and Casey voted aye, Scheider, Berndt, and Rutta voted nay. The condition 4b stands as stated at the original hearing of August 28, 2008, motion failed.

Rutta stated the request to rescind Condition 4.b. from the original August 18, 2008 Board of Adjustment conditions is denied.

Rutta entertained a motion for a five minute recess. Casey moved for a five minute recess, Janowski seconded. Rutta called the meeting back to order at 5:30 pm.

Patrick and Laura Planton (A09-09)

VERBATIM

Rutta: Call this meeting of BOA back to order and continue on with our next appeal, which is a request for reconsideration and this only to umm... um... schedule this for another meeting if the reconsideration is ah...so deemed to ah... to be necessary. Umm... it is a var... or Appeal No. A09-09, Patrick and Laura Planton. And the initial request is for a variance from the provisions of the Portage County Zoning Ordinance and Shoreland Zoning Ordinance is requested to rebuild a house within the rear setback, rear yard setback and 100 foot setback from Tree Lake in Recreational Zoning District, Township or Town is Alban, Parcel #002-29-028Able, 03, and 04 and umm... to give everybody a background. Phil, were you in on the original?

Janowski: No, no I wasn't there.

Rutta: Joan, ah... you weren't on the original

Scheider: I certainly was. It was a couple years ago.

Rutta: Ah, this goes back ah... basically the history ah...

Casey: couple of years

Rutta: 07, 2007. What the ah... appellants have out there is a a, a piece of land that sits on... on Tree Lake. One side of the lot abuts on Tree Lake and the other side of the lot ah abuts on a, a private road. And the mean or average depth of the lot is about 80 feet or 82 feet, something like that, 200 feet wide on the water with a depth of approximately 80 feet on the average. I believe, believe it is 92 feet on one side (inaudible more than one person speaking at one time) and 72 feet on the other side around 80 feet. The first appeal was made back in 2007, umm, and umm they, the appellants, asked for a variance..... for their fundamentally to build ah... a piece of pro... build a... a home on that ah... on that property. The, the lot has a... ah... on the water side, has a rather steep drop off for approximately the first 20 or 25 feet from the waters edge. It is almost ah... probably ah 45% slope from the water up to the top and for the first 25 feet is ah... not very useful for uhh... uhh... filtration purposes for filtering the water that is going to runoff from the building and seep into the lake because the water tumbles down I'm sure quite rapidly. There will be some but it wouldn't be the same as if the water was left into the flat and sandy soil a lot of stones out there. That particular request is denied by the Board of Adjustment that was in sitting at that time. Several of us were on that one, were you on that one Dick?

Berndt: Yes.

Rutta: Some of us were on that one and the largest reason umm... when we looked at it, we analyzed it looked at it and the umm testimony that came out from that hearing indicated that in fact the applicants would have to have a variance in order to build on that property. Umm... they umm... umm... the site is such that it makes building making a building very difficult, however it is doable, its... its... its very possible to do. That particular request was for a house and garage that was 2268 square feet and the umm lot, if you subtract 25 feet from the bank, of the water umm... my notes show me as having approximately 1100 square feet which is usable land there. About a quarter of an acre, quite small. It was rather a large house and uhh... and uhh... there is a requirement that uhh... the DNR puts out that says that uhh.... a variance that uhh... can be granted can only be the minimal... minimal amount of variance to alleviate that hardship uhh...condition and uhh... uhh... that was the reason it didn't get reviewed at that time for the for the denial. Ah, a second request came through on Appeal No. A09-09 and they structure size was ah... shrunk down some ah... 300 and some feet umm... moved back umm... a slight bit from the umm... umm.... umm... previous location of the house umm..... As soon as I can, I got my notes about 11 feet... which brought it back to in the 40 foot mark from the umm... from the water. And umm.... umm... the... the... the a Ordinance requires a 100 feet set uhh... the Board has in the past when we have a known hardship, the hardship (inaudible) we do issue variances when that happens. And umm....umm... this one was fundamentally denied for the same purpose that the first one was denied. It was not in the public interest to have ah... a building of that size ah... that size footprint um... that close to the water and um... ah... and for that reason it was denied. Umm... The applicants have umm... have umm... asked us to look at that decision again and uhh... see if uhh if it would be possible to schedule a umm... reconsideration hearing umm...

to look at umm... the appeal of A09-09 again. And um... um.... We received a rather lengthy letter from ... from the applicant, I assume it is your letter

Plankton: yes.

Rutta: It is not signed. I checked it and it is seven, seven or eight pages long. I don't know if I want to read the whole thing. It simply asks that... that the letter be made permanent record of our... of our... umm... proceedings. Because of the length, it's a rather long letter and I'm going to ask the Board members if they all read that letter. Did you all read the letter that came from the Plantons?

Casey: I still didn't receive it.

Janowski: No. inaudible (more than one person talking at the same time)

Rutta: I have to apologize for that.

Liebe: There is a signed copy of that letter in the file.

Rutta: OK. It's a..... I'll summarize it rather than go through the whole thing in detail I'll summarize it because there is quite a bit of reading involved and umm..... the umm... the umm.... applicant uh... is asking that we consider the contents of this letter to be um... a valid umm... reason to schedule a hearing of reconsideration at our next months re... umm... next month's meeting. And uh... the rest of you have all read it? OK. Do you have any questions on it? Umm... it is pretty much self explanatory if you go through it. And umm... umm... and uh... the applicant states umm.... there reasoning for the ah... request. It is covered quite nicely in the covering page at the very end. Umm... the ah... the ah... the reasoning for the um... for the request for the reconsideration. Um... the problem that we have with this particular umm... request is that in our Board of Adjustment Bylaws there are a couple of umm.... Article 8 umm... there is a couple of conditions we have to meet in order to reschedule a ah... a... the hearing to reconsider it, but before we do that maybe we could ask the appellant to summarize the contents of the letter for us so that we have something on the tape that tells us what, you know.

Planton: Sure. Do I need to be sworn in or anything?

Rutta: I'll swear you in. Do you solemnly swear the testimony about to give shall be the truth, the whole truth, so help you God.

Planton: I do.

Rutta: Please be seated and kind of summarize the contents of the letter umm... for the Board's benefit, actually for anybody who hasn't read it.

Planton: The chair did a very good job of summarizing this entire process. (inaudible.....)

Formella: I'm sorry to interrupt but it might be convenient for you to know what standards you will be looking at Mr. Planton will be able to address from your bylaws. I do not mean to put the applectart before the horse...

Rutta: We... we... we... use the standards that are required by the DNR. Those standards that are required by the DNR are the standards we use....

Formella: Can I say something, just for today's purpose, from your bylaws, you said Article 8, Section 5 is the....

Rutta: Oh! OK, you... you would like me to do that first?

Formella: If you don't mind.

Rutta: I can do that. Umm... OK we have Section one, ok? It says "No matter which has been acted upon by the Board of Adjustment shall be considered again within one year from the date of action except as hereinafter provided: (a) The case does not involve a request for an identical permit or does not allege the same misinterpretation or error non coverage or hardship as the previous case;" In this case it doesn't. You're asking for a reconsideration and it does involve, this request does involve an identical permit and it does allege the same misinterpretation or error of non coverage or hardship because of the previous case. You are asking for the same variance. And there is a (b) section but.... uttt... it, well (b) is "when the case does not contain the original request for a for a specific variance" and it does and (c) "when substantial change in the use of adjacent property has occurred" and that doesn't apply to this particular case, so... that that isn't an issue. What this particular section tells me, and the reason it was put in there is so that we don't have people coming in and um.... your case, come in on January and say I need a variance of uhh... uhh... I can't give you 100 feet, I need, I give you 42, ok. And uh... you say sorry, we can't buy that, that's, that's, that's not good enough, you can do better. And you come back in.... March and say I got a reconsideration, ok, and we are going to change it now, we're gonna... substantial change, we're going to change it to 42 feet, 43 feet. And we look at it and say gee..... this is not what this is intended for and so we refuse to take that out. Umm.... that is why that clause was put in there, ok. Umm.... Consideration by request... Section 5 reads: "Board of Adjustment may entertain a request for reconsideration by a party of interest provided the request is in writing and the new written the new written evidence is submitted with the request. On receipt of the properly files request to reconsider, the matter shall be

placed on the next agenda under **Reconsideration** . The request for reconsideration must be filed with the Planning and Zoning Department at least 10 days before the next scheduled meeting.” This is what we are dealing with today. Your request falls under this category and it says it shall be a new written evidence submitted with the request, ok. That is the category you guys fall under. Umm... pause ... And um.... now, would you please go ahead.

Planton: Sure. We have met with the Town Board twice for the same property, the same general purpose of how to reconstruct the 80 year old seasonal cottage. We would like to move out there, retire out there. There are some specific problems with the property as the Chairman again alluded to; it is not deep enough to meet the 100 foot setback requirement. There is a private road behind our property, and um.. we came before the Board two years ago in February with a larger um... proposal that was going to be essentially in the same footprint, 25 feet away from the water's edge. That was denied with the direction of the Board, it was too big, too close, working with the staff we came up with a plan B, which was further away from the water, and smaller, over 300 square feet smaller and the building itself is 16 feet further away from the water's edge. So they would be 41 feet vs the 25, than out here right now. And ah... we were told that the first time we came in front of the Board that we met the first two requirements, unnecessary hardship and the unique property characteristic, although that is not what the letter said at the time.

Rutta: No, I know.

Planton: In the second part was that it was denied because the DNR had suggested that the uh...the proposed (inaudible).... I appreciate that you follow DNR requirements, but I guess there are some legal issues as to what is or is not in the public interest. So, the purpose of the letter was to reiterate where we have been and (inaudible) April 28, this past.... We met the two criteria, we didn't meet the third criteria, and our proposal was not in the voiced judgment representing the general public or Portage County is not in the in the interest of the general public to go forward.

Rutta: Just let me interrupt you for just a second.

Planton: Sure.

Rutta: Just to point out that umm... while umm... those three are the big three, they are not the only three requirements to grant a variance. There is like about seven or eight and.....

Planton: Where is that stated in Wisconsin Administrative Code NR115 and Portage County Ordinance about Shoreline Zoning issues?

Rutta: Well, ah it

Planton: And why not have those in the application that we have other criteria to meet besides unique property characteristic, undue hardship and contrary to public interest. Those are the only three that we have been asked for, twice now, to bring in front of this Board. And we have been at this for three years. And the last time I received agreement from the Board and all of a sudden, the goal in this in this changed, now this other requirements, this minimal variance....

Rutta: there are.....

Planton:granted no where in the statutes or Ordinances.

Rutta: The Ordinance, the statutes states that two.... I need to look at my notes. At 231.81 designates the Department of Natural Resources as the leading Department in charge of administrating shoreland. OK? And it requires all municipalities to adopt a shoreland ordinance.

Planton: Correct.

Rutta: OK? They require this ordinance to follow their guidelines. And, ahh... when they do that, ahh.. we have to be careful how far we deviate from those guidelines ahh... because ahh... we open ourselves up to a lawsuit from the Department of Natural Resources. And the ahh... the ahh... specified what the guidelines are in NR115. NR115 spells out the guide all of the... all of the...

Planton: Correct.

Rutta:the state laws required standards. However, umm..... Shoreland Zoning... variances, variences, variences. This is what the DNR says: “

Planton: Can you for the record indicate Mr. Chairman where that um... where that document comes from, who the author, what was the year it was published?

Rutta: It was published umm.... by the Department of Natural Resources. For Wisconsin, this is the Zoning Board Handbook for Wisconsin Zoning Boards of Adjustment and Appeals, 2nd Edition, 2006, uh.... This is by Lynn Markham and Rebecca Roberts.

Planton: They both work for the DNR?

Casey: They work at the University? No. Yes, University.

Planton: So they are not working for the DNR? They don't, they aren't really instrumentations for the State.

Rutta: ahh.....well.....

Planton: They don't speak for the State.

Rutta: Well....but... the DNR speaks for the State.

Planton: This is not a DNR document as I understand this.

Rutta: No, but see ahh..... where's the letter? I.. I... I.. have to go back to the last hearing. Now wait a minute..... All we got is this document that tells us, well first of all let me tell you what this document says. OK? About... ahh... about variances. It says....

Planton: Now, this is not a legal document, a research document, am I correct?

Rutta: No, this is our guide line for Zoning Boards.

Planton: It is not a legal document (inaudible)

Rutta: I don't know...

Planton: If I am to be held to that standard, I need to know if that is Portage County Ordinance or Wisconsin State Statutes, or what.

Rutta: Well, it would have to be coming from the DNR and definitely, this is not coming from the Portage County Ordinance. At least I don't think it is. However, State law supersedes County Ordinance.

Planton: Correct.

Rutta: OK... [Read from Zoning Board Handbook, Chapter 15 Variances, page 94]. Now it says: "To qualify for a variance the appellant has the burden of proof to demonstrate that all three criteria defined in State Statutes and outlined below are met." These are the three that are identified in the State Statutes, OK? "Unnecessary hardship, unique property limitations, and no harm to public interest." It goes on to explain in each case, OK? No harm in public interest and it gives a kind of a flow chart for us to use OK? And then we get down to Additional Standards [page 98] and it says: "Few areas of land use law are as extensively litigated as the standards necessary to qualify for a variance. The rich case law concerning variances provides these additional guiding principals and a zoning board should rely on in their decision-making." OK? "Published court decisions provide guidance for board member and are cited in the endnotes. Websites for accessing case law are provided in Appendix B." The first requirement is that we must consider the whole parcel, we can't look at the little part that you want, we have to look at the whole parcel to see if this is a umm.... a better way of... of... of... positioning what you want done on that parcel. Ah, the second criteria is a self-imposed hardship. You cannot umm... ask for a variance after you limited yourself to a certain situation to umm... by... by... by... having an action which prevents you from getting a building in accordance with the Ordinance of the law.

Planton: I understand.

Rutta: "The circumstances of an applicant such as a growing family or a desire for a larger garage are not a factor in deciding variances. Financial Hardship. Economic loss or financial hardships do not justify a variance." They got notes here in each case what it refers to. Umm..."The test is not whether a variance would maximize economic value of a property." Or not... The nearby violations. "Even if similar to the requested variance, do not provide grounds for granting a variance. Objections from neighbors. A lack of objections from neighbors does not provide a basis for granting a variance." and "Variance must meet code. Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts.

"Are there any limits on granting a variance?" OK? This looks, we go into limits now. Number 1, The minimum variance allowance. [page 99] "The board may only grant a minimum variance needed. It comes from ¹⁶¹ Robert M. Anderson, *American Law of Zoning*, 3rd edition, (1968) vol. 3, s 20.86 pp. 624-625.

Planton: So that's a law book, that isn't Wisconsin Law necessarily.

Rutta: I have no idea.

Planton: OK.

Rutta: I have no idea.

Planton: But that's what you are basing you decision on my property?

Rutta: Yes.

Planton: Is that law a book?

Rutta: That... this... one of these... one of, it was a FACTOR! OK?

Planton: OK, just so I know what the term, the protection under the law is and that doesn't appear to be law.

Rutta: I don't know, that will have to be challenged.

Planton: Could we ask the Corporation Counsel his opinion?

Rutta: You can.

Planton: OK. Why don't you continue, I'm sorry.

Rutta: The next one is "Conditions on development. We can impose mitigation measures to eliminate or substantially reduce adverse impact of a project under consideration for a variance. OK? "Conditions may relate to project design, construction activities and must address and be commensurate with project impacts." The third one is "Specific relief granted. A variance grants only the specific relief requested (as described in the application and plans for the project)" In other words, if we grant a variance, we grant a variance that is listed on that on that, on that application. You can't change the application procedure umm....

Planton: Correct me if I'm wrong, can't try to make it smaller as your are deliberating it or what.

Rutta: Well what we can, what we, what we do, what we do in this case, we try we try to do in this case is we try to give you an idea of what the Board seems to be in indicated what they, what they will accept. Ahh..."Variances do not create nonconforming structures," and [page 100] "Variances transfer with the property." OK? Then they give you a footnote here, they've got a sketch where the wetland is, where the side yard is, where the proposed garage is, the existing home, and whether or not this would be acceptable and what would not be acceptable. And we go to through these training sessions every year...umm... The, these sessions are put out by the Department of Natural Re.....(inaudible) Who is it?

Casey: University.

Rutta: OK, the University puts it out and ah... and ah... to make a long story short, this is what we use as guide books.

Planton: So it is guidance from the University.

Rutta: Yes, and from the DNR. Now after we had that hearing, I called Lynn Markham. I said Lynn ah.... I think we are going to get challenged on this one. And uh... she said well, what seems to be the problem? I said, well, it is the section that applies to minimal, minimum variance. And umm.... here is the letter she sent to.. she sent a letter to or emailed a letter to Edwina Cavanaugh, who is an attorney for the DNR. OK? And she says..."Hi Edwina, the Portage County Board of Adjustment and Zoning staff have asked me to provide the legal background and rational behind the statement the Board of Adjustment can grant only the minimum variance needed." OK? "We've included the statement in the past two umm... umm... (inaudible, several people speaking at same time) "past two Zoning Board Handbooks and you can see the discussion on page 99 of the 2006 edition. We site the American Law of Zoning, 3rd Edition. Are you aware of any case law concerning this statement? If not, could you comment on the application of this statement in Wisconsin in the absence of Wisconsin Case Law? I am copying Tracy Pelky, from Portage County Zoning Department on this email." It comes back to Lynn, from Edwina Cavanaugh, Department of Natural Recourses to Lynn. "The idea that an area variance is granted only after the applicant has proved that he or she meets the standards to obtain a variance. Unnecessary hardship defined by Ziervogel and (inaudible) um... umm... Ziervogel 2004 WI 23, 269 WI 2nd, bunch of numbers. Using the Schneider 74 WI 2nd 468 formulation, (i.e. whether compliance with the strict letter of the regulations would unreasonable prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions as unnecessarily burdensome, the decision said. Since a variance grants someone the permission or privilege of not complying with the general rule or law as announced in the provisions of the Zoning Ordinance from which the applicant rel... um... seeks relief. A variance grants its holder an exception to the general rule with which all those without variances must comply. Under accepted principals of common law and statutory and rule construction exceptions shall be granted sparingly and narrowly construed." Thus"....

Formella: Is that quoted from uh... Ziervogel?

Rutta: Have no idea..... (inaudible). This is from Edwina Cavanaugh, Staff Attorney, Bureau of Legal Sources, WI Department of Natural Resources.

Planton: Just so I am sure, I wasn't reading it wrong.

Rutta: I'll get you a copy of this if you want.

Planton: OK. Thank you.

Rutta: Under, where did it go... exceptions shall be granted sparingly and narrowly construed thus allow the owner the ability to reasonably use the property for a permitted purpose and relieve the unnecessary burden which the owner would otherwise have to bear. Those are the... those are the two key lines in this letter. Once the applicant is granted just enough relief from the Ordinance terms so that he or she no longer is unreasonably prevented from using the property for a permitted purpose and conformity with the remaining Ordinance provisions is no longer unnecessarily burdensome, then he or she no longer qualifies for further relief by other variances since he or she no longer meets the unnecessary hardship test required to obtain a variance. Using

that same rational, unless some unique conditions of the land later changes successive variances should never or rarely be granted because relief from the Ordinance needed no longer is no longer suffer unnecessary hardship was granted by the first variance. That makes sense. Granting more relief that needed to prevent unnecessary hardship would also essentially amount to rezoning of to a rezoning of a property rather than a relief valve to prevent unnecessary hardship and Board of Adjustment's are administrative agencies that make decision... that... that make decisions applying to the Ordinance to a particular set of facts. They are not legislative bodies that enact Ordinances. I guess the argument there is ah... granting more relief than necessary um.... it is essentially a zoning change and we are not in a position to change zoning. It continues I haven't done a search, but offhand I am not aware of any WI case law that deals with this specific point. However, based on the analysis above, I think that WI Zoning Law does support the conclusion that relief by a variance should be granted only to the extent necessary to relieve unnecessary hardship and no more. I hope this is helpful to you. Edwina Cavanaugh, Staff Attorney, Bureau of Legal Services, WI Department of Natural Resources". Now, I look at this and I take from, from, from a logic point of view, if you came to your, to your 2007 request, OK? And you umm... said you want to build this 2,268 square foot house, we want to be right on the cusp of that of that of that shoreline, where that, where the water drops off and we said no, we don't think you ought to be able to do that and the Board agreed with it, you know. And umm... and this would probably be umm... instruction from our Zoning Board Handbook that they used to make that decision. I'm, I'm guessing. I can't, I can't read into other peoples mind. Look it, it makes sense that you can't build up to the absolute limits of these things, OK? You can't, in other words, you can't build a house out on the water, OK? You can't.

Formella: Why not, why can't you?

Rutta: You could

Planton: That's not in the public interest.

Rutta: Not in public interest, exactly. Now, umm... if you can't build out in the water, can you build right on the shoreline? (inaudible) You could.

Planton: That's not in public interest.

Rutta: Not in public interest, exactly. So the question comes, becomes where does the where does the combination of public interest and, and the ability of the applicant to use this property uh... in such a way that is unnecessarily a burden, unnecessarily a burdensome, OK?

Planton: So we're, we're agreed that.....

Rutta: And, and this is where we sit, you know?..... We have to judge these things.

Planton: I appreciate that. Umm, before I go on to why I think our proposal is in public interest, maybe you would like to have Blair just comment on the guidance document that the Board's been using as far as granting the minimal variance required.

Rutta: I'll, I'll....

Planton: Mr. Chairman, you mentioned Wisconsin Case Law (inaudible) Wisconsin.....

Rutta: Ah... ah... let's just wait a while. We'll take of yours, and then we will ask Blair, OK?

Planton: OK, that's fine. So, it's, it's

Rutta: I'm still the Chairman.

Planton: You are. And what I would like to say is the whole purpose of this letter was just to demonstrate in more forceful terms because that is the only part of the variance we don't comply with according to 80% of the Board that was in attendance on April 20, last month. So, I'm not going to read this word for word cause you have looked at it, I came up with 8 specific points why we feel that our proposal is in the public interest. I'll go to page 2, bottom and I go through each one of the specific points again. No lakefront shoreline within the Primary Buffer Area, that is 35 feet that the State has the most interest in not being disturbed and the guidance we got from the Board 2 year ago, 35 feet is pretty much a no-go zone, nothing will be disturbed within that 35 feet. We appreciate that and with my background as a professional engineer, working on construction projects all throughout the State I, I, I appreciate how you want to protect our lakes. I don't want my lake value or the lake itself to be (inaudible, more than one person speaking) so everything we've done

Rutta: Just let me interrupt you for just two minutes, OK?

Planton: OK.

Rutta: The 35 feet OK, is measured horizontally from the water up and it is not measured on the down slope.

Mrdutt: Correct, linier.

Planton: Um hum, right. So, no construction at the 35 feet (inaudible) buffer area. We have agreed to that.

Planton: In fact, we've moved the building back another 6 feet. We have a 6 foot deck in front that we're proposing that would be up to 35 feet.

Rutta: Um hum.

Planton: But it is not covering the impervious surface because it is going to be a deck.

Rutta: It's a deck. It's a deck.

Planton: It will be....

Casey: ...living area.

Rutta: Incurring, incurring into that area.

Planton: And having decks in front of properties, in front of lakefront shoreline is a great asset.

Rutta: Yes, I've got one myself.

Planton: You understand that, the reason for that, and the reason we are going to have the deck at 35 feet is so we don't have to build at 35 feet. We have that much more room separation from the lakefront. Granted, we can't go back too far because of the constraints behind the property. So, our point is that going back and not disturbing that 35 foot buffer area, is not in anyway destroy or disturb the natural beauty of Tree Lake, at 35 feet, it's not going to destroy habitat, it's not going to destroy spawning grounds, or wildlife habitat, can we agree to that? Moving it back, because right now as the property stands 25 feet away.....

Rutta: No, I can't agree to that.

Planton: 25 feet away, that's the where the property stands right now.

Rutta: That's where the property stands right now?

Planton: That is where the building stands, so we are moving it back 16 additional feet.

Rutta: Um hum..

Planton: Moving it back is in the public interest, correct?

Rutta: Yes it is.

Planton: We can all agree to that?

Rutta: I agree.

Planton: OK. We're going to take all the impervious surface runoff water on the property, 100% away from Tree Lake. Right now, what's 500 square feet of our cottage slopes towards Tree Lake, you were out there, the water runs down the hill, you saw some erosion problems around the piers of the cottage because there is no basement. All that sediment runs down the bank into the lake. We are keeping it off with our proposal. Can we all agree that is in the public interest?

Rutta: You're not taking it all off.

Planton: We are.

Rutta: No, you won't and I'll tell you why. You can better this thing, you can do anything you want, when it gets to be 30 degrees below zero, those gutters fill up, they freeze, the water comes down and it's going to run into the lake, whenever there is any thaw from that roof, it is going to run into the lake.

Kurt Bergman, Bergman Builders: Well, if we slope the grading of the property so even if it runs off the gutters over the um... over the edge, it's going to run to the east and to the north...

Rutta: Yes.

Bergman:away from the lake so, I guess my point being that we are taking off 100% of a potential current...

Rutta: What's the distance to the other lake the wetland on the other lake?

Bergman: Probably about maybe a hundred feet.

Rutta: Feet, but, you're getting it either way, you know.

Planton: Our plan is to retain all our surface water runoff on our property with a program with rain gardens, with swales, with depressions, so no... any, any of the runoff from our property, our impervious surfaces is not going to leave the property. Can we agree that's in the best public interest? From what is there right now?

Rutta: Yes, we can.

Planton: Any, any doubts?

Berndt: I have to disagree as to whether or not your going to hold all that runoff water on your property.

Planton: OK, and why do you think we can't?

Berndt: You get some real heavy rain, it's going to overflow.

Planton: The way rain gardens and storm water retention ponds are designed is for, correct me if I'm wrong, 10-year storm, 100-year storm.

Pelky: Twenty-five year storm.

Planton: Twenty-five year storm.

Berndt: So you're going to have a rather deep hole there.

Planton: I believe we have to retain 2 inches of rain.

Mrduitt: Four inches.

Planton: Four inches? On our property?

Mrduitt: And that is why our staff would be working with the appellant.

Planton: Like if we can't do it on our property working with the staff,

Mrduitt: Then they won't be able to do it.

Planton: My goal is to make the best ecological improvements on the lake as possible and I'll talk about some of the disturbances that exist on the lake right now.

Rutta: Um hum.

Planton: OK. We'll remove the septic system and put something new in there. I was talking with Tracy, possibly even a holding tank.

Rutta: Um hum.

Planton: His concern with septic systems contaminating groundwater, septic systems contaminating the surface water, the groundwater, and surface water systems are hydraulically interconnected.

Rutta: I have one question. After I looked at this later, this little bulls-eye here, that little thing, is that a well? (referring to the plans submitted)

Planton: Correct.

Rutta: And these trees? (referring to the plans submitted)

Planton: That's a stump.

Rutta: Than that's a stump here?

Planton: That is the stump of a pine tree that fell over on the power line so no one could get past the road in three days.

Rutta: (still referring to the plans submitted) You have another one there.

Planton: That's a stump.

Rutta: I thought maybe I was wrong.

Planton: So, we replace our septic system. It's been there for probably 50 years. As I mentioned in my letter, as you've read, it's one of the oldest structures on the lake, maybe the oldest. This part of this was the original gathering space for this resort, now on the, a private road. So, we want to put something in new, a new septic and a new home,

Rutta: Um hum.

Planton: then what's there right now. Can we agree, as a group, that that's in the public interest? That existing aged structure..... (inaudible, several people speaking at the same time)

Rutta: Remember, when you address your questions, I'm the Chairman.

Planton: Yes, you're the Chairman

Rutta: Um hum.

Planton: Can we agree that it is in the best public interest to replace the septic system?

Rutta: I think, it, it, it, that it can be, it's.. that's my own personal opinion. I'm not speaking for these other members.

Casey: Yes, I'm not going to agree to anything and I'm going to tell you why. He's going to send us a letter and say you all agreed on everything....

Rutta: Yup, there you go.

Casey: and why didn't you give it to us?

Rutta: Yup, OK.

Casey: That's exactly, why I said I'm not agreeing to anything. (inaudible) That's exactly why... that's why I said I'm not agreeing to anything.

Planton: Than you ask I withdraw the question.

Casey: No, I just...

Planton: Leaving a 50 year old septic system in the ground and using it, is that in the public interest? Or is it in the public interest to replace with something brand new? Easy question.

Casey: Well, it's an easy question, but you aren't going to get a building permit unless you have that, reviewed, your existing uhh... septic system and if it doesn't meet whatever you're building on top of it.

Planton: That's why I've got (inaudible).....

Casey: Well, that's why you have..... you're going to probably have to replace it anyway. So, we shouldn't have to agree to that.

Planton: Replace, why?

Casey: Well, it isn't going to be adequate for whatever you're building.

Planton: I'm gonna.... if I build anything, I'm replacing it. It's not going to stay like that.

Casey: Well, there wouldn't be any, I mean, it's not if you were going to, it would be you'd have to.

Planton: Um hum.

Casey: And, it's just, if it doesn't meet the County regulations, you'd have to replace it anyway.

Pelky: Well, I'm just thinking if this type of request, typically the written information supplied to the Board, that you guys could maybe discuss this subsequently that you feel the public interest or new information presented qualifies for, what we're talking about right now. I'm not trying to cut you off.

Planton: This is going to have to happen at a later date.

(inaudible, several people speaking at the same time)

Pelky: I don't think it should be discussed at this reconsideration.

Rutta: We have to determine whether or not this information that is presented to us is new evidence.

Pelky: Correct.

Rutta: OK?

Mrdutt: I'd like to show.....

Rutta: And, so far, I haven't heard any. So far.

Pelky: I mean you've read this stuff.

Rutta: This is basically what came out at the, at the hearing.

Pelky: But, there are two new letters.

Rutta: Nope.... no....

Mrdutt: There are two staff letters that you need to read.

Rutta: OK, where are they?

Pelky: Into the record, and, and possibly, you should have both of those here, the Board should have received that Friday.

Scheider: I did.

Rutta: OK.

Pelky: Well, that is something new that should be added in. (Discussion going on in background)

Mrdutt: It is information that I would like you to read....

Pelky: Now if the Board would decide this evening to reconsider it for a subsequent meeting, you are not setting yourself up to approve it, it is just to open it back up.

Rutta: No, no, I understand.

Pelky: Probably discuss.....

Rutta: Ya.

Pelky:...the information that would be presented by the applicant.....

Rutta: I understand. OK, umm.....

Pelky: ...at the following meeting.

Rutta: So, this is addressed to the Portage County Board of Adjustment, from Steve Bradley, Portage County Soil Conservation, or Conservationist and Ray Schmidt, Portage County Water Quality Specialist. And, and, I have read this. Umm.... umm... dated May 11, 2009 in reference to a variance appeal A09-09 for parcel numbers 002-29-02A, 03, and 04. (Rutta read the letter into the record, commenting on several issues as he read). (Copy attached)According to the 2007 Tree Lake Study Final Report-page 11 ... "As soon as I saw this I said I'll, I'll get, I can't get all fired up about this because I never saw this. I don't know, it is the first I ever heard, OK?"this site if the Board of Adjustment grants a variance....."and we're not at that point at this at this date." ...to rebuild a house..... Tree Lake.

Rutta: I didn't get into that, because it talks about variances and we're not talking about variances now.

Mrdutt: I just indicating the Board could consider this new evidence with the Tree Lake Study, our staff, both Steve Bradley and Ray Schmidt feel that umm... the proposed plan would help and benefit Tree Lake because of these conditions.

Rutta: OK.

Rutta: Second letter is addressed to the Portage County Board of Adjustment from Steve Brazzale, Director of Portage County Planning and Zoning with reference to the Patrick S. and Laura A. Planton Reconsideration Request. (Rutta read the letter into the record). Umm... and it is, those other two letters that were ah... that came out of permanent staff..... OK, umm.... Now do you want to continue on with your summary of what...

Planton: I do, I, I, my wife and I are pretty emphatic about that letter, also is new the, this new written evidence that your bylaws require something new to be considered.

Rutta: OK.

Planton: For regardless of what changes are on. Lets go back to item number 5, in the middle of page 3 And I'm talking about the septic system. The staff's letter is in support of our proposal going forward to improve groundwater, surface water quality which in every respect in public interest.

Rutta: Um hum.

Planton: Ok. Item number 5, mentions we own 200 feet of frontage on Tree Lake. I don't have a color picture of that photograph taken of our frontage.

Rutta: It is, we understand.

Planton: I can get you something better and bigger, but um... 70% of our shoreline is natural, it hasn't changed since the lake started to be developed years ago. And umm... virtually, nothing has changed on 70% of the property. That is where the steep slope is. We've got a viewing area that exists and has existed for since as long as the cottage has been there, 80 years, practical frontage. There was a bunch of discussion at the last hearing about the number of changes to our plan that we've been working on for three years. To move the site, the garage back, and the whole reason why we put the structure where it is, would be the existing footprint exemption the back 16 more feet is to enhance the natural beauty of the lake. That is one of the requirements of being in the best public interest. But, also putting in the middle of the property, we would not have to remove those existing trees within the 35 foot primary buffer strip, because it exists already. My contention is to add, if we do move that, our house, one way or the other, we are applying for what Portage County stated us from the Statue their County Ordinance exists under State Statute NR 115, that we can cut a 30 foot strip so we have access to the water. We don't want to do that. If we be forced to move our house one way or the other, we would be in our rights to take those trees down, and you can see the height of some of those trees. Those are probably 100 years old, they are the biggest trees on the lake. We don't want to take those down. And I don't think....

Rutta: (inaudible)

Planton: I don't think the general public would ... I don't think... the County does and I don't think the State does. So, by moving it, our project away from that viewing area, by our estimation and in respect it is not in the public interest to move it away from that viewing area. Next page, item 6. The Board indicated that the natural view of the lake would be greatly enhanced by moving the north end of our proposed home several feet closer to the road. We agree that the natural beauty of the lake will be enhanced by location our home further away than our existing legally nonconforming cottage, as was suggested by the Board in February 2007. As can be seen in the above photo, on the previous page, that umm the northern half of our cottage cannot be seen from the lake in winter, summer, it cannot be seen. We could be ten feet away from the lake, it could be 100 feet away from the lake, it could not be seen. So, we're moving the northern half of the home closer to the road will require the removal of a number of mature pine and hardwood trees. I show that on my site plan. I guess there is concern about removing habitat for wildlife; it is in the public interest section of the request for variances. Let me explain these trees. They have been around sir, as long as the property has, very tall, very large mature trees. Removal of these trees is not necessary per our original plan and will destroy wildlife habitat. Additionally, these trees provide a natural buffer for sound and light between our house and cars and pedestrians on the private road. It also enhances the natural beauty of the area. There is no question about that. Our intention of moving the proposed home closer to the road negatively impacts the natural beauty of the area, and is not in the public interest, and is not needed. If we do, if we are required to move out home further away from the lake, we're going to have to vegetate that area between the house and hillside. In order to be able to vegetate that is with grass. If you've seen the lakefront and the lakefronts you gentlemen own, you know that people maintain lawns right to the shoreline. Not in public interest. Large lawns around any Wisconsin lakes cannot be in public interest because of phosphorous. We're going to have a lawn closer to the water than we would otherwise, if we moved the house back. I think we can all agree to that. It is not in the public interest and doesn't serve any purpose; it doesn't enhance the natural beauty. The last item, I will name very distinctly when we were here in 2007. I hadn't seen the letter from the DNR. If fact, when I saw it the first time, was when it was read into the record. I had no idea what the DNR was up to, what their concerns were. I can't imagine the DNR ever being in favor of any building inside of the 75 foot NR 115 Shoreline Setback Requirements. If there is, I, I'm not aware of any. Its, if there are any, its for the State to protect in the public trust all the waterfront, all the water of the State. So, and the reason why I bring that up is that it was in your denial letter of 2007, that we didn't meet the three criteria and the State recommended that we be denied. I can't imagine the State would ever recommend anything on a lake be approved.

So reading from Number 8, I'm saying while positive comments by lake stakeholders, the general public included, are not reasons for granting the variance, the Board did take negative comments, and does take negative comments into consideration, as was our case in February 2007. There were no negative comments on our current proposal of last month. In fact, we received the most positive comments from the Town of Alban, which was read into the record that was last month as well as from several lakefront property owners. They see what we are trying to do is enhancing the lake groundwater and enhancing the lake surface water, enhancing the natural beauty of the area. No negative impacts from our proposal. Now the State. In the absence of the general public, won't speak to the general public. The State of Wisconsin voices its opinion to our original February 2007 variance request. What was read into the record word for word, as was documented as one of the specific reasons why our original request was denied. The State of Wisconsin, through its administrative agency DNR, did not voice an opinion this time on our current variance proposal request. They were asked, Tracy forwarded as required, any lakefront shoreland request, for variance has to go through the DNR. They sent an extremely negative response to our original February 2007 proposal. One can only reasonably infer that the State by its silence, is supportive of our current variance request and that its not contrary to public interest. If it was, there is nobody to speak up on behalf of the general public, the State has to, and they didn't.

I talk about the do nothing alternative. Umm... I've got a couple of options there, if we don't do anything by the staff's and some of the reports that are being done on the lakefront. Lake properties, do nothing will not improve the situation, in fact you can argue, and I guess I do, make it worse, for all the reasons why we stated. You're going to leave with two questions, either do nothing or wait until NR 115 does get up a break. There are thousands of legally nonconforming structures in the State as we all know that, I'm not sure if yours are, but there are many in the State, go up to the northern lakes, and there are properties built right on top of the lake, right on the edge. My two neighbors, one is ten feet away, one is 15 feet away. Is that in the public interest?

Rutta: We can't do anything about those.

Planton: Nope, I'm just, just for reference. I am further away than they are, 25 feet. So, I have two choices either leave it the way it is to deteriorate and it is not doing anything better.

Rutta: You have that choice.

Plankton: I do. I'm going to wait till NR 115 gets changed.

Rutta: (inaudible). That will be your choice.

Planton: And they say you can build in the same footprint and revegetated the shoreland as it was originally, which I have already demonstrated, my shoreline is essentially in its natural state. And if the State would allow me to build where I am 25 feet away from the water, we will. If it will allow us to build it bigger and taller and revegetate the shoreline, we will.

Rutta: Most people would build on as close as they can get their house near the water, that's premium.

Planton: Absolutely.

Rutta: That's why you buy an older house and remodel the old house and it is done all the time. We ran, we ran, we ran into this a lot.

Planton: I know.

Rutta: And, and yours is not the first case like this.

Planton: I'm not being in competition, I don't want to be (inaudible) with this; actually, I'm trying to make it best for everybody. The last thing, I didn't introduce the evidence at the last hearing which I wish I would of. The first phase of that report for Portage County is on the County Website. I haven't seen the second one, 2007, but this is the thing I referenced the last part of my, part of my letter, that this was done four years ago and they are doing this for all the various lakes in Portage County.

Casey: I just received a questionnaire on it. Did you?

Planton: I haven't seen one.

Casey: They had to be back in by the 18th, all property owners, farmers within a certain distance from the lakes.

Planton: I don't believe I saw one.

Casey: Well I don't know, I sent mine back in Friday, I think it being the 18th as the questionnaire.

Planton: I don't remember seeing it.

Rutta: Well, it's safe to say we didn't know about it. Members of the Board didn't, but Patrick....

Casey: Well, it's because I happen to live on one of these lake, umm... that the university studies.

Rutta: OK.

Planton: What I'm referencing is on page number 12 in the report. It's in color on the letter and the thing out

there is that the portion of the lake that is my property is that little yellow section right there (showed BOA on the letter). Had I known that I would be testifying, I would have thought of getting four like I did last time, OK? As you can see on either side of my property, for 200 to 304 feet, it is severely disturbed. Right in front of our property, where maybe 200 to 500 feet on the whole lake, that's in the lowest disturbed area, this is the minimally disturbed shoreline on the lake for all these years. So, we have been good stewards of this lake. Previous property owners have been good stewards of this property, we haven't built up to the lake. We haven't done anything that wasn't in the public interest to this property since it was built 80 years ago, so what we want to do now is make it better. All we are requesting from you is to reconsider your decision that it wasn't in the public interest. Now, the other thing I am concerned with is that my understanding is the Board has to vote up or down on the proposal that has been brought forward. Two years ago, we had that big plan we had drawn up there, and we tried to get some guidance from the Board you know, this is going to be voted down, give us some idea what would be approved because we don't want to keep coming in here and arguing and keep spending \$350 bucks and come back and visit you guys every year.

Rutta: Right.

Planton: So um... we did make it smaller, we did move it further away from the waterfront, we would have liked to have gotten a vote up or down on our proposal before it started to be some (inaudible) or things being considered, garage is supposed to be moved to the other side of the property, we're supposed to be smaller, there was supposed to be no deck, it was supposed to be moved further to the north, it was supposed to be closer to the road, these are all things that we worked on for three years. Again, this specific piece of property that we felt met the three criteria and is in public interest. Now, now when we say it is not the least variance that is permissible, I come back and give you something that is 300 square feet smaller than that, I move another foot back and what's to keep the Board, maybe it's a different Board, that says you know, you could still make it smaller, you could still move it further back, you know you can make it 720 square feet, the minimum provided by the Ordinance

Rutta: The guide line.

Planton: The guide line, there is no resemblance to State law or County Ordinances, none.

Rutta: These, these Boards as long as I have been on them. This, Pat's been on it for a whole lot longer than I have. We have used these guide lines as our, as our tool.

Planton: So the determination was... (inaudible, someone speaking from the audience)

Rutta: Well, you know (inaudible) 139.00 you don't, you don't. (inaudible)

Formella: But, Mr. Chairman and members of the Board of Adjustment, you are sworn in aren't you, you take an oath.

Rutta: No, we don't.

Formella: If you don't, you don't. But, I suspect if you did, what it would lead to is the Constitution of the United States to uphold that to uphold the State Statutes to uphold the Town Ordinances, that's what you are upholding. I say that with all due respect, not some notion of what Ms Markham, God Bless her, is thinking over at the it, it, the university over there she gets a letter from, from the lady who used to be the um.... public intervener for, for Tommy Thompson, when he did away with that office, she went to the DNR.

Rutta: (inaudible)

Formella: What I am telling you, each of you need share thought, you don't share a thought, you're going to go down the wrong path because your staff and your counsel will tell you that not in your bylaws, and I just checked your bylaws, not in the guidance the staff puts out, not in State Statute, not in the Wisconsin Constitution, not in the State Statutes, not in the NR 115 does it talk anywhere about minimum allowance variance. That is Ms Markham's desire to give them what the American wants, no case law, I'm running out of fingers. Case law, that is what, with all due respect, ladies and gentlemen, you're behold to not this idea what the bureaucrats would want, that is the one, I, I, I, I encourage you to respectfully to ask staff and ask Mr. Ward, whether there is any reference to minimum variance standards in any of those six or seven fingers that I just counted off to you, or any other fingers that anybody else has here. With respect to that, the, the by telling, not unlike the posted speed limit, I said do you want a variance from a posted speed limit. Just think of how unfair it is and can I have your attention on this, think of how we are run by a county with due process of law. Due process of law means that people have notice and opportunity to defer to know what the target is, to not have a demote. If you all want that to be the target, that is, the minimum variance allowable, Mr. Chairman, I know that is what you are behold to, because you told us what now, maybe three time ago. But, what you're telling us is nowhere to be found in the law, but as you want it to be in the law; you know what people do to change the law?

Rutta: I, I...

Formella: I hear you, but if you agree with me sir, then you wouldn't be so bereaved to that concept, you would let it go, because there is no other place to you to abide by that, to do it lawfully.

Rutta: The problem that.... is this, we have people who are electricians, we have people here who are booze distributors,

Casey: Used to be.

Rutta: beer distributors, umm... I'm a telephone, I'm a retired telephone umm... maintenance man, a lawyer, a realtor, real estate, insurance, I don't know what Joan did all her life, but um....

Scheider: Administrative Office

Rutta: See, there is not a common thread of legal in us, there is not a common thread of legality, it approaches legality, in any of those professions.

Formella: That is why you have Mr. Ward here, to help you. I'm not going to let you get off that easily sir because you are all bright people. And at some point, stubbornness overcomes what everybody is trying to say that this is not fundamentally in any of the sources that you have a right to rely on.

Rutta: Um hum.

Formella: So with all due respect, you're all bright people,

Rutta: What your saying is that the source that provided Why The handbook section, this source..... is not a valid source?

Formella: No, I'm not necessarily saying that.

Rutta: You're saying one part of that source is invalid.

Formella: You're referring to that one source sir, and I looked hard for more support. I know you are wedded to I have trust me I've looked long and hard, you know I have. I did an open records request to check where is that coming from and then when they told me where it's from, I looked case law I looked NR 115, I looked at State Statute, I looked in the State's Constitution, and what all the sources I outlined here to see where it has validity. It has validity in one place, Ms Markham's outline, and no others. It doesn't have validity in Ziervogel, it doesn't have validity in Waushara County, nowhere at all except her outline (inaudible) Who can't even fight to a case with all due respect, but that is what she wanted it to be. But we have a tyranny of democracy if we let that control. The problem with that's, that's it doesn't meet due process because good people like the Plantons, have a right to, to due process. What that means....

Rutta: I....

Formella: What that means is whether you're an administrative assistant, or whether if you're an electrician, or whether you're a beer vender, or whether, God Bless us all for doing the work that we are doing the work that we are intended to do as people. That's wonderful. But what you all have a right, whether you're sitting on that side of the table or on this side, is due process, an opportunity to be heard and to know the charge it is. Because your own guidance of the staff don't say and oh, by the way, it has to be the minimum allowable.

Rutta: Um hm....

Formella: IT AIN'T IN THERE!! IT ISN'T IN THERE!! It isn't in Statutes! It isn't in Ordinance! It isn't in the Constitution! It's not in case law! It is nowhere! You can all let it go, with all due respect.

Rutta: No, we don't let it go. What you're telling me is that County Ordinance is totally invalid and worthless?

Formella: I didn't say that Dick. Mr. Berndt, I didn't say that it was totally invalid, but for the proposition that Mr. Rutta is asking us to abide by, it is. So, please don't be offended by the fact that.... he knew what the (inaudible) is a bad setting, it's a bad thing because there are nuisance, I'm not saying that the whole thing needs to be thrown out. It may seem that way and I, if I were sitting where you're sitting, I can see perfectly well that you're frustrated that you are having another attorney telling us how to do our job. I apologize for that, that perception, but there are reasons why you have people say we got to abide by the rules of law that are slathered, that's due process. It means you change, if you change the law, then you got to tell the applicants, but you know what? Your own guidance from staff doesn't alter that dec..., any guidance in submitting, where it would be found.

Rutta: Don't say that

Formella: I'm not saying that the whole Ordinance is incorrect. If I said anything that sounds like the whole Ordinance should be canned, I apologize, but I'm pretty confident I didn't say that because I don't mean that.

Rutta: OK. All done?

Formella: OK.

Rutta: You're all done.

Planton: Umm.... I'm not sure where I left off.

Rutta: Any questions for anyone. I think we covered all the points that....

Planton: I'd like to make one more statement.

Rutta: OK.

Planton: OK, last paragraph, page 6, actually the second from last. Please note that our frontage is the majority of this minimally disturbed shoreline on Tree Lake. By the County's own researchers, own independent documentation, we have maintained our shoreline in a markedly better and environmentally conscious way that virtually ever other lakefront property owner of Tree Lake. The emphasis that, it is mine..

In addition, our proposed plan to remove and replace our old an deteriorating seasonal cottage with a new building, further away from the lake, removing the existing impervious surface water runoff to the lake, replacing the aged and deteriorating septic system, removing minimal trees and none within the Primary Buffer Area, will demonstrably improve one of the environmentally-best properties on Tree Lake. How is this not in the public interest? The public interest would best be served if all Tree lake property owners were as good environmental stewards as the current and past owners of our property. I do make some reference on the last page to the Spring Lake area. I realize it does not have any credibility here, but the thing that was interesting is that when the Town Chairman came and testified; that the variance be denied because it wasn't in the public interest.

Rutta: That's Spring Lake.

Planton: That's Spring Lake, that umm... the Board did go out of it's way, it appeared to me, in my own humble opinion, to see if somehow this property owner could build something on his property, I appreciate that, I do, and I'm trying to do the same thing. My property has a lot less serious approval requirements....

Rutta: Everyone here agrees that that the only way you can build on it is with a variance, you do need a variance, and you need to be granted a variance.

Planton: Right

Rutta: Not the variance you requested.

Planton: Why is it not in the public interest?

Rutta: Because it is too close to the water, too big of a footprint to allow for the size of the lot you have, that house is way too big. My opinion, this is my opinion.

Planton: My opinion

Rutta: My opinion is

Planton: Mr. Corporate disappeared, and I wish he were here. You saw the statistics I've written about size of property. My house, my wife and our house is going to be 1,950 square feet...

Rutta: Ya, but I think we should really stop. We're not dealing with the issues of the variance now, we're taking..

Planton: You said it was too big, I want (inaudible) and for Phil's perspective. I don't have my visual aids, but there are 50 structures on the Lake, and there one-third, 17 that are larger than what we are proposing to build.

Rutta: Um hum.

Planton: And I was anticipating the question last month, well, but your lot is a lot smaller. Well, the total buildable space of our lot a ratio of what we're proposing to do, I took our square feet and divided by the acreage it come to 13%.

Berndt: What we're considering here, that is not the problem.

Rutta: Well, it is.

Planton: It is only going to be 26 feet wide. How much more do you want it to be?

Mrs. Planton: Can I make a comment?

Several people talking at one time, inaudible

Berndt: What is the size of your house?

Planton: The whole thing, it is 30 on the outside, 26 on the inside.

Berndt: What is the size of the house right now?

Planton: 1,000 square feet, and 1,270 for

Rutta: We're here to review this hearing what we want to do is determine whether or not there is enough evidence brought forward to meet the umm.... the umm.... reconsideration by request, which states Umm... Provided the request is in writing and new written evidence is submitted. OK? We can entertain the request for reconsideration. Now it is up to you plus five to determine whether there is enough, whether there new enough, new written evidence to justify a reconsideration. But, are you done now?

Planton: Yes.

Rutta: I have another witness. Please come forward. I don't want to be sworn in. I just want to make a comment.

Rutta: A comment, OK.

Mrs. Planton: If you look at the plan that was issued to you in 2007, it involved a walkout basement. They took objection of the big hill.

Rutta: Um hum.

Mrs. Planton: We went back and listened to what you said.

Rutta: Um hum.

Mrs. Planton: Ok, now we used your recommendations. You said at that time, build up, we built up. So do you see you leave us with no clear guidance because last month when we were here, the five of you, I should say the four of you, could not even agree on how this should look.

Rutta: That's right.

Mrs. Planton: Some wanted it parallel to the road; well I've been to five different lakes in the State since then. I could not find one cottage that is parallel to the road and not to the lake. You know, this is how important it is for Patrick and I to get this right. I don't think as a Board, in my humble opinion, and I apologize, that you understand that.

Rutta: I think we do. I think, umm.....

Mrs. Planton: Then what are we arguing about? What, what, what is our, I'm so confused now as property owners about what to do because we did everything you asked us to do. We have exceeded what you asked us to do, and after the meeting of last week, last month, we have four different opinions about what we should NOW do. Which leave us NOWHERE!

Rutta: Right.

Mrs. Planton: So, that's all I have to say.

Rutta: What, what might be a better way to do this, and I might be all wrong on this. You let me know.

Planton: Can I say one thing first?

Rutta: Certainly.

Planton: Making it incrementally smaller, how does it make it more in the public interest than what we've got right now, just because it's smaller and less intrusive to the eye? That the impervious surface were.... were...

Rutta: That can't be an argument.

Planton: We've made it smaller than it was before.

Rutta: Um hum. But it wasn't good enough to, to, to get this Board to agree to this. It will take something less. I can't accept, I can't accept.

Several people speaking at the same time, inaudible

Mrs. Planton: You can't come out as the Board with the exception of Joan, and God love her, can you come up with a reason why?

Rutta: I just did.

Mrs. Planton: Because you don't want to.

Rutta: Alternatives are.....

Casey: I can tell you why I can't work with this program is because averaging is 65 feet. You've got a lot here that is almost impossible to put a home on.

Mrs. Planton: That's not what you told us two years ago.

Casey: Well, I'm just talking as a Board member. I'm talking as a Board member.

Mrs. Planton: Alright.

Casey: So we're talking as if you know averaging at 65 feet. You want 35 or 36 feet.

Mrs. Planton: 41 feet.

Casey: Well 41 feet and the deck, and that deck is living area, so you take that six feet off and you're back at to 35 or 36 feet, and you know, so we're right back to 35 feet, and that isn't going to fly as long I'm talking. You know, it's ah,

Planton: You did say last month that 26 by 72 would work.

Casey: Alright, what else did I say? I said if we SHIFTED it on the lot, brought it back towards the road farther.

Planton: And, how does that improve the public interest?

Casey: It, it improves the lake.

Planton: How?

Mrs. Planton: How?

Casey: Because there is more area in front of the in front of the cottage.....

Plantons speaking at the same time: More grass. Then tell me which trees in front of that cottage do I have to remove to have view of the lake?

Casey: Well, I don't think you're going to...

Plantons: That's not in public interest and you represent the public.

Casey: Well, it's public interest that it's 65 feet or a hundred feet, it's in the County.

Rutta: There is a case that we're watching right now, that, that, what's that case in Ouida County, they denied it completely. The issued a denial and said you can't build period. That's worked its way through the courts.

Planton: As it should be, because you have to get public property owners or private property owners, and not just because there's no alternatives.

Mrdutt: Mr. Chairman, what we have to act on is plain and simple. Does the Board think there is sufficient enough new information to.....

Rutta: Exactly.

Mrdutt: t....to reconsider this in a month...

Rutta: yes.

Mrdutt: ...or two

Rutta: yes

Mrdutt: month.

Scheider: I would so move.

Rutta: Lets wait, lets wait a second.

Casey: I guess.....

Rutta: Does anybody else from the general public want to comment? Nobody? Ok, we will close the hearing portion of this particular request and we will immediately go into deliberation, which will be followed by a decision. And, ah... ah... to start the deliberation, I will simply read from the one year refilling rule, it says: No matter which has been acted upon by the Board of Adjustment shall be considered again within one year from the date of action except as hereinafter provided: (a) The case does not involve a request for an identical permit period.

Formella: Now there's no period there sit.

Rutta: OK, but, but it says does not allege the same misinterpretation or error, we did not misinterpret it and we did not make an error. Point of noncoverage or hardship as the previous case, the same hardship request as the previous case, nothing has changed in my opinion, that's not the rest of these people's opinion, that's my opinion.

Formella: Raised his hand to speak.

Rutta: You sir, are not part of the deliberation unless requested for information. Thank you. Now, Phil.

Janowski: I am trying to digest the information here because of what's happening. I will comment in a few minutes.

Rutta: OK. Patrick.

Casey: Well, there, my understanding you is that there has to be a change and I don't think there is any change, it is the same proposal again.

Mrs. Planton: inaudible

Rutta: That's the way it sounds like to me. Dick.

Berndt: I just think the sad thing there hasn't been any great changes made here (inaudible). He's got the house is a second story, and the square foot, at that time, it wasn't even considered. It's the same footprint. It is the same. We asked about, I did, about reversing the garage ah... the only excuse I got was that well we are going to have to plow more snow, that is a very small reason to do something, and I'm not saying that reversing is the right thing to do, I wanted some discussion on it and it was just wiped off and thrown aside and deemed worthless. I think it is worth considering in that. The house, the thing we've got here is very similar to what we had before. There have been no great changes to it.

Rutta: Joan.

Scheider: I think there is a change in information we have. I would like to the ability to document that, that there may be reasons to reconsider.

Rutta: Um.

J Blair Ward: Before the Board makes a decision, I ask the Board members to, to look at this a little bit more as to whether or not there is additional evidence. I heard the argument from the four gentlemen and I don't recall hearing any comments regarding whether or not there was additional evidence.

Rutta: Did, did, did said Pat said the same thing.....as they...

Ward: Well, I wanted a statement from the request of the Plantons being the same request as was originally vs new evidence being presented today as what this letter discussed, so, I guess I would like to make the record clear that the members either feel there has been enough new evidence presented or there hasn't been evidence presented.

Rutta: Lets just say that um... there are seven pages of documents presented and, and largely, it's a reiteration of the information that was presented at the um... hearing umm... That is my own opinion. There is probably some new evidence that um... the presentation of the study that the university is doing at the ah... on the lakes. We didn't have that at our hearing and um... that is new evidence, but it still does not ah... rise, in my opinion, to the level that it would, that it would warrant reconsideration.

Casey: It is the same house in the same position, it hasn't been moved. So there really isn't any reconsideration here because it was voted down. They haven't moved it one foot one way or another, from what I've heard today.

Rutta: I'll ask Phil again, I realize you weren't here when the request was declined, so it's hard for you to say.

Janowski: It is a bit of a problem.

Rutta: I.....

Casey: I don't know.

Rutta: I'll ask our permanent staff, OK. This, this umm.... requirement that we afford a minimum variance to eliminate the unnecessary hardship, as required by our guide books, OK? Is that a legally defensible decision to be?

Ward: I think that's a gray area, it was accurately stated that there was no precise guides anywhere in the law that says you have to follow that, but I'm looking at the other angle, seeing that there is no specific law out there that prohibits it or requires it, it's a guide line that has been presented through the DNR....

Rutta: Yes.

Ward: for Boards of Adjustment to follow and if the Board of Adjustment follows that and relies on that in making a decision, then it will be up to the courts to decide whether that is an appropriate guideline and that's, that's where I assume the next step will be, in Circuit Court, Court of Appeals, whatever, but I can't and I won't criticize the Board of Adjustment for using that as a guideline. That certainly is within their discretion. It is a gray area that needs to be determined.

Rutta: From all the problems that I look at as the Chairman of the Board, is I talk to other people at these seminars and everybody in the State of Wisconsin uses that book. This, this guide book that is put out is used through all the seminars' that are held throughout the State, to my knowledge. The same group of people moves around and gives these seminars. Ok? So they are out hearing exactly the same information that we're hearing, and they say..... this is one of your limits. You have a limit on how much of a variance you can grant, and they are telling us this and.... I don't think that this Board, in my opinion, should be the Board that says No, we don't recognize that as being a, a, a valid limitation placed on Boards of Adjustments. In all honesty, I think this is going to be settled and ought to be settled in either in the Circuit Court or the Appellant Court. That's my... my position, that's my position. Sir:

Planton: You're using this limitation throughout this session. You want to place a physical limitation on my property.

Rutta: It's not deep enough.

Planton: How big do you expect something to be built on this?

Rutta: We're, we're, we're bound to give you a variance.

Planton: How big? And where does it come from?

Rutta: There comes your problem. There comes the problem. How big should it be?

Planton: How big should it be?

Rutta: I think, now this is, this is my own opinion. OK, as Chairman of the Board. I think that we were quite close during our discussion ah... at the last meeting, I think we were close. We were....

Planton: You were talking a 4% difference.

Rutta: We were talking about 4 feet, if I recall.

Planton: Right.

Rutta: OK. That's what we're talking about.

Planton: And at one point, we were.....

Planton and Rutta: (talking at same time, inaudible)

Rutta: But....but...but...and we working toward that, OK? We were working toward compromise for everything. The problem is in this particular case, you as an appellant, demanded an immediate vote.

Planton: Isn't that my right?

Rutta: Yes it is. But, buy the same token, you have to live with the consequences of that action.

Mrs. Planton: Can I make a comment, please?

Rutta: You sure can.

Mrs. Planton: OK.

Planton: Well, I want my question answered, what, what is too late? In your opinion, you have.....

Rutta: Something, something that this group of 5 people will accept.

Mrs. Planton: What, when the four of you met last month, you could not agree. If you could not come to a consensus, Mr. Berndt wants to turn it around, you, want it further from the lake, Mr. Casey wants it long and narrow, Mr. Potratz had yet a fourth opinion. So, that's, that's

Casey: I think you're wrong on what I said, what I said, what I said is I wanted it closer to the road and turned a little bit.

Several people talking at one time.

Rutta: We granted a variance of 12 feet from the road, to get it further away from the water.

Casey: And we were heading in that direction until you asked for the called.....

Planton: Well, I wanted to know, at least have a, an honest opinion on the proposal before its starts to get redesigned when four people can't decide.

(inaudible, several people talking at one time)

Rutta: That's what you deal with when you got a, 5 men, 5 person board, they all come in with their own opinions.

Planton: So, what's a person suppose to do?

Ward: I think the Board is getting

Rutta: Completely sir, completely, completely, completely. I don't know what the answer is, but I'll tell you this, in every case where this has come up, with the, how many years have you been on the Board?

Casey: Eighteen.

Rutta: Eighteen years, there has been an answer. Yours is the first time that we were not able to come up with an answer. Now there is a reason for that. And, it is probably not the fact the Board isn't amendable to the compromises. With that, you all done? OK. Umm.... OK. The Chair will ask, entertain a motion to ap... to approve the request for reconsideration, at the reconsideration request placed on our June agenda for the June meeting.

Planton: Mr. Chairman, we cannot make the June meeting because we will be in San Diego at a water conference.

Rutta: OK, You want it on the July meeting? OK.

Planton: Yes

Rutta: The Chair will entertain a motion umm..... place this umm.... request for reconsideration on our July umm.... our July agenda..... umm.... if there is not a second, or there is no motion or if there is not a second to the motion, umm... the Chair will then ask for a motion to simply deny the request and umm... we'll have to go through the reasons why we are denying it.

Casey: Mr. Chairman, are there any changes to this proposal? Or is it the existing proposal that was originally given to us in April?

Ward: I also ask that the Chair address the new evidence, the letters sent as new evidence sent to you for reconsideration.

Rutta: Right. Umm..... ah..... I don't want to go into whether there is changes in the proposal, you can... you... we have to have a reason..... we have to give the reasons why if we're going to approve it...why we are approving it, if we're going to deny it, we have to give reasons why we are denying it. OK, I would ask everybody to keep that in mind and umm.... as the reasons come up..... we'll put them into the motion. First of all let's just, lets go through the procedure the State gives, if there is enough votes to approve this.... and then we can determine umm.... determine which way..... which way we're going to have to start thinking about the reasons. So the Chair, first of all will entertain a motion to approve the request to umm.... to take this reconsideration um... request up on our July 09 meeting. Is there a motion and a second?

Scheider: I'll so move.

Rutta: A motion has been to... um... to umm.... take this reconsideration request, Appeal No. A09-09, for Patrick and Laura Planton, at our July umm... meeting. Is there a second to that motion? There not being a second to the motion that motion fails. Is there a motion to deny the ah... request to, to, to um... place this meeting umm... to... to... place this reconsideration request on our July 09 meeting? Is there a motion?

Scheider: What was your request?

Rutta: Is there a motion to deny the request to place this reconsideration umm.... request on our July Meeting?

Berndt: I move to deny the request.

Rutta: Is there a second to that motion?

Casey: I'll second

Rutta: A motion has been made and seconded to deny the request to place this reconsideration on our July meeting. Um.... now, itemization of the reasons why. The first reason is that it does not meet our one, the request does not meet our one year refilling rule in, in, in that the request is umm... a carbon copy..... of the request that was denied back in back in April. Um... the second reason is that we umm... we umm... evidence that was presented to us was not of enough stature, of enough importance to justify placing this on a umm.... on a hearing in July for reconsideration. Pause..... Anything else guys?

Berndt: This information on the landscaping and the changing of the uh.... land has been done. I've, I've no problem with that.

Casey: This is a reason for denial.

Rutta: This is why we are denying the request, not the, not, not the appeal. We're talking about denying the request. (inaudible) We're saying that the request for, for um ... reconsideration is fundamentally the same request as um.... the request, the variance was, OK?

Rutta: OK, All members in favor of the motion to deny please respond with an aye or a nay if you oppose the vote.

Phil: Aye

Patrick: Aye

Dick: Aye

Joan: Nay

Rutta: Chair concurs, the Chair votes aye. The vote passes four to one.

Mrs. Planton: Can I ask a couple of questions?

Rutta: Certainly.

Mrs. Planton: Is our burden of proof here tonight to change our plan or present new evidence?

Rutta: Your burden was to present new evidence

Mrs. Planton: And we didn't do that the two letters from the staff?

Rutta: No.

Mrduitt: Judy, I would like to go on record that Portage County Planning and Zoning Staff does not support or agree with the Board's decision tonight. Thank you.

Rutta: OK, that concludes our work on this particular appeal. Thank you all.

Correspondence/Updates

Mrduitt stated the next regular meeting will be Wednesday, May 20, 2009 at 2:00 pm.

Adjournment

There being no further business to come before the Board, Casey moved to adjourn at 7:15 pm. Janowski seconded the motion, all in favor. Meeting adjourned at 7:15 pm

Respectfully submitted,

Judith J. Liebe, Rec. Secretary

Jams Potratz, BOA Secretary

07-22-09
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Wednesday, May 20, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 2:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, Phil Janowski, and Dick Berndt. Joan Scheider excused. Staff included Tracy Pelky and Judith Liebe, Planning and Zoning Department.

Pledge Allegiance to the Flag

Janowski led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing. Rutta stated there are four appeals for consideration today, all for ponds as a result of removing fill to be used exclusively for the USH 10 road project.

PUBLIC HEARINGS:

Tony & Margaret O'Donnell – Diamantidis, Owners/Hoffman Construction Co./Agent (A09-15)

The O'Donnell - Diamantidis/Hoffman request for a special exception from provisions of the Portage County Zoning Ordinance to excavate fill and blast rock, to be used exclusively for the USH 10 road project, creating a pond exceeding 30,000 square feet in the A4 General agricultural Zoning District, Town of Eau Pleine, was opened by Rutta who read the public hearing notice.

Pelky stated all four applications are almost identical, all exceed 30,000 square feet, and all need special exception approval. Blasting may be needed, and if it is, an inventory must be completed pre and post blasting. All materials removed are to be used exclusively for the USH 10 road project. No letter was received from the Town of Eau Pleine regarding this request.

Rutta swore in Paul Hoffman. Hoffman stated they need the fill for the USH 10 project. They were able to avoid wetlands and obtain fill for the north side of proposed County Road O overhead. The house is sitting on rock. Hoffman showed BOA where the rock was located on the plans he submitted. In some areas, it is five feet down. There may be need to blast some areas to reach 20 feet in depth.

Berndt asked Hoffman the proposed start and finish dates. Hoffman replied they would like to start in July 2009 and must be completed by November 1, 2010. Berndt asked if there would be any haul roads needed. Hoffman replied he would use County Road O, which will be reconstructed upon completion of the overpass. They will also be making a new access for the homeowner. Berndt asked who would be doing the blasting. Hoffman replied he is not sure; the Department of Transportation (DOT) uses a licensed blaster for all jobs and checks all building and wells within a 500 foot radius of the blast before and after the blast(s).

Janowski asked if the Department of Commerce (COMM) would be controlling the blasting. Hoffman replied yes.

Pelky stated Ray Schmidt, Portage County Water Quality Specialist, should get a copy of pre and post blasting reports to verify water quality. Hoffman replied he would do that. Hoffman stated if there are wells on the fringe of the 500 foot area, they would also be inspected. Hoffman stated there are four homes in that area for sure. Hoffman stated the Village well will be tested also; they are very concerned.

Rutta stated a certified survey map (CSM) must be completed on the north and east property lines and staked every 100 feet. Finished slopes must be 3:1 (three feet horizontal to one foot vertical) or greater. Hoffman must keep out of the wetlands. Hoffman replied he hired a licensed wetland delineator, who checked the area for him already and will do so again as they start the project. All setbacks will be maintained, the pond will be approximately 15 acres, and the maximum depth will be 25 feet.

There being no further question from BOA members, Rutta opened the request to the public for input, questions, or testimony.

Mary Erickson stated they live north of the proposed pond and are concerned with their well. They have several grandchildren she takes care of and wants to know if the completed pond would be fenced between their property and the pond. Rutta replied his personal feeling is that the State should not be responsible for a fence to keep their kids off an adjacent property. BOA has never required it in the past. There is a substantial distance between the pond and their property line. Erickson asked if they would be informed when blasting will occur. Rutta replied there would be times of the day listed as a condition, if approved. Hoffman stated normally blasting would not go past 2:00 pm; they will inform you a day prior to blasting. Hoffman stated blasting would be done during the day, for approximately two to three weeks. They always let homeowners know prior to a blast. Erickson asked who would maintain the pond. Hoffman replied there are ponds like this one all over the State and they are pretty much self maintained. If any maintenance would be necessary in the future, it would be up to the owner.

Casey asked Hoffman the hours of operation. Hoffman replied usually 6:00 am to 7:00 pm, Mondays through Fridays.

There being no further questions, comments, or testimony Rutta closed the hearing portion of this request.

Deliberation and Decision:

Berndt, Casey, and Janowski agreed that everything has been covered and the plan presented explains it all.

Rutta stated he would entertain a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a 15-acre pond exceeding 30,000 square feet with 25 foot maximum depth.
2. A 25 foot setback from property lines and 50 foot setback from the road right-of-way must be adhered to.
3. The north and east sides of the property must be surveyed and stakes set every 100 feet marking the setback.
4. All dewatering, when necessary, must be done out of the wetlands
5. Hours of operation are 6:00 am to 7:00 pm, Mondays through Fridays.
6. All blasting must be done by a Wisconsin certified/licensed blaster and a copy of his certification be on file in the Planning and Zoning Department
7. All buildings and wells must be tested prior to blasting and again after completion. A copy of the pre and post report of wells tested within the 500 foot test area must be on file in the Planning and Zoning Department.
8. All surrounding property owners must be notified prior to a blast.
9. Start date July 2009 with completion by November 2010.
10. All slopes will be 3:1 (three feet horizontal to one foot vertical) or greater and reseeded upon completion of the project.
11. All materials removed are to be used exclusively for the USH 10 road project.
12. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by roll call vote (4-0).

Kevin & Diane Skinner, Owners/Hoffman Construction Co., Agent (A09-16)

The Skinner/Hoffman request for a special exception from provisions of the Portage County Zoning Ordinance to excavate fill and blast rock, to be used exclusively for the USH 10 road project, creating multiple ponds exceeding 30,000 square feet, in the A4 General Agricultural Zoning District, Town of Eau Pleine, was opened by Rutta who read the public hearing notice.

Pelky stated this request is a carbon copy of the previous one, the only difference being there will be three ponds. Skinner had applied for a rezoning and it was granted yesterday, May 19.

Rutta read a letter from the Town of Eau Pleine Board recommending approval of this request.

Rutta asked Hoffman to come forward, informed him he was still under oath, and would be for the remaining appeals.

Hoffman stated he needs a large amount of fill for the new interchange in this area. Trying to balance the wants of the landowner and Hoffman's needs, they found three areas. Hoffman showed BOA on the plans where they would be located. He does not want to cutoff any access to farm fields. The rock is 17 to 20 feet down. The terrain and rock lines vary greatly in that area.

Casey asked the approximate acreage for each of the three ponds. Hoffman replied pond one is approximately 18 acres, pond 2 ten acres, and pond three is about 12 acres in size. Rutta asked if the maximum depth of all three ponds would be 25 feet. Hoffman replied that is correct.

Rutta stated this one looks like it will need a lot of property lines staked. Casey stated east and west sides would need staking. Hoffman replied he thought just one, the east line, the rest are Skinner's property. Casey stated the east property line is the only one having an adjoining property owner. Hoffman showed BOA on the plans where stakes would be located. The Victory Road side will meet road right-of-way setbacks.

Berndt stated the request for blasting is the same as the previous request. All the conditions will be the same.

Rutta opened the hearing to the public. There were no comments. Rutta closed the public hearing portion of this appeal.

Deliberation and Decision:

Casey stated he has no questions; everything is the same as the previous request and other BOA members agreed with Casey.

Rutta entertained a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for three ponds exceeding 30,000 square feet: pond 1 approximately 18 acres, pond 2 approximately 10 acres, and pond 3 approximately 12 acres, with a maximum depth of 25 feet for each pond.
2. A 25 foot setback from property lines and 50 foot setback from road right-of-way must be adhered to.
3. The east side of the property must be surveyed and staked every 100 feet marking the setback.
4. All dewatering, when necessary, must be done out of the wetlands
5. Hours of operation are 6:00 am to 7:00 pm, Mondays through Fridays.
6. All blasting must be done by a Wisconsin certified/licensed blaster and a copy of his certification on file in the Planning and Zoning Department
7. All buildings and wells must be tested prior to blasting and again after completion. A copy of the pre and post report of wells tested within the 500 foot test area must be on file in the Planning and Zoning Department.

8. All surrounding property owners must be notified prior to a blast.
9. Start date July 2009 with completion by November 2010.
10. All slopes must be 3:1 (three feet horizontal to one foot vertical) or greater, and reseeded upon completion of the project.
11. All materials removed are to be used exclusively for the USH 10 road project.
12. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

John & Betsy Sheehan-Tushkowski, Owners/Hoffman Construction Co, Agent (A09-17)

The Sheehan-Tushkowski/Hoffman request for a special exception from provisions of the Portage County Zoning Ordinance to excavate fill and blast rock, to be used exclusively for the USH 10 road project, creating a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Carson, was opened by Rutta who read the public hearing notice.

Pelky stated this request is the same as the two previous requests. Rutta asked if there was any correspondence for this request. Pelky replied yes.

Rutta read letters into the record, with one from the Carson Town Board recommending approval, and the second letter from Dorothy Frenette, stating John Sheehan's will is being contested (copies in file). Frenette said John Sheehan's original will was made out to his family. The second will, made Betsy Tushkowski the sole beneficiary. Tushkowski was in no way related to John Sheehan. She is using it as her middle name. The revised will was filed in Waupaca County, went to probate, and was denied. It is currently in limbo. Pelky stated he checked with Blair Ward, Portage County Deputy Corporation Counsel, for legal advice. Ward stated there would be no reason for BOA to hold open or deny the request because of this letter. The correct property owner's name must be on the deed and the contract with Hoffman. All BOA is doing is approving or denying the use of the site for the USH 10 road project. Hoffman stated he was told Tushkowski is the owner.

Rutta stated he feels very uncomfortable with this request. Hoffman stated the special exception does not give him the right to go on that property. He must have an agreement and permission with the lawful owner prior to doing anything. Rutta stated BOA could approve this, if a clear title was generated and clarified prior to start of the request. Pelky stated, if the will is not settled by the time Hoffman needs the site, no permit will be issued.

Casey stated this pond is to be approximately 18 acres and 25 feet deep. Hoffman replied that is correct. He stated this parcel has the fill needed for the base of USH 10. There is a small amount of wetlands on site, but they will meet all setbacks from the wetlands and highway. Hoffman stated he put down the whole parcel, but there will be a small amount left because of the wetlands. The pond will be more toward the center and west side of the 18 acres. It will be 100 feet from USH 10 and all other setbacks will be met. There will probably be no blasting, but he mentioned it just to be sure if he needed to blast, he would have that covered and not need to come back for another hearing.

There being no further questions, Rutta opened the request to the public for comments, testimony or questions. Jim Vitort asked if the building on that site would be removed. Hoffman replied it was not mentioned and he does not know if it is habitable.

Pelky stated the setback, septic system, and drainfield must be 50 feet from the pond request at this time.

There being no further questions, Rutta closed the public hearing portion of the request.

Deliberation and Decision:

Casey stated he sees no problems with this request, but there may be a problem with ownership of the estate. If the estate would be approved, there must be clear title obtained prior to start of extraction. Hoffman replied he would get the proper documentation and signature from the correct owner.

There being no further questions, Rutta entertained a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a pond exceeding 30,000 square feet, approximately 18-acres in size with a maximum depth of 25 feet with a signed contract between legal owner and contractor to be on file with the Planning and Zoning Department.
2. A permit is not to be issued until the title is cleared and a copy on file in the Planning and Zoning Department. The County Corporation Counsel is to determine whether the title is clear.
3. A minimum of two acres must remain untouched with the existing buildings on the site.
4. A 25 foot setback from property lines and 50 foot setback from road right-of-way must be adhered to.
5. The west and north sides must be surveyed and stakes set every 100 feet marking the setback.
6. All dewatering, when necessary, must be done out of the wetlands.
7. Hours of operation are 6:00 am to 7:00 pm, Mondays through Fridays.
8. All blasting must be done by a Wisconsin certified blaster and a copy of certification must be on file in the Planning and Zoning Department
9. All buildings and wells must be tested prior to blasting and again after completion. A copy of the pre and post report of wells tested within the 500 foot test area must be on file in the Planning and Zoning Department.
10. All surrounding property owners must be notified prior to a blast.
11. The start date was held open until the deed is signed by the correct owner, with completion by November 2010.
12. All slopes must be 3:1 (three feet horizontal to one foot vertical) or greater and reseeded upon completion of the project.
13. All materials removed are to be used exclusively for the USH 10 road project.
14. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Joyce Krupsch & Leon Pankratz, Owners/Hoffman Construction Co., Agent (A09-18)

The Krupsch & Pankratzi/Hoffman request for a special exception from provisions of the Portage County Zoning Ordinance to excavate fill and blast rock, to be used exclusively for the USH 10 road project, creating a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Eau Pleine, was opened by Rutta who read the public hearing notice.

Pelky stated this request is the same as the previous three.

Rutta read a letter into the record from the Eau Pleine Town Board recommending approval of this request.

Hoffman explained they are trying to create some ponds between the old and new highway 10. They are trying to find an area that does not disturb good farm fields; he tries to balance the need for fill and farmland. There will be one large pond until they get close to the gas pipeline. Hoffman showed BOA on the plans where it is located. The gas company has their own restrictions regarding off sets, slopes, etc., and theirs may be even more strict than what BOA is asking. They ask for a 6:1 (six feet horizontal to one foot vertical) slope and their setback may be 75 feet instead of 50.

Casey asked who owns the gas line. Hoffman replied he is not sure, he could find out. He does not have the plan with him.

Hoffman stated the rock is deeper on this site and they will probably not do any blasting because of the gas line. There will be a total of three ponds.

Berndt asked the start and completion dates. Hoffman replied this start date would be a little later because of where it is located and needed for the highway project, the completion date is November 2010.

There were no further questions. Rutta opened the Hearing to the public. There were no comments, questions, or testimony. Rutta closed the public hearing portion of the request.

Deliberation and Decision:

Casey stated the main concern is the pipeline restrictions. They should be on file in the Planning and Zoning Department. A certified survey map should be on file for the perimeter of the area. The three ponds will total approximately 20 acres. Pond one is approximately 8 acres, pond two, 10 acres and pond three, 12 acres. The maximum depth would be 30 feet. The same conditions should apply as the previous requests except for the pipe line area. The BOA members all agreed with Casey.

Rutta entertained a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for three ponds exceeding 30,000 square feet: pond 1 approximately 8 acres, pond 2 approximately 10 acres, and pond 3 approximately 12 acres, with maximum depth of 30 feet for each.
2. A 25 foot setback from property lines and 50 foot setback from road right-of-way must be adhered to.
3. The entire site must be surveyed and stakes set every 100 feet marking the setbacks.
4. All dewatering, when necessary, must be done out of the wetlands
5. Hours of operation are 6:00 am to 7:00 pm, Mondays through Fridays.
6. A gas pipeline runs through the center of proposed ponds 2 and 3. The gas company must be contacted. All gas line company conditions regarding digging and blasting must be adhered to. A copy of the signed approval and conditions from the gas company must be on file with Planning and Zoning.
7. All blasting must be done by a Wisconsin certified/licensed blaster and a copy of his certification must be on file in the Planning and Zoning Department
8. All buildings and wells must be tested prior to blasting and again after completion. A copy of the pre and post blasting reports of wells tested within the 500 foot test must be submitted to Planning and Zoning Department.
9. All surrounding property owners must be notified prior to a blast.
10. Start date July 2009 with completion by November 2010.
11. All slopes will be 3:1 (three feet horizontal to one foot vertical) or greater and reseeded upon completion.
12. All materials removed are to be used exclusively for the USH 10 road project.
13. A new drawing must be submitted showing the location of the pond(s) with dimensions.
14. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Correspondence/Updates

Pelky stated the next meeting would be June 15, with on-sites on June 13.

Rutta stated he received a petition from the Court for BOA members regarding Modrzewski. Modrzewski asked that his decision be taken from BOA and have the local Courts exercise jurisdiction for this appeal. Rutta asked staff to send a copy of the petition to all BOA members.

Rutta stated Plantons have filed a writ of certiorari. They want a copy of all the documents generated for this appeal and have the judge take a look at them. It is completely legal and it is a good idea, it keeps us in checks and balances. They are saying BOA used an incorrect area of the law denying their request. They are petitioning the court for relief. Rutta stated he had a conversation with Will Sites, Department of Natural Resources. He informed Rutta that as long as they follow recommendations in the handbook, they would be correct. Rutta stated that it does not seem logical to him, that the appellant wants maximum variance. BOA has the option to state what size a variance they will approve. Rutta stated BOA could give them some idea of what BOA would accept. We could not do that on this appeal, they demanded a decision.

Casey stated the 6-8 page letter Planton gave BOA prior to the last hearing gives him some concerns. The letter indicates that BOA agreed to this design. Rutta stated BOA might have given them some indication of what they would accept. Plantons are entitled to a variance; there is no denying that, it is just how much of a variance BOA will grant.

Adjournment

There being no further business to come before the Board, Berndt moved to adjourn, Janowski seconded the motion passed. Meeting adjourned at 3:45 pm.

Respectfully submitted,

Judith J. Liebe, Recording Sec.

James Potratz, Board Secretary

November 16, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
June 15, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Dick Berndt. Staff included Tracy Pelky, Christopher Mrdutt, and Judith Liebe, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

RECONSIDERATION:

Eric & Nancy Anderson (A09-14)

The reconsideration of a variance from provisions of the Portage County Shoreland Ordinance is requested to construct a 28 foot by 32 foot detached garage with an access deck within the 100 foot setback of Ditch Number 3 of the Portage County Drainage District, Town of Grant, was opened by Rutta, who read the public hearing notice. Rutta stated this was held open from last month to allow Anderson time to contact the Portage County Drainage District regarding setbacks from the ditch.

Mrdutt stated a variance is needed due to the setback from that ditch. Planning and Zoning was informed the Portage County Drainage District wanted to hold a meeting on this request, that is why it was postponed. The Drainage District did hold their meeting and sent staff a letter. A representative from the Drainage District Board is present to answer any questions. Also, the owners did come up with a new proposal.

Rutta read a Town of Grant letter recommending approval of this request, and a Drainage District letter recommending approval with conditions (copies in file).

Rutta stated an on-site was completed on this site last month. There are two drainage ditches involved, forming a "V" shaped site. Anywhere the applicant places the new garage; he would be infringing on Drainage District setbacks. If the garage is placed within the setback of drainage ditch 3, it works a lot better for the appellant.

Rutta swore in Nancy Anderson. Anderson stated they would like to construct a detached garage. The house currently only has a one car, attached garage and she is not sure a van would fit in it. It was built 50 years ago, and she is asking if they could build a 28 foot by 44 foot garage. Rutta stated he sees the changes on the plans. They have moved the proposed garage further east and turned it. Anderson stated the berm they spoke about earlier, is not going to be there. The Department of Natural Resources (DNR) does not want the berm there. She also showed them on the plans where the electric pole would be moved. She explained they will change the doors' placement, and the roof was changed so it would be the same as the house. It would funnel groundwater away from the drainage ditch. Anderson stated stairs would be inside the garage instead of a deck.

Berndt asked the distance from the garage to the property line. Mrdutt replied the middle property line shown on the old survey map is not the correct line, and he showed Berndt where the correct property line is located. Berndt stated the new plans are very well done and he has no other questions.

Potratz stated the revised plan is much better than the original.

Casey asked how high the side walls would be. Mrdutt replied being agricultural land, no minimum height is required. Pelky stated plans show the side walls to be 9 feet high. Anderson stated they would eventually side the home so it all matches. Casey asked if they would have lights on the front of the garage. Anderson replied they are hoping to. Casey stated BOA would require lights to shine down and inward to the property, not toward the road. Anderson stated her husband is going to check with the electric company when they move the existing pole, to see if they could have a pole put in for a light.

Donald Hamerski, Portage County Drainage Commission Chairman, stated this particular piece of property is unique. The Drainage District is exempt from shoreland zoning. The Drainage District controls a 100 foot corridor on each side of the ditches. Mrdutt replied the Drainage District has the same setback as the County. Hamerski stated it is the Department of Commerce (COMM) that wants the banks leveled. They are trying to maintain and get all the banks level. They want the ditch banks leveled before they move the electric pole. Rutta asked whose responsibility it would be to remove the bank. Hamerski replied Andersons agreed to remove it.

Berndt asked who pays for the pole. Hamerski replied the Andersons agreed to pay for it. The Drainage District does not pay for anything in this request. Hamerski stated the Drainage District would not stop the Andersons from building a garage they need.

Scheider asked Hamerski if Anderson would level the ditch the full length of the property. Hamerski replied no, it is up to Andersons if they want the whole length leveled, they would do it. It must be leveled at least to where the power pole would be moved prior to putting in the new pole. The area would be tapered ten feet from the pole back toward the proposed garage. No runoff from the proposed garage or driveway is allowed to run into the drainage ditch.

Berndt asked if Anderson had a Groundwater Plan. Mrdutt replied no, they do not. They plan on having the surface water run east, toward County Highway F. The driveway would have a slight slope to the east also.

Scheider stated it looks like they gained about 24 feet by leveling the bank. Hamerski replied it maybe even a little more.

There being no more questions from BOA, Rutta opened the hearing to the public for input.

William Zacheski stated he owns 16 acres to the east of Anderson. His main concern is the power pole. That pole fed power to their cottage. It was knocked down during a storm a few years ago. He asked if the pole is being moved further from his property than it is now, how would he get power to his cottage. Rutta replied the power pole would be moved south to the bank of the hill, not east. Hamerski stated they should be able to service both properties from that pole. Zacheski stated if the drainage goes east, where the water would go; it is a pretty flat area. Rutta stated they are only talking about half the roof; it should all soak in before it gets to his property.

There being no further comments, questions, or testimony, Rutta closed this portion of the hearing.

Deliberation and Decision:

Scheider stated it is a hard situation for the property owners and she thinks the solution they have come up with is an improvement as to what was presented originally.

Berndt agreed with Scheider.

Casey stated the whole situation is better than it was the plan is greatly improved. Potratz agreed.

Rutta read the variance criteria.

Rutta entertained a motion for approval.

Berndt moved to approve the request with the following conditions:

1. Approval is granted to construct a 28 foot by 44 foot detached garage with 9 foot sidewalls as new plans submitted.
2. The proposed garage must match the existing home.
3. Any lighting installed must point downward and inward away from the road.
4. The driveway drainage must flow east.
5. The side yard setbacks shall be met. The garage is to be 65 feet from Drainage Ditch 3.
6. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Scheider seconded the motion, which passed unanimously by a roll call vote.

PUBLIC HEARINGS AND DECISIONS:

Sonja Carlson, Owner/Chris Northwood, Agent (A09-19)

The Carlson/Northwood request for a special exemption from provisions of the Portage County Zoning Ordinance is requested to construct a 24 foot by 24 foot garage and convert the current residence into a workshop exceeding 1,600 square feet of accessory building space in the R2 Single Family Zoning District, Town of Carson, was opened by Rutta, who read the public hearing notice.

Pelky stated Carlson wants to convert the existing home into a workshop, which would be considered an accessory building, and construct a house toward the road further away from the water. This will exceed 1,600 square feet as an accessory building and needs BOA approval through a special exception.

Rutta read a letter from the Carson Town Board recommending approval with conditions (copy in file).

Rutta stated BOA did an inspection Friday morning; the parcel is 100 feet wide by approximately 250 feet deep. There is an existing 1,200 square foot house and a boathouse attached to the residence, which is right on the water's edge. He explained if the purchaser buys the parcel, he wants to build a new home up the hill and convert the existing home to a workshop.

Rutta swore in Chris Northwood, agent, representing Carlson. Northwood explained he has an offer to purchase the property, but the proposed purchaser cannot use the house because it is too small. He wants to convert it into a workshop and build a new home on site. He would construct a new home with an attached garage. He has agreed to remove all the plumbing and sewer system from the existing home. The electricity would remain. Rutta stated when he looked at it, the roof was flat, and all the surface water runs right into the water. Rutta stated the new house would not be a problem because it would be constructed up the hill nearer the road.

Casey asked if there would be any proposed decks on the existing boathouse. Northwood replied they can not go up; there is a small patio next to the lagoon. Casey stated BOA has had problems in the past with decks being added to boathouse roofs and he just wants to clarify that no deck could be constructed on top of the boathouse. Casey asked if there would be any commercial use of the workshop. Northwood replied no, just a workshop. Casey asked if there are any plans of enlarging the existing home. Northwood replied, that is the problem, the existing home cannot be enlarged.

Rutta asked what type of workshop it would be. Ron Yach, proposed purchaser, replied just a couple of table saws, a woodworking shop for his personal hobby, he likes to tinker. Rutta stated BOA must be specific as to what type of shop, so they would not run into problems in the future, if Yach sells the property and someone would want to open a boat motor repair shop.

Rutta stated the Town Board is concerned that a garage would be constructed prior to the home and a home not constructed. Rutta stated BOA usually requires a roof on any new buildings or old buildings, like the boathouse, cannot be used as a patio or deck or enclosed for residential purposes. Yach replied he understands that. The existing structure is quite attractive as it is. Rutta agreed.

Rutta stated the shoreline is manicured right down to the water line. The DNR, under NR 115, requires a 35 foot buffer from the ordinary high water mark (OHWM) landward include some type of vegetation to filter the surface water before it enters the lake. Yach asked how this lot differs from other lots on the lake. Rutta replied they have not come before BOA. If they had come before BOA with any requests, it is a condition BOA places on every site located on water. Rutta informed Yach to contact Dan O'Connell, Senior Conservation Technician, Planning and Zoning Department for recommendations as to the type of vegetation to be planted in the buffer zone.

Rutta stated if any damage greater than 50% of the assessed value of the existing buildings would occur, he would not be allowed to rebuild or fix it. Yach stated when Mrdutt was on the site, they talked about the type of vegetation that would be best for that area.

Berndt stated any lighting placed on the proposed building must be located so it shines inward and downward.

Scheider asked if the new owner could make repairs to the boathouse. Pelky replied it depends on what type of repairs they do. He can do repairs, but no new structure or additions are allowed. Scheider stated some of the things do need repair. Scheider asked why removing the restroom from the workshop is so important. Yach replied the septic system in the existing house is questionable at best. Pelky stated only one home is allowed per site and removing the plumbing takes away the thought of making that a residence at a later date. Berndt stated he agrees with Scheider, some lenience should be granted because it is nice to cleanup prior to leaving the workshop. Yach replied he agrees with Scheider.

Rutta stated the driveway that comes down to the existing home occupies a large area of the lot and asked Yach if he would be keeping it as is. Yach replied he would like to remove it. Rutta stated that would change the surface water runoff considerably.

Pelky stated a CSM should be completed. Northwood replied it is being done today. Pelky stated this lot was never surveyed. If adjustments would be needed, it would be best to find out prior to construction, to eliminate any construction on part of a neighbor's property. Pelky stated he feels there is enough property to allow for the construction to be shifted a little, if needed. Northwood stated this was an unrecorded subdivision.

Rutta opened the hearing up to the public.

Carl Carlson, a surrounding property owner, stated a survey was completed back in the 50's, but never recorded. Rutta asked Carlson if the boathouse was on footings. Carlson replied he has no idea, it is a dry boathouse. Rutta stated some buildings could be moved. Carlson replied this one cannot because it is attached to a small workshop/garage. Carlson stated neighbors are concerned that Yach's workshop may become commercial.

Pelky stated a deed restriction could be in place stating that no commercial use is allowed. The wood working/hobby shop should be for private use.

Carlson asked if a person would want to remove part of the building, would they be allowed to do it. Pelky replied one can always remove a portion of a building, but cannot rebuild without obtaining the necessary approvals and permits.

There being no further testimony, comments or questions, Rutta closed the public portion of the hearing.

Deliberation & Decision

Rutta read the reasons allowing BOA to approve a special exception.

Casey stated he has no problems with this request. It will improve the site with a new septic being installed for the proposed home. The woodworking shop is alright. Rutta stated if the roof on the existing building would need repair, BOA would request it be designed to drain away from the water.

Potratz stated he agrees with Casey.

Rutta asked if the building has gutters. Northwood replied no. Pelky stated staff is not concerned too much, but could have our Land Conservationist take a look at it.

Berndt stated the current building on site is in good condition and should be put to use. Removing the blacktop parking area would be a great improvement.

Rutta stated he would entertain a motion for approval.

Casey moved to approve the decision with the following conditions:

1. There is to be no change in size of the boathouse or the 1,200 square foot existing home.
2. The existing home will be converted into a private woodworking shop.
3. There is to be no commercial business in the workshop.
4. Existing plumbing and water fixtures will be removed from the existing home/workshop and will be disconnected from the septic system and water line.
5. There are to be no decks added to the workshop/boathouse roof.
6. The new home and garage are to be constructed at the same time.
7. The new garage is to be 24 feet by 24 feet with plans on file in the Planning and Zoning Department.
8. The first 35 feet from the water must be revegetated with recommendations from Dan O'Connell, Senior Conservation Technician, Land Conservation Section, Planning and Zoning Department. Appellant should contact O'Connell for advice on proper drainage for the existing boathouse.
9. A certified survey on file in the Planning and Zoning Department.
10. A deed restriction should be placed on the existing house/workshop restricting it to personal use only for woodworking, no commercial business. No human habitation in the existing house/workshop allowed.
11. Follow the conditions set by the Carson Town Board:
 - a. The new garage be attached to the new house
 - b. The Zoning remains noncommercial with respect to the workshop.
12. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval

Potratz seconded the motion, which passed unanimously by a roll call vote.

Andrew Sickinger (A09-20)

The Sickinger request for a variance to remodel his home by converting loft space into living space and construct a lean-to within the 100 foot setback of Lake Jacqueline was opened by Rutta, who read the public hearing notice.

Rutta read a letter from the Sharon Town Board recommending approval of his request (copy in file). Rutta stated BOA did an on-site, and it appears this is a cottage that is trying to be converted into a year-round home. The lots are very narrow and long from east to west. The lot is 1.73 acres. The western 370 feet consists of wetlands. That leaves about 165 feet usable, and that is bisected by Jacqueline Lake Lane. About 107 feet by 75 feet is on the water side and 50 feet by 75 feet across the road. The garage and woodshed are located across the road. The house is currently 22 feet by 44 feet, which leaves very narrow side yard setbacks. It will be very difficult to put in a new septic system. The cottage was constructed with two bedrooms. Sickinger wants to keep it as a two bedroom cottage. The original roof was replaced with a much steeper one.

Rutta swore in Andrew Sickinger. Sickinger stated he has an existing loft space that he would like to make livable space. The two bedrooms he does have downstairs do not have any closets; he would make the two bedrooms into one with a closet, or a bedroom and office. He would make one bedroom and a bathroom upstairs. The stairway would be in the middle of the loft space. He would also like a lean-to to store firewood. He has very limited space. He contacted septic installers, Garrison Septic mainly, but they have not been on the site yet.

Rutta asked Sickinger where the porch would be. Sickinger replied on the road side; there was one originally, but it was deteriorating badly, so he removed it. Pelky asked Sickinger what size it would be. Sickinger replied it would be approximately four feet deep by ten feet wide. Rutta stated BOA would not allow it to be four feet by ten feet, a four foot by six foot would be large enough for an entrance way.

Rutta asked Sickinger if he had any septic service installers on the site. Sickinger replied no, he has contacted Garrison, who also designs systems. He would give him an idea of what could be done. Rutta stated the County would also be involved with the septic system. Pelky replied there is a high water table on that site. Staff would work with the On-Site Waste section to get a system approved. If one were not approved, a holding tank would be a last resort. There might be a small area on the south side of the house. The owner would prefer not having a holding tank. Sickinger replied that is correct.

Rutta asked if there was a certified survey map (CSM) for that parcel. Pelky replied he does not think so. Rutta stated Sickinger should have a CSM before doing any improvements on the site.

Berndt stated the septic system is across the road. It is extremely close to the wetland and there is a lot of debris in that wetland area that needs to be cleaned up. Sickinger replied that was "gifted" to him when he purchased the place. Berndt asked Sickinger if he considered a small porch on the rear instead of the front. He replied he would like it in the front. Berndt asked Sickinger if he planned on installing dormers on the upper level. Sickinger replied no, just a window on each end.

Rutta stated BOA did not see any plans. His concern is this would convert into a three bedroom home in the future after the septic system would be sized for a two bedroom home. Sickinger replied he only wants a two bedroom home.

Scheider stated the Town of Sharon letter stated a three bedroom home with a bath. Sickinger replied the letter is incorrect.

Potratz asked if the existing septic is across the road now. Sickinger replied yes. Potratz asked if the home had been occupied during winter months, and if the septic system ever freezes up. Sickinger replied he lived there in winter and it has not frozen up since he purchased it in 1999.

Berndt asked if this would be a permanent home or a cottage. Sickinger replied he would like to live there, but at this time, he has been caring for his father.

Casey asked the lean-to size he is requesting. Sickinger replied eight feet by 19 feet.

Rutta stated there is another small building on the site. Sickinger replied it is a small garden shed. Pelky asked if Sickinger constructed it. Sickinger replied there was one there when he purchased the site, but it was falling down, so he replaced it. Pelky stated it would fall within the setbacks and BOA should consider it also.

Casey asked if the front of the cottage is on the lakeside, and what his plans were. He saw some caulking and building materials there. Sickinger replied he plans on completely residing the house.

There being no further questions from BOA, Rutta opened the request to the public.

Rutta swore in Ron Hensler, Sharon Plan Commission Chairman. Hensler stated Sickinger came before them and they understand the A-frame was constructed when zoning regulations were not as stringent. If the remodeling stays within the existing footprint, the Sharon Plan Commission has no problem with the request.

Rutta asked Hensler if Jacqueline Lake Lane is a Town road. Hensler replied yes.

There being no further questions, comments, or testimony Rutta closed the hearing portion of the request.

Deliberation and Decision

Rutta stated a variance request is completely different than a special exception. The rules are more lenient for a special exception.

Potratz stated his concern is the septic system. He does not think there is a solution other than a holding tank.

Rutta stated the house could easily be changed to a three bedroom home. Potratz replied if a holding tank is installed, it would have no impact on the number of bedrooms. Pelky stated the septic system must be upgraded or replaced prior to Sickinger continuing the project. No zoning permit would be issued until that is completed.

Rutta asked who would make the decision as to whether it would be two or three bedrooms. Pelky replied the septic code is regulated through COMM 83; BOA does not have much control over that. COMM 83 can size systems to "per capita" also; usually three bedrooms would be for six people.

Berndt asked Sickinger if there was a bathroom on the main floor. Sickinger replied yes, it consists of a stool, sink, and bathtub with shower; it is a full bath. Berndt asked if BOA could limit the addition to one bedroom and one bath for upstairs. Rutta replied that is what he is asking for. Pelky asked if BOA is placing the limitation for the whole home or only the upstairs. Rutta replied the request is for one bedroom and one bathroom upstairs. Pelky stated that is something staff could do by issuing a certificate of compliance.

Casey stated no deck would be allowed on the lakeside of the home.

Scheider stated her main concern is the septic system.

Berndt asked Sickinger what the little shed is used for. Sickinger replied building supplies; he stores his motor cycle in it during the winter. Rutta stated BOA could set a condition that it be removed.

Scheider asked if there was a structure there before. Sickinger replied yes, it was rotting and falling down, he just rebuilt it.

There being no further discussion, Rutta summarized the criteria required to grant a variance. He then stated he would entertain a motion for approval.

Casey moved to approve the request with the following conditions:

Variance - Conversion of Second Story to Living Space

1. Approval is granted to convert the upper level loft to one bedroom and one bathroom.
2. A septic system evaluation must be on file in the Planning and Zoning Department for a two bedroom home.
3. A certified survey map must be on file.
4. No decks allowed on the water side of the cottage.

Variance - Allow Conversion of Second Story to Living Space on Lake Jacqueline Lakeside of Existing Home

1. Approval is granted to allow conversion of loft space to living space within 59 feet, 6 inches of ordinary water mark of Lake Jacqueline.

Variance – Allow Entryway and Conversion of Second Story to Living Space on Jacqueline Lake Lane Side of Existing Home

1. Approval is granted to allow an entryway 27 feet 6 inches from Jacqueline Lake Lane.
2. Approval is granted to allow conversion of loft space to living space within road setback of Jacqueline Lake Lane.

Variance - Lean-to on Existing Garage within 20 feet Jacqueline Lake Lane

1. Approval is granted to allow an 8 foot by 19 foot lean-to addition of the existing garage across Jacqueline Lake Lane.
2. Remove the small storage shed on that side of the road, or move it under the lean-to.
3. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Scheider seconded the motion, which passed unanimously by a roll call vote. Rutta stated, as a reminder, all garbage and trash must be removed from the site prior to the issuance of a Zoning Permit.

Correspondence/Updates

Pelky informed BOA there will be two meetings in July, Monday, July 20 at 4:00 pm, and Wednesday, July 22, at

2:00 pm, all on-sites will be on Friday, July 17. There are numerous requests for USH 10 road project fill, four or five gravel pits, and three other requests.

Pelky stated the Judge finally signed the order to correct the terminology for the Modrzewski request and it will be reconsidered on the Monday, July 20 meeting. Pelky passed a copy to each BOA member with the correct language on it.

Rutta stated with respect to the Modrzewski case, he would recommend all BOA members read the State Statutes, Chapter 59, 69, and 59.692, and Chapter 281-3. Pelky stated he would make copies of NR 115, which includes DNR obligations. State Statute 990-001 talked about titles, sections, subsections, etc., which refers that titles are not a part of an Ordinance.

Rutta stated July is the annual election date for BOA, if anyone is interested in chair, vice-chair, or secretary that will be the time to bring it up.

Rutta asked that the variance evaluation form he drew up be copied for BOA's use; it does not need to be handed in, just for personal use.

Berndt stated he received a letter from the County Executive stating he will not be reinstated as a BOA member. Rutta read it into the record. Rutta stated Berndt has made very substantial contributions to BOA and thanked him for all his years of work.

Rutta asked if an addition to the BOA Bylaws had been inserted regarding a BOA member who is also a voting member of a Town Board, should abstain from voting on any requests from that township. Berndt replied it has been common sense all along. Rutta stated it should be inserted into the Bylaws, he thought BOA acted on it a while ago. If you are a Town Supervisor or Chairman, you should recuse yourself from any appeals in that township. Pelky replied it depends on what level you would want to act on it. If you vote on a Town level, you should not vote on a request at BOA. You need to make a choice. A discussion was held on what to do regarding this issue. Rutta stated it should be placed in the Bylaws. Three members are a quorum for BOA. Rutta stated he would make a motion that the wording be placed in the BOA Bylaws.

The item listed below must appear on an upcoming agenda as an action item with proper notice.

Casey moved to insert the wording: "A BOA member should recuse themselves, if a request from their township is considered by this Board." Berndt seconded the motion, which passed by a voice vote.

Scheider gave BOA members a copy of a variance form passed out at a workshop she attended and said it is a very simple form. Rutta replied he likes it except for one thing, it does not list all the things needed to consider regarding a variance. Scheider replied this form does not try to structure a person's thought process as the present one does. Scheider stated it would be nice to combine the two. Rutta went on to state what the Zoning Board Handbook says regarding a variance.

Rutta read a letter he received from Lynn Markham (copy in file). Scheider stated she did not receive a copy and asked if other members had. Casey, Berndt, and Potratz replied no. Liebe stated there was not a copy of the letter for the file and requested permission to make copies for staff and BOA members. Rutta stated he wants the letter back after copies are made. A discussion took place regarding the letter.

Adjournment

There being no further business to come before the Board, Scheider moved to adjourn. Potratz seconded the motion, which passed. Meeting Adjourned at 6:30 pm.

Respectfully submitted,

Judith J. Liebe, Recording Sec.

James Potratz, Board Secretary

October 19, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, July 20, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Phil Janowski. Staff included Tracy Pelky, Chris Mrdutt, and Judith Liebe, Planning and Zoning Department, and J Blair Ward, Portage County Deputy Corporation Counsel.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta read the agenda and explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Adam & Jenna Lubeck (A09-21)

The Lubeck request for a special exception and variance from provisions of the Portage County Zoning Ordinance was requested to operate a kennel and grooming service within 1,000 feet of a neighboring residence in the A4 General Agricultural Zoning District, Town of Eau Pleine, was opened by Rutta, who read the public hearing notice.

Pelky explained the variance is for a kennel being within 1,000 feet of a neighboring home and the special exception is for the kennel and grooming service.

Rutta read a letter from the Eau Pleine Town Board recommending approval of the Lubeck request (copy in file).

Rutta swore in Adam and Jenna Lubeck. Jenna Lubeck explained she and her husband have an existing pet grooming business and would like to expand. She would also like to establish a luxury resort type kennel. It would be like fancy hotel suites, each dog would have a room with a toddler bed, television, etc. They would be in a totally enclosed building. They want to move the grooming shop into the proposed kennel. The kennel would have a waiting area with public restroom, and be handicap accessible to meet commercial codes. They are working with a contractor to accomplish that. They have put a lot of thought into this. They have some ideas for waste management. They want this business to be more upscale and look nice. She gave BOA a picture showing what the building would look like, and information on dog waste management. She explained there would be privacy fences to help keep barking to a minimum. She has been dealing with Wick Buildings on designing the kennel. The proposed kennel would be 51 feet by 84 feet. They have toured many upscale kennels when on vacations to get ideas on how to accomplish the type of kennel they want. Their cost for boarding pets will be very affordable. There will be an outdoor area, but the dogs will not be free to go out on their own. They will let them out and stay with them to make sure they do not get noisy.

Rutta asked Lubeck if they had settled on a building. Lubeck replied not at this time; they have been working with Wick contractors designing the building. If they do not have Wick build it, her uncle is a contractor, and he would do it for them.

She showed BOA a very rough layout of what they want and explained where everything would be located. Rutta asked how far from the neighboring house the kennel would be. Mrdutt replied it is not quite 1,000 feet. That would require a second variance. Rutta stated he understands, there is no other place for the building to be

located. Lubeck stated there is a pipeline going through part of the back of their property. They do not want to put a business way out in the middle of a field. They want it close enough to be able to supervise the business and be sure the dogs are not barking, etc. There is no electric line coming in from County Road E.

Potratz stated the area they chose is probably ideal. If they move the building east or west, it would be infringing greater on neighboring residences. The road does provide some type of barrier.

Casey asked if they currently have a home occupation permit. Lubeck replied yes, they have had a permit for over four years. Casey stated he does not remember them coming before BOA for approval. Pelky replied if a home occupation operated from within the home, does not exceed 50% of one floor of their home and has no outside employees, only a zoning permit is needed, not BOA approval. If a home occupation would be operated in an accessory building, it needs BOA approval. Casey asked Lubeck if all the horses were theirs. Lubeck replied yes. Casey asked if they thought of putting up any screening on the west side of the lot, toward County Road E. Lubeck replied they would do whatever it takes. Casey asked Lubeck what the hours of operation would be. Lubeck replied they have not decided yet, at present they operate by appointment only. She would like hours in the mornings and a few in the afternoons/evenings. She would also like to be open on Saturdays and Sundays to allow people to drop off or pick up their animals. They would not be open all day everyday. Rutta stated they usually set up hours of operation as a condition. Lubeck stated it would probably be 9:00 am to 5:00 pm, Mondays through Fridays, and on weekends, an hour in the morning and an hour in the evening to allow owners to pick up their animals. Casey asked if they would consider moving the building to the west and put the fenced in exercise area on the east side of the kennel. That would help cut down on noise. Lubeck replied they would put up a privacy fence and plant trees so the dogs could not see cars as they drove in.

Janowski asked if the building would be heated and air-conditioned. Lubeck replied yes. Janowski replied it sounds like noise would be minimal. Lubeck replied they have two children, a two-year old and a one-year old; they plan on having two more children, they want to keep the noise to a minimum also. This is where they live and they do not want a lot of barking dogs running around. Each inside kennel will be completely enclosed, like a room in your home, complete with ceiling and windowed door. The dogs will not be as excitable, if they do not see or hear other dogs. Scheider stated if they move the building west, they would need some type screening.

Rutta asked Lubeck how large the run area would be. Lubeck replied 82 feet long by 20 feet wide. They could move it twenty feet and have all the runs on one side.

Mrdutt stated staff measured 540 feet from the Lansing house to the proposed building area. BOA needs to be specific when they make their decision as to stating distance from Lansing's home to the kennel.

There being no further questions from staff or BOA, Rutta opened the request to the public for testimony, comments, or questions.

Rutta swore in Steve Lansing. Lansing stated his house is 520 feet from the proposed kennel. The kennel will be too close and he does not want to be a bad neighbor, but there are enough dogs barking in the general area. If the building would be 580 feet or more, he would have no objections. He will be closest to the kennel. He is not very happy about it. Lubeck is not even close to the 1,000 foot setback. Rules are rules and if they made the rules, they should live by them. Rutta replied there are provisions to allow for closer setbacks to properties, that is why we are here. BOA will need to decide if this is a feasible request. Rutta asked Lansing if there is anything else he would like to see done. Lansing replied noise is the most important thing; he would like to know what time the dogs would be inside for the night and limit the number of dogs on the site. Rutta asked Lubeck how many suites and number of dogs could be there at one time. Lubeck replied there would be 20-28 suites, the maximum number of dogs per suite would be two, if they were from the same family, many families have two dogs, and they would be in the same suite. Probably the only time they would be full would be on holidays. Lubeck stated there is a kennel on Mayfair Road that raises dogs. There is a lot of barking and complaints. They can hear them and there is a full forty of trees between them. Barking is a huge concern. Their dogs would

be in by 7:00 pm. The other kennel is approximately a mile south of them and people think it is their dogs barking, but it is not. Being in the country, sound carries. Rutta asked if the dogs would all be let out at one time. Lubeck replied no.

Jim Kawleski, a neighbor, stated he owns the 80-acres north of Lubeck, and has lived there all his life. He has dealt with noise all his life. There are a lot of wolves and coyotes in the area that dogs bark at. In the years Lubeck lived there, he has had no problem with Lubeck or their animals. Eventually he would like to build a new home directly across from Lubeck's and does not have any objections to their request. Kawleski stated the soils are very different in the area, there could be clay, and ten feet away there is sand. Lubecks always take good care of their animals and he has no objection to the home occupation.

Mrdutt stated one sign, six square feet in size, is allowed. It must be outside of the road right-of-way.

There being no further testimony or questions Rutta closed the hearing portion of this request.

Deliberation and Decision:

Potratz stated this seems like a very well thought out plan. If they move the runs east of the building, it will act as another noise barrier. If the building is properly insulated, there will be little noise coming from inside. He would suggest moving the proposed building a little west with runs on the east side of the building.

Casey asked if 520 feet is from the proposed building to the neighboring residence or just property line. Mrdutt replied from the residence to the proposed kennel. There would be 540 feet to the residence, if the building would be moved west. He would like to see at least two rows of pine trees, six feet tall and planted along County Road E for at least 200 feet and out of the corner vision triangle. Hours of operation would be 9:00 am to 5:00 pm, Mondays through Fridays, the proposed building approximately 51 feet by 84 feet, a complete set of State approved plans on file prior to issuance of a zoning permit. All outside runs to be on the east side of the building, six square feet for signage, and a total of 40 dogs on site at any one time. Lubeck replied they would not want to turn anyone down on the holidays; they are investing a lot of money in this proposal. Any septic system for removal of animal waste must be approved by the County. All dogs must be inside by 7:00 pm. Maximum of three dogs allowed outside at one time.

Janowski stated he would like to see the building insulated well to keep noise to a minimum.

Scheider stated she would like a privacy fence in front of the building. She asked at what time they would start letting the dogs out. Lubeck replied by 7:00 am. Scheider stated that would take a lot of time taking one or two dogs out at a time. Lubeck replied there is a play area inside the kennel; they will not be outside all day. Scheider asked what route would be used to take them outside. Lubeck showed Scheider on the plans provided.

Rutta stated Lubeck felt that 40 dogs is a little low and asked how many she would like approval for. Lubeck replied realistically, they would like to see 50-56: they would probably only have that number of dogs on holidays.

Scheider stated for clarification, the number of dogs allowed would be part of the special exception conditions. Rutta replied that is correct. Scheider stated if they allowed Lubeck 50 dogs at this time and she would like to have 75 dogs, then what. Rutta replied she would need to come back before BOA for the increase in number. Rutta asked Scheider what number of dogs she felt comfortable with. Scheider replied 50. Potratz, Casey, and Janowski agreed with Scheider.

There being no further discussion, Rutta stated he would entertain a motion for approval.

Casey moved to approve the special exception request for a kennel and a variance for less than 1,000 feet to the nearest residence with the following conditions:

1. The kennel is not to exceed 51 feet by 84 feet in size.
2. Two rows of six foot tall trees must be planted on the east property line for a length of 200 feet south and out of the road right-of-way and vision triangle.

3. Days of operation Mondays through Fridays 9:00 am to 5:00 pm, Saturdays and Sundays one hour in the morning and one hour in the evening to allow clients to pick up their pets.
4. Approval is for 28 inside suites.
5. A septic system of some type installed for disposal of dog waste must be approved by Portage County On-Site Waste Section.
6. Three dogs are allowed outside at one time with supervision.
7. The dogs will be allowed outside during hours of 7:00 am to 7:00 pm. At 7:00 pm, all dogs must be inside the building.
8. Approval is granted for a maximum of 50 dogs to be boarded at one time.
9. A complete set of plans must be on file prior to issuance of a Zoning Permit.
10. A sign is allowed not to exceed six square feet and must be outside the road right-of-way.
11. The outside run must be on the east side of the proposed building.
12. There must be adequate insulation in the building to muffle the sound of barking dogs.
13. A privacy fence must be installed in front of the outside run.
14. The closest residence is to be not less than 520 feet.
15. The appellant has one year to obtain a zoning permit and two years to complete the project. The proposed start date is September 1, 2009 with completion by September 1, 2011.
16. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Potratz seconded the motion, which passed by a roll call vote of four to one, Janowski voting nay.

Fahrner Asphalt Sealers, LLC Owners/Jesse Houle (Point of Beginning), Agent (A09-28)

The Fahrner request for a special exception from provisions of the Portage County Zoning Ordinance and Portage County Nonmetallic Mining Reclamation Ordinance to excavate an area exceeding 30,000 square feet in the A2 Agricultural Transition Zoning District, Town of Almond, was opened by Rutta, who read the public hearing notice.

Pelky explained Fahrner wants to expand an existing pit to the west. The site was owned by two different parties in the past but is now under one ownership. Fahrner owns both and wants to combine the two parcels, which would exceed 30,000 square feet. There will be a period of comment from the public for the reclamation standards of the County's Reclamation Ordinance, as well as NR 135 requirements.

Rutta read a letter into the record from the Almond Town Board recommending approval of this request (copy in file).

Rutta swore in Jesse Houle and Gene Mottes. Houle asks BOA members to turn to page 1A of the plans submitted showing the existing Patrykus Farm Pit. This site was a 120 acre parcel approved in 2003 for a pit. Since then Fahrner has purchased 50 acres to the south, known as the Pagel Pit, 23 acres which were mined and a 27 acre adjoining parcel to the east. That would give Fahrner a total of 170 acres under the Reclamation Plan.

Pelky stated the existing 23 acre Pagel Pit had been approved for mining by BOA years ago. Fahrner would be expanding that pit east. He would be going deeper than the existing Pagel Pit listed on the Reclamation Plan.

Casey stated the only thing changed is how they mine it. Mottes replied that is correct, it would remain almost the same, only deeper, and incorporating the Pagel 50 acres for mining, and at the same time incorporate the south and east parcels, so it would all be one parcel. Casey stated Fahrner should have a certified survey map (CSM) completed on the south and east sides and staked every 100 feet to show the lot line. Mottes stated they have flagged it every 100 feet, but he is not sure if it had been surveyed. Houle stated there is a certified corner marker. He stated his survey team was out there looking for survey markers. If they are not surveyed, they could generate them. Casey stated that would be one of the conditions; if approval were granted, especially on the east side. Houle stated the setback stakes have pink flags and are 30 feet off the road setback. Casey stated the same conditions set for Patrykus would need to be adhered to by Fahrner. They would extend

conditions into the plan submitted for this pit addition. Rutta stated there are two conditions from the July 30, 2003 appeal (A03-37), condition 5 should be removed because they are not talking about temporary asphalt or concrete plants. Mottes replied he would like to have that condition left in. Condition 13 would not apply. Houle replied that could be removed. Mottes stated there is natural screening on the east side. Rutta asked if Fahrner would be using the same ingress and egress. Mottes replied that is correct. Mottes stated it is hard to consider imaginary lines; they want to get this approved and consolidated. Mottes stated Pagel had a Reclamation Plan and when Fahrner purchased it, they just used Pagel's existing plan and did not go any further.

Potratz stated if they remove the barrier between the pits, would they eventually become one. Mottes replied yes, the separation between the two properties will be non-existent.

Casey stated if approval is granted, all conditions set at the July 30, 2003 BOA meeting for appeal (A03-37) are to remain the same. Mottes asked if they could have a few conditions from the July 30, 2003 BOA meeting changed.

Rutta asked Mottes which conditions they would like to see changed. Mottes replied condition #11 changed to show hours of operation to read 6:00 am to 7:00 pm, Mondays through Fridays, 6:00 am to 7:00 pm on Saturdays, and Sundays from 7:00 am to noon, to allow sales as well as work on projects that have a timeframe. No digging or crushing would be done. Casey stated Fahrner would need to notify the Planning and Zoning Department, per project, if they need to work Sundays.

Pelky stated that the original proposal for Patrykus showed a lake as part of the Reclamation Plan, he does not know what the pit depth will be now that Fahrner is going deeper and asked if it would be above the water table. Mottes replied that is correct. The decision in 2003 regarding condition #5 temporary asphalt and concrete plant needs to be changed. Fahrner went through BOA and the request was changed in 2007. Pelky stated they went through BOA in 2007 for a special exception to allow a permanent asphalt plant on that site, which was granted with conditions (copy in file). Fahrner must keep the plant where it is located on the 120 acre site. Rutta stated he would like approval for a temporary plant on the combined parcels for one construction season. Pelky stated the Ordinance changed in 2003, which allowed an operator to have a temporary plant for one construction season. It was changed and when they applied again in 2007, there was no provision in the Ordinance that allowed anything temporary. Any kind of concrete or asphalt plant needed to be applied for through BOA. BOA would not have the authority to allow it at this time because it was not published that way. Rutta stated if Fahrner wanted to have a plant on the new site, he would need another appeal. Pelky replied that is correct, they are allowed to keep the one on the old Patrykus site. Mottes stated just for clarification, they are allowed to keep the plant on the 120 acres, but if they want to move it or put up a different one on the new acreage, they would need a new permit. Pelky replied that is correct. Rutta stated condition #13 would be removed because there is no warehouse on the site.

Casey asked if approval should be granted for three years. Rutta replied that would be good. Pelky stated staff visits all pits on a yearly basis and asked Rutta if Fahrner asks for renewal, could staff renew it, or would Fahrner needed to come back before BOA. Rutta replied staff renewal would be fine.

Rutta opened the request to the public for questions, comments, or testimony. There were none. Rutta closed the request portion of the hearing.

Deliberation and Decision:

Scheider stated she is satisfied with the conditions specified, Janowski agreed.

Casey stated he is satisfied except Fahrner needs a CSM on the newly acquired site(s). Also, any weekend work would need to be approved by Planning and Zoning staff.

Rutta entertained a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted to expand the existing Patrykus Farms pit by 50 acres, which was the Pagel pit. Fahrner owns both pits and is combining them into one pit.
2. A certified survey map must be completed on the south and east sides of the property with setbacks staked every 100 feet.
3. All conditions listed on the A03-37, July 30, 2003, BOA decision must be adhered to except conditions 5 and 13 are to be eliminated. A copy of that decision is attached and in the file.
4. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Casey moved for a five minute recess, 5:30 pm, Potratz second, all in favor.
Rutta called BOA to order at 5:35 pm.

RECONSIDERATION/REHEARING:

Thomas & Rosalie Modrzewski (A08-24)

The Modrzewski reconsideration/rehearing for a variance from provisions of the Portage County Shoreland Zoning Ordinance is requested to construct an addition within the 100 foot setback of the Wisconsin River, R2 Single Family Zoning District, Town of Plover, was opened by Rutta who read the request.

Rutta summarized why this request is being reconsidered. He explained Modrzewski has a home on Love Creek and applied for a variance to remove an existing deck, which was constructed without a zoning permit, and replace it with a home addition. BOA denied that request. The appellant, through his attorney, filled an appeal with the Circuit Court for issuance of a Writ of Certiorari. The Court issued a Remand Order to BOA instructing them to reconsider this request. BOA did not accept the first Remand Order because it stated Modrzewski applied for a special exception and it was denied. That was incorrect. Modrzewski requested a variance which was denied. Rutta stated BOA has now received the Order with the correct wording and is ready to act on it.

Rutta read the Remand Order into the record (copy in file). The Order was regarding whether or not Modrzewski's property "abuts" a body of navigable water and the legal affect of such an abutment. and the issue of setback averaging regarding this parcel.

Rutta swore in Thomas Modrzewski and attorney Brian Formella, representing him. Formella stated Modrzewski will give testimony on averaging and he will deal with the abutment.

Formella stated this request is unique. He asked BOA if they had a copy of the records. Rutta replied yes. Formella stated what was not in dispute and not considered a year ago was the affect of the abutment/non-abutment issue. He would like BOA to make one decision and finding in respect to this request. He is asking BOA to find that there is no abutment of Modrzewski's property to Love Creek. At the time of the last hearing, Pelky made it clear that there was no abutment. Formella stated the legal records show proof that Consolidated Power Co. owns the land that abuts Love Creek. Formella asked BOA to make that finding as correct and part of the legal record. The legal affect is significant when you make that finding. The Shoreland Zoning Ordinance setback does not apply to Modrzewski and he explained why. Formella asked if all BOA members and staff had a copy of the Department of Natural Resources (DNR) letter dated July 20, 2009, signed by Keith Patrick (copy in file). Rutta replied yes.

Formella stated he would like to use that letter as an outline and go through the letter stating why the legal affect of non-abutment means that the Shoreland Zoning Ordinance does not apply to Modrzewski with respect to setbacks. There are eleven points and he numbered his copy to make it easier to understand which one he is speaking of. In bullet 1, Patrick referred to State Statute 281.31(e) & (f) and 59.692(1)(b) "definition of shorelands as lands under, abutting or lying close to navigable waters..." that does not apply to this request.

Formella gave BOA members a handout of State Statutes 59.692(1)(b) referring to shorelands and referred to it as he went through the DNR letter. Formella stated his findings are that Modrzewski's property does not abut

navigable water. He is within the Shoreland Zoning area. Formella stated the setback of Portage County Zoning Ordinance and the DNR model ordinance NR 115 talks about a 75 foot setback required by the State and 100 foot setback required by Portage County, which allows no construction within that distance adjacent to or abutting a body of navigable water. That takes Modrzewski out of that limited Ordinance. He is in the Shoreland Zoning area.

Formella read from a handout he gave BOA which he highlighted in yellow and stated: "Unless an existing development pattern exists, a setback of 75 feet from the ordinary high water mark (OHWM) of an adjacent body of water to the nearest part of the building or structure shall be required for buildings and structures except for boat hoists and boathouses." Formella stated that is significant because when talking about the setbacks, Modrzewski falls outside the Ordinance when talking about his house being adjacent to water for setback purposes. He feels that Keith Patrick does not really say that.

Formella stated that bullets six & seven refer to Potage County adopting a Shoreland Zoning Ordinance according to NR 115. It is beside the point because Modrzewski's property does not abut the water.

Bullet eight says that if the Planning and Zoning Department states Modrzewski's property does not abut water, it would mean the County Ordinance was less stringent than required by State Statutes.

Formella read the last three bullets. Formella stated the phrase "lots that abut waters" has now been deleted from section 7.7.4.2.1, Portage County Shoreland Zoning Ordinance. It was merely a title in that provision pursuant to section 990.001(16), State Statutes, which says titles in State Statutes are not part of a statute. Ordinances are construed like statutes, so the title in an ordinance is not part of the ordinance

Formella gave BOA a partial copy of the old Shoreland Zoning Ordinance with the section regarding lots abutting on navigable waters. It states: "All buildings and structures must be 100 feet from the OHWM of a body of water to the nearest part of a structure." That phrase has been removed from the Shoreland Zoning Ordinance.

The Planning and Zoning Committee (P&Z) recommended that language be taken out. Formella stated he has a CD copy of the P&Z meeting on October 22, 2008, that recommended the language be removed. He also has a CD copy of the County Board meeting following the P&Z October 22, 2008 meeting a month later. He was surprised to hear or not hear that no one at the P&Z or County Board meetings stated that an error had been committed, that maybe it was wrong for a long time. No one questioned it. Brazzale said they are trying to change language for lands that abut on bodies of navigable water. He stated that language had been there since the very inception of the ordinance. He quoted from a DNR model ordinance Portage County used to develop Portage County's Shoreland Zoning Ordinance, the language lots abutting navigable water provision in it. Formella stated he found the model Shoreland Zoning Ordinance Brazzale referred to. Formella stated this is just a part of the Ordinance from DNR and Portage County revised it in 1985, and they left that language in. People do not like that language, so the County changed the Ordinance in 2008. He gave BOA members a copy of the Resolution changing the Ordinance. The County Board members, at the November 2008 meeting, did not even consider the issue. Formella stated that Modrzewski must abide by other requirements of that zoning district, but he does not abut a body of navigable water.

Formella stated Patrick, in his letter, said there is a Statute 990.001(6) that states the titles to any provision in a State Statute is not part of that Statute. Ordinances are construed like Statutes, so the title in an ordinance is also not part of the Ordinance. Ordinances like Statutes must be construed in pari materia.

Formella referred to a couple cases that interpreted the provisions, one case from Pure Milk Products vs National Farmers Organization, a Supreme Court case in 1974, states that a title may not be part of a Statute; it may be persuasive of the interpretation to be given a Statute. Formella stated the case he mentioned is 64 Wis. 2nd 241 (page 571) Court Cases. Formella stated there is another Wisconsin Court Case which states that a title of an Ordinance or Statute is persuasive of the interpretation to be given to that Statute or Ordinance. That is from a

Milwaukee Police Association vs City of Milwaukee, Supreme Court of Wisconsin case 2005 Wis. 28, paragraph 20. Titles are very persuasive. Patrick may be right when he states titles are not a part of the State Statutes and it may be good enough. He stated DNR is coming out with new standards regarding water setbacks very soon. He is asking that BOA make a finding that this property does not abut a body of navigable water.

Formella stated that when Modrzewski went before the Plover Town Board, they recommended approval of his request stating he did not meet the rear lot line setback, but he did not abut a body of navigable water. There is land between him and the water which is owned by Consolidate Power Company. The old Ordinance stated lots that abut on navigable water. Brazzale said at the October 2008 P&Z meeting the phrase Lots that abut navigable waters should be removed so this would not happen again. Formella stated that is fine, change it. The Judge instructed BOA to apply the Ordinance that was in effect during the time Modrzewski applied for the variance, not the one that now exists.

Modrzewski stated his first meeting was with the Plover Town Board. He presented his request for constructing an addition on the back of his home, which faces the water. He met rear lot line setbacks because his property does not abut water. There is a strip of land between his property and Love Creek that does not belong to him. Town of Plover Board informed him he needed to apply to Portage County Planning and Zoning for a variance. Pelky did an on-site inspection with Modrzewski on his property. Pelky acknowledged Consolidated Power Co. owns that strip of land between Modrzewski and Love Creek.

Modrzewski stated he took pictures of his home, then got in his boat and took pictures of other properties along that section of water. There are several homes that are much closer to the water than his.

Rutta stated he would go through some points brought up today, interview Pelky, and give everyone a chance to speak again before BOA makes a decision.

Rutta asked Pelky to take the stand and swore him in. Rutta asked Pelky if he is Portage County's Assistant Zoning Administrator. Pelky replied yes. Rutta asked how long the Shoreland Zoning Ordinance has been in effect. Pelky replied it went into effect January 1969 and been in effect for 41 years. Rutta asked how many times this particular aspect of the Ordinance has been challenged. Pelky replied in his 18 years with the Planning and Zoning Department, this is the first time. Rutta stated this Ordinance has been in effect and accepted by Portage County residents for 41 years.

Casey asked Pelky what part of the Wisconsin River is owned by Consolidated Power Co. or other paper mills. Pelky replied Consolidate owns a strip approximately 25 to 30 feet wide along most of the Wisconsin River. He stated it continues along Love Creek. Several people living along the River did not and do not know that Consolidated Power Co. owns that strip, residents only own up to the crest line. Consolidated Power Co. owns flowage rights along that whole area. There are numerous sites on Love Creek, that when you measure setbacks from the OHWM, cannot be met. This is not the first time it has been applied, but the first time it has been challenged. This owner's property has probably been assessed as "waterfront property" by Town of Plover's previous assessor. The Town has a new assessor and Modrzewski will need to work that out with him. Property owners along that strip owned by Consolidated Power Co. must get permission from Consolidated to cross to get to the water.

Rutta stated he would go through the basics being considered. Rutta asked Ward who has more power, an Ordinance or State Statute. Ward replied State Statutes have control over counties and allows a county to enact their own Ordinance(s), as long as it does not go beyond the scope of what State Statutes require or allow. Rutta asked if that holds true for Administrative Codes. Ward replied yes. Rutta gave the definition of a flowage and stated Love Creek is actually a flowage. He quoted State Law defining shoreland requirements, shoreland areas, and shoreland setback areas for construction. State Statute 887-30 says that if a County fails to enact an ordinance that meets DNR shoreland zoning standards by 1968, DNR had the power to.

Rutta asked if everyone agreed so far. Formella replied he is not conceding to anything because Rutta is acting more like an advocate than an impartial tribunal. Rutta stated he was trying to get an idea if everyone understood.

Formella replied Rutta asked what he thought, and he is going to state what he thinks. You are asking, as an advocate, not as an impartial person for this rehearing. If Rutta wants to advocate he may. It will only help Modrzewski with his argument. Formella stated we need an impartial tribunal, not an advocate. Rutta replied he is only bringing information to BOA members so they can make a reasonable decision. Formella asked Rutta to please keep him out of any agreements. Formella stated Rutta is only trying to state an argument for his position. Rutta replied he does not have a position. Formella stated he thinks Rutta does. Rutta continued going through State Statutes, reading parts regarding ordinances referring to subdivisions and zoning regulations for properties including controlled building sites, placement of structures, lands under, abutting, or lying close to navigable waters. Rutta asked if everyone understood what they are talking about or had any questions. There were none.

Rutta then referred to Wisconsin State Statute NR 115, which requires counties to enact ordinances for protection of all shorelands in unincorporated areas by 1968 or DNR would enact an ordinance.

Rutta stated you could clearly see the intent of the law to regulate construction. Every rule created since 1968 has that intent. State law mandates counties regulate an area 300 feet from navigable waters or from the OHWM. Rutta stated BOA needs to look at what a navigable stream is. Formella stated Modrzewski is not contesting Love Creek is a navigable stream. Rutta continued with his explanation of what Love Creek is. Consolidated Power Co. retains ownership of a 25 to 30 foot wide strip of land along the Wisconsin River. The reason is that at their discretion, Consolidated Power Co. can raise water levels when there are periods of saturated soils and high water. They have the power to do that because they retain riparian rights. They can raise the water as high as riparian rights allow. Rutta continued with his explanation of why and what Consolidated Power Co. can do. He explained a floodway is part of a navigable stream, giving the definition. He also explained titles, sections, and subsections are not a part of Ordinances, Statutes, or Administrative Code.

Rutta stated BOA must return a statement to the Judge stating they affirm this property is subject to or not subject to County Ordinance. Rutta stated he assumes that BOA members did some research over the weekend to understand what is being covered today.

Rutta asked Formella if he had anything to add. Formella replied yes, and asked Pelky if he had any information that Modrzewski created this situation with Consolidated Power Co. Pelky replied no, this would have been done prior to Modrzewski's purchase of the property. He stated a smart developer would have looked at the Ordinance and known the laws. Formella stated neither party created this situation. Pelky replied not that he is aware of. Formella stated the Ordinance Rutta is basing his decision on has been changed as of November 2008, and asked Pelky if that was true. Pelky replied yes, it was changed for clarification purposes. Formella stated there was never any mention of any error at all by Mr. Brazzale, Director, Planning and Zoning Department, who presented the change to the Planning and Zoning Committee, and asked if that was so. Pelky replied he is not aware of what Brazzale said to the Committee, he cannot comment because he was not at that meeting.

Formella stated there are new DNR rules. Pelky replied the new NR 115 is not effective yet. He looked at the proposal, but it must go before the Legislature, and before they review and change or sign it, he is not going to look too far into the future regarding the changes.

Rutta asked if any BOA members had questions for anyone to help them make a decision based on how and why you feel the way you do regarding this issue.

Casey stated he would like to ask Lynn Markum some questions. Rutta swore Markum in. Markum stated she is a shoreland and land use specialist with the University of Wisconsin Extension. She has been in that position since 2000. During that time, she has helped eight counties revise their County Shoreland Ordinances to provide the level of prevention they felt prudent for their lakes and rivers. This situation, like any variance situation, one should be looking at the purpose, the intent of the Ordinance, as well as specific language within it.

Markum stated in addition to looking at the Ordinance, you should look at the intent of shoreland setbacks, why we have those setbacks in Portage County and across the State. There is a lot of science out there now, more so than in 1968 when they were initially adopted. Her expertise is largely related to water quality. The further back impervious or hard surfaces are from the water, the less likely runoff is going to make it into the lake or river. The runoff, snow, rain or whatever, as it runs toward the water, can carry anything along the way with it, soil, leaf litter, whatever, if there is any oil or gas leakage, it can carry that into the water. The purpose of that setback is to allow the area between structures and water to filter and soak into the ground. Our soil is one of the best filters we have. If that surface water actually has enough time and space to soak into the ground, then into the lake or stream through the groundwater it allows for the cleanest surface water to enter the lake, etc. Plants that have stiff stems help slow the water down and physically stop the larger chunks from entering the water.

Casey asked where we have this problem, has there been any question as to the setback from the water. Markum replied not that she is aware of, but cannot say there has never been a question. Casey asked if there are any court cases she is aware of regarding the OHWM to a structure. Markum replied she is aware of a difference in Chapter 59 or NR 115, it talks about pothole lakes, seepage lakes, where you measure from the high water mark, rather than the OHWM, that is the only difference.

Formella asked Markum if she was for or against this request. Markum replied neither.

Rutta asked if anyone from the audience would like to testify, comment, or ask questions regarding this matter.

Modrzewski stated he has one comment regarding the shoreland area of his site, if anyone goes past his property in a boat, they will see nothing but natural growth. All of their downspouts point inland away from the river; all surface water is contained on site.

Rutta stated Markum was not addressing the issue at hand, whether this site abuts the water or not.

Rutta read the existing NR 115. He said all structures must be 75 feet from navigable waters and 50 feet from wetlands adjacent to navigable waters. Formella asked Rutta where he was reading from. Rutta replied NR 115. Formella asked Rutta where specifically because he could not find that statement anywhere. Rutta replied he may have an older or newer issue, his is dated November 16, 2004, NR 115.13(2) Purpose, General. Formella thanked Rutta and stated his copy does not go to #13, he is not sure if that is an updated issue or older one. Formella stated for the record, his issue states AC Draft, November 16, 2004. Formella stated it may not be enforced, but he will find out. Rutta stated the intention of NR 115 is that all lands along navigable waters be regulated and the DNR setback is within 75 feet from the body of navigable waters. Rutta stated if we accept this property does not abut navigable waters, it negates NR 115. It does not say who owns it, just 75 feet from navigable waters.

J Blair Ward, Portage County Deputy Corporation Counsel, stated he would read a portion of the transcript Order issued by Judge Finn remanding this case back to BOA, and what their job is (copy in file). After reading it, Ward asked if BOA understood what he just read. Scheider asked Ward to please read it again. Ward read the Order again. He stated the Judge is asking if the land must abut on navigable water, or whether it just talks about it, whether or not it is just a caption in the Ordinance. What effect the caption has on the application of that Ordinance, does it abut or not.

Casey stated BOA has always used the OHWM setback for construction, there has never been any question of who owned the property or where the setback started, there was never any question, and the strip of land owned by Consolidated Power Co. is unbuildable.

Janowski asked if the problem is the strip of land owned by Consolidated Power Co. between Modrzewski and the water. Formella replied that is correct. This request will not be before BOA again because of the Ordinance change in wording since the original request. They are not contesting a navigable body of water, just that Modrzewski does not abut that body of water.

Ward stated before BOA goes into deliberation, he would like to make a clarification as to Formella questioning if he represents the interest of Portage County Planning and Zoning Department as an advocate on a particular position of this matter. Ward stated for the record, he does not represent Portage County Planning and Zoning Department; he is here as legal counsel to BOA. He wants to make that clear to everyone here and for the record. He would like to ask BOA to adjourn for a five minute recess; he would like to consult with Rutta as BOA Chairman prior to making a decision.

Rutta entertained a motion for a five minute recess (7:10 pm), Janowski seconded, all in favor. Rutta called the meeting back to order at 7:15 pm.

Deliberation & Decision:

Rutta stated if no one has any questions, he would like each BOA members to state how they feel about this request. An agreement must be reached and it needs a majority vote to pass.

Potratz stated he does not think the Judge should have remanded this back to BOA in the first place. BOA made a decision on the facts they had and he thinks it was a good decision. Rutta stated they are dealing with the abutment issue, if you think it abuts, why and if you do not think it abuts, why. Potratz replied from everything he has heard, his opinion is the abutment issue is irrelevant. The abutment is not a factor; the setback from the OHWM should be adhered to no matter who owns the land.

Janowski stated the law should be refined, it is very vague. The 75 foot setback should be adhered to, it is not written anywhere. He does not think the property abuts the water, but the 75 foot setback set by the State should be followed.

Scheider stated in 2007, residents of the Town of Plover who lived in this area were assessed as 'Waterfront Property.' The decision from that issue was that residents do not abut that body of water because they do not own land abutting the water. Consolidated Power Co. owns that property. She is disturbed the word adjacent has a different meaning in this issue. Some statements made an attempt to get around the issue we are talking about.

Casey stated there is a lot of legal talk going around. State law says all construction must be at least 75 feet from the OHWM, Portage County Ordinances stated 100 feet from the OHWM. Every case is considered on its own merit. We have records that on May 23, 1989, Modrzewski met the 75 foot setback at that time when he constructed his home. He accepted it and had no problem with the setback at that time. All of a sudden, a deck appeared on the waterside without a permit being issued and now he wants to replace that deck with living quarters. Modrzewski had no problem with setback requirements in the past.

Rutta asked if anyone thought Portage County changed the wording to get around State law, where it said lots abutting water. Do you think it came intentionally or just came down as the Ordinances were updated? Janowski stated he does not think it was done intentionally; the County can enforce a stricter setback than the State. Casey stated it is just the way it turned out.

Rutta asked if BOA was ready to make a decision on this request. No one objected.

Rutta stated he would entertain a motion, if it fails, he will entertain a new motion, in fact, he will make the motion.

Rutta motioned BOA adopt the position that the subject (Modrzewski) property does, in fact, abut the navigable waters of Portage County, specifically Love Creek for the following reasons:

1. It has always been the intent of State Law 59-692 and 28131 Wisconsin Administrative Code NR 115, and County Ordinance 7.7. It has always been the goal and intent of those documents to provide regulation for shorelands on navigable waters and those shorelands include 300 feet from a river or

stream, by definition of WI Administrative Code, 75 feet setback from navigable waters regardless of who owns the property. Portage County Zoning Ordinance, which was placed on the books with no intent to bypass State Law or WI Administrative Codes, in good faith, to mean lots, whether they abut the water exactly or just lie close to the water, that was the intent of the Ordinance, State Law and WI Administrative Code. It has been accepted for the past 41 years that the Ordinance has been in effect. This property abuts navigable waters.....

Ward interrupted Rutta for a point of clarification and stated he has made the point, the intent of the motion, but he would like to raise a point with BOA now as it pertains to the motion, instead of using the term or making the reference that the land abuts navigable waters, he thinks BOA would be better advised to use the phrase that the lot owned by Modrzewski is subject to the Portage County 100 foot setback, even though it does not abut, because as the diagram shows, there is no physical abutment from Modrzewski's land to the water, but yet, the motion appears that it may still be subject to Portage County Shoreland Zoning Ordinance.

1. Rutta stated amend the first part to read 'even though it does not abut water, the Ordinance was written in such a way it is meant to include that property and would be subject to Portage County Ordinance, State law, and Administrative Code. The property lies within the 100 foot setback of the Portage County Shoreland Ordinance.

Ward replied that is the correct wording.

2. State Statute 990-1 Construction Statutes title says On Lots that Abut Navigable Waters. That does not apply to the body of Ordinance because it is a title, not a Statute.
3. Consolidated Power Co. retains the strip of land between Modrzewski and the water to act as a floodway in the event of a major flood, as a result that property is in the floodway.

Casey seconded the motion.

Scheider asked if BOA is voting to say Modrzewski property does abut navigable water. Rutta replied yes. Ward stated he would advise Rutta not use the word "abut." Rutta replied you are correct, what BOA is saying is the Modrzewski property is, according to Administrative Code, State Statutes, and State law, all apply to the Modrzewski property, even though it does not physically abut Love Creek and therefore the 100 foot setback applies.

The motion passed by a roll call vote of four to one, with Janowski voting nay.

Rutta asked Ward if the decision was worded correct. Ward replied yes.

Rutta stated the next issue is that of averaging. He read Section 7.7.4.3 Reduced Building Setbacks from the Shoreland Zoning Ordinance, explaining how averaging is obtained. No setback may be less than 65 feet from OHWM. Rutta asked Pelky to explain how averaging works.

Pelky stated if there is an existing home on either side of your property and they are less than 100 feet from the OHWM, for example, say one is 80 feet from the water and the other is 60 feet from the water, you add the two, which is 140 feet and divide that by two, the property in the middle would be allowed to construct their house at 70 feet from the OHWM. If there were homes 60 feet and 40 feet on either side, you could not average, because that would be 50 feet from the OHWM and the Ordinance states one can only average up to 65 from the OHWM. No one could average any closer than 65 feet. That case would require a variance. Rutta asked who determines if the property is eligible for averaging and who makes the decision if averaging applies. Pelky replied permanent staff determines that. Rutta asked Pelky if under any circumstances, BOA would have anything to do or say regarding averaging. Pelky replied no, averaging can be applied, it takes BOA out of the picture. Rutta stated BOA has no interest and has nothing to say about averaging.

Rutta asked Ward if that was a satisfactory statement for the Judge. Ward replied it is, he would like to ask Pelky some questions.

Ward asked Pelky how many years he has worked for Portage County. Pelky replied 18+ years.
Ward asked if he has ever known BOA to make a decision on averaging. Pelky replied no.
Ward asked if it is within BOA's authority to make a decision on averaging. Pelky replied no.
Ward asked Pelky if he realizes he is still under oath from being sworn in earlier. Pelky replied yes.

Ward stated with testimony from Pelky, BOA can discuss the information received from him, then a motion can be made and action taken.

Rutta asked if the appellant would like to make a statement regarding averaging. Formella stated he would like to legally make a statement that he thinks BOA has always acted on an error corrected capacity. Setback averaging, if by Statute and/or Portage County rules and regulations now, states in it that BOA has the authority by Statute to correct errors. He does not think it is enough to say BOA has never been involved in averaging. If you said that legally, he would refer to Modrzewski to address the issue.

Modrzewski said, referring to the Statute about averaging being from buildings on either side of a proposed building, on one side of his house there are no homes, just Consolidated Power Co. property. On the other side, his neighbor built a new home, the original home was a lot closer to the water than the current one. The new home was averaged at 85 feet from OHWM. If you took the ridge line from one side of his (Modrzewski's) site to the other, the home is considerably closer; it would put it about 42-45 feet from that ridge. Rutta stated the Ordinance says if there is only a house on one side, the setback should be the averaging of the existing building and 100 feet, divided by two. Pelky stated that is correct. Rutta stated BOA has nothing to do about it and never has. The only time BOA gets involved is if a variance is needed. Pelky stated you can only average from 100 feet down to 65 feet, you cannot average below that. This particular case, the house is 75 feet from the water, through averaging, you might put a 10 foot addition on it, but going closer, averaging cannot be used according to the request.

Ward asked Pelky if one would average in this case, the average would be 90 feet from the water. Pelky replied the Modrzewski home was built at 75 feet using averaging. The numbers he mentioned earlier were just a sample. Modrzewski built his home in 1989, he was allowed to use the averaging up to 75 feet, based on the measurements he took; the main part of the home is at 75 feet from the OHWM. Ward asked how that was established. Pelky replied it was established in 1988 or 1989. He cannot comment on how that was established because he was not working for Portage County at that time. Brazzale would have probably been out there. Ward asked if someone would want to build on the water, how would they determine where they could build if averaging would be in play. Pelky replied permanent staff usually goes to the site to meet with the prospective owner, see what they want to do, and go over the options with them. If an individual wanted to go closer to the water, staff uses aerial photos and measures to see if they could use averaging or would need a variance.

Ward asked Pelky if Modrzewski contacted him regarding using averaging as an option to build 59 feet from the OHWM. Pelky replied he believes they discussed it on site. The house was built using averaging of 75 feet from the OHWM, if he wanted to build the addition, it would bring his house to 58-59 feet from the OHWM, and he would need a variance. Rutta stated according to his measurement, the existing deck is 57 feet from the OHWM. Casey stated the home is 75 feet. Rutta stated it is 25 feet to the Consolidated Power Co. lot line and then another 25-30 feet to Love Creek, which would make the new construction only 50+ feet from the OHWM.

Ward stated he would like BOA to stress a number of issues regarding averaging, then make a formal decision by roll call vote whether or not averaging would allow Modrzewski to receive relief he is seeking and also a decision that Pelky was or was not wrong in saying Modrzewski could not build as he requested because of the averaging. Review Pelky's statements.

Rutta stated he would entertain a motion stating Portage County Planning and Zoning staff acted correctly when interpreting the averaging provision. Ward replied that is correct. The averaging does not allow Modrzewski to

build as requested. Rutta stated he wants to point out BOA has nothing to do with averaging. Rutta stated he would make the motion.

Rutta made a motion: Averaging does not allow Modrzewski to build as he requested. The permanent staff acted correctly because averaging does not apply to any construction less than 65 feet from the OHWM. A variance would be needed to construct anything less than the 65 foot setback from the OHWM.

Potratz seconded the motion, which passed unanimously by a roll call vote.

Formal Decision as Directed by Portage County Deputy Corporation Counsel, J Blair Ward

DECISION
PORTAGE COUNTY BOARD OF ADJUSTMENT

TO: Thomas & Rosalie Modrzewski
4758 Pierce Avenue
Plover WI 54467

APPEAL NO. A08-24
TOWN OF Plover
SEC. 26, T. 23 N, R. 7 E
HEARING DATE July 21, 2008
(if different from below)

At the July 20th, 2009 Board of Adjustment hearing, the following FINDINGS OF FACT, CONCLUSIONS OF LAW, and DECISION were made by majority vote of the Board of Adjustment members based upon the record and evidence presented at the hearing:

FINDINGS OF FACT

1. The Thomas & Rosalie Modrzewski property, Appeal (A08-24) does in fact abut the navigable body of water of Love Creek to the extent necessary to be subject to and carry out the legislative intent of section 7.7.4.2.1 of the Portage County Shoreland Zoning Ordinance as well as Wisconsin statutes and the Wisconsin Administrative Code; and
2. The Thomas & Rosalie Modrzewski property, Appeal (A08-24) is subject to the requirements of section 7.7.4.2.1 of the Portage County Shoreland Zoning Ordinance as it existed on July 21st, 2008 when the petitioners' variance request was first denied.
3. The applicable Portage County Shoreland Zoning Ordinance, subsection 7.7.4.2.1, as it existed at the time of the appellants' application requires a setback of at least 100 feet from the ordinary high water mark of navigable waters and reads as follows:

7.7.4.2 SETBACKS FROM THE WATER

Setbacks from the water shall be as follows:

7.7.4.2.1 Lots that abut on navigable waters. All buildings and structures, except piers, boat hoists and boathouses which may require a lesser setback, shall be setback at least 100 feet from the ordinary high water mark of navigable waters.

4. The permanent staff of the Portage County Planning & Zoning Department properly interpreted Portage County Shoreland Zoning Ordinance section 7.7.4.3 when denying the appellants' request to use lot averaging at the time of initial application.

CONCLUSIONS OF LAW

1. The Requirements of State Statute section 59.692 and section 281.31, Wisconsin Administrative Code Chapter NR 115, and Portage County Shoreland Zoning Ordinance section 7.7.4.2.1 all have the same intent which is to regulate building construction along navigable waters. State Statutes and Administrative Code requires that Ordinances enacted by counties must regulate all lands under, abutting and lying close to navigable water.
2. State Statute section 59.692 and section 281.31 require that counties develop Ordinances that regulate construction up to 300 feet from a river or stream. Chapter NR 115 of the Wisconsin Administrative Code requires that all buildings must be set back at least 75 feet from a navigable stream. Portage County has no authority to impose setbacks less than the minimum required by Wisconsin statutes and administrative code, but may impose greater setbacks than required by Wisconsin statutes and administrative code. Portage County by enacting section 7.7.4.2.1 has imposed a 100 foot setback which is greater than the minimum 75 feet required by state law. Any attempt by Portage County to enact an ordinance which would allow setbacks less than the minimum 75 feet required by state law would be invalid. Therefore, the Board of Adjustment rejects any argument by the Appellants which concludes that section 7.7.4.2.1 as it existed on July 21st, 2008 allows construction closer than 75 feet to the water without a variance.
3. The strip of land between Appellants' lot and the ordinary high water mark (OHWM) of Love Creek was retained by the Consolidated Power Company to provide relief to the waterway in case of flooding and high water. This strip is approximately 25 feet wide, and was never intended to be built upon. Requiring physical abutment with a navigable body of water before a landowner could be subject to section 7.7.4.2.1 could allow anyone to retain a very narrow strip of land along a waterway and build right up to the water's edge. Portage County is without legal authority to enact an ordinance which would circumvent the intent of Wisconsin law. Accepting the petitioner's argument would have the effect of circumventing the legislative intent of section 59.692 and section 281.31 Wis. Stats., Wisconsin Administrative Code Chapter NR 115, and Portage County Shoreland Zoning Ordinance section 7.7.4.2.
4. State Statute section 990.001(6) states that, "STATUTE TITLES AND HISTORY NOTES. The titles to subchapters, sections, subsections, paragraphs and subdivisions of the statutes and history notes are not part of the statutes." Portage County Ordinance section 7.7.4.2.1 is titled "Lots that abut on navigable waters." Because this is a title to a subsection of an ordinance, using the reasoning of section 990.001(6) by analogy, the title is not part of the Shoreland Zoning Ordinance and therefore can not have the effect of contradicting the plain language which is stated in that subsection..
5. The permanent staff of the Portage County Planning and Zoning Department did act correctly when this issue was presented to them at the time of application. Staff correctly interpreted Portage County Shoreland Zoning Ordinance section 7.7.4.3 which states: "A setback of less than that required by Section 7.7.4.1 and 7.7.4.2 may be permitted by the Zoning Administrator where there is at least one main building on either side of the applicant's lot, within 200 feet of the proposed site that is built to less than the required setback. In such case, the setback shall be the average of the setbacks of the nearest main building on each side of the proposed site or, if there is an existing main building on only one side, the setback shall be the average of the existing buildings and required setback. In no case shall averaging allow a setback of less than 65 feet from the ordinary high watermark. Any other setback may be permitted by the Board of Adjustment, according to Section 7.7.9.6.1(D) upon a written finding of unnecessary hardship. The same reduced building setback standards shall apply to additions to buildings allowed by averaging, provided the addition will be no closer to the water" (emphasis added). The permanent staff of the Portage County Planning & Zoning Department properly interpreted Portage County Shoreland Zoning Ordinance section 7.7.4.3 when denying the appellants' request to use lot averaging at the time of initial application. The petitioners requested a setback of 57 feet thereby making this lot averaging provision inapplicable to their parcel of property.

The Board of Adjustment's decision at its July 20th, 2008 hearing is AFFIRMED and the Appellants' request for a variance is DENIED.

It should be noted: Any person aggrieved by this decision, or any taxpayer, or any officer, department, board or bureau of the County, may, within 30 days after the filing of this decision in the office of the Board of Adjustment, commence an action in circuit court seeking the remedy available by certiorari. See Sec. 59.694(10), Wisconsin State Statutes.

For: _____
Edward Rutta, Chairman

Date

cc: Joan Scheider, Tim Karcheski, William Sniadajewski, James Isherwood, Joe Firkus Jr., David Schaub:
Town of Plover
Don Hamerski, Plan Commission Chairman
Keith Patrick, Department of Natural Resources
Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, Marj Bachhuber, Dennis Meis, Phillip
Janowski; Board of Adjustment Members
Board of Adjustment File

Correspondence/Updates

Rutta informed BOA the new member replacing Dick Berndt is Marj Bachhuber. She will start at the August 17, 2009, BOA meeting.

Casey stated he would not be able to make the September 14 on-site because he will be out of town, but he will be at the August 17, 2009 meeting.

Rutta stated nomination of BOA officers is usually held in July, but will wait until August to nominate new officers with a full Board. Potratz seconded, motion passed.

Casey moved to adjourn, Janowski seconded, all in favor. Adjourned 8:10 pm.

Respectfully submitted,

Judith J. Liebe, Rec. Secretary

James Potratz, Board Secretary

October 19, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Wednesday, July 22, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 2:05 pm in Conference Room 2, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Dick Berndt. Staff included Tracy Pelky, Christopher Mrdutt, and Judith Liebe, Planning and Zoning Department, and J Blair Ward, Portage County Deputy Corporation Counsel.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant and agent will be sent notification of the decision during the week following the public hearing. Rutta stated there are four hearings today. They all have Mashuda Contractors, Inc. as an agent. All requests are for fill to be used for USH 10 project.

He stated Marj Bachhuber is the new BOA member replacing Dick Berndt; she was appointed yesterday and will take her position with BOA next month.

Rutta stated BOA has just been given a document by Mrdutt regarding a new State Statute governing the State of Wisconsin Department of Transportation (DOT) requests covering DOT road work. He said there has been a recent change in State law that needs to be addressed. Mrdutt stated this is a law in the Governor's budget that became effective July 1, 2009. Mrdutt read the document (copy in file). He summarized it, regarding borrow pits used for DOT construction sites. No State project will require BOA special exception approval in the future, if the borrow site is located "near" the project. The borrow must be used exclusively for that project. The landowner must sign a letter of approval for the project on his property prior to start. The State handles restoration, and regulates the area being used regarding noise abatement, blasting, hours of operation, sloping, and seeding to restore the area upon completion of the project. Mrdutt read the State definition of borrow.

Mrdutt stated BOA and the public could ask Scott Hermann of Mashuda Contractors, Inc., how the new law will affect Mashuda Contractors, Inc. and Portage County. Hermann will answer any questions regarding the new law. Another definition staff would like to address is the State's interpretation of "near" and if haul roads are used, would they need BOA, County Highway Department, or Town Board approval. Mrdutt stated staff would require the contractor to meet with the Town Board or County Highway Department regarding permission for use of haul roads. Two of the requests today would not be considered "near" and will need BOA approval for haul roads, which are the Cyra and Eron properties. Mrdutt asked Rutta how he would like to handle these requests. Rutta replied the easiest way to do this, because the agenda has been published, would be to hear each appeal, knowing we do not have jurisdiction to place conditions on the applicants. Rutta stated after we get through with the four requests for the USH 10 project today, the DOT project should be completed in Portage County and moving into Wood County.

Rutta asked J Blair Ward, Portage County Deputy Corporation Counsel, if he had any guidance for BOA. Ward replied yes, he would give his guidance as needed for each request as BOA considers them, but the new criteria Mrdutt summarized is regarding nonmetallic mining. BOA members should have a copy. It is State Statute 84.06(12) BORROW SITES. (a). Ward stated he would ask BOA members to read items (b)1, 2, 3, 4, and 5 toward the bottom of the first page of the new Statute. If all criteria would be met, Mashuda would not need BOA approval. Only if Statutes cannot be met, it would require BOA approval through a special exception request prior to obtaining a permit. However, if BOA finds the applicant meets all five criteria, State Statute exempts the

applicant from local zoning. BOA can not do much regarding the borrow pit site; however, if BOA finds there may be a problem with #4 dealing with noise abatement, BOA can address that issue.

Ward stated he will offer assistance as BOA proceeds with the requests today. Rutta replied that would be a great help and thanked him.

PUBLIC HEARINGS:

Timothy & Dana Cyra, Owners/Mashuda Contractors, Inc., Agent (A09-23)

The Cyra/Mashuda request for a special exception from provisions of the Portage County Zoning Ordinance to excavate and blast rock to be used exclusively for the USH 10 road project, resulting in a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Carson, was opened by Rutta, who read the public hearing notice. Rutta stated nothing was addressed regarding blasting. Mrdutt replied they could blast as deep as needed, if the borrow would be used exclusively for the USH 10 project. Rutta asked if that meant BOA cannot address the blasting. Mrdutt replied that is correct. Ward stated BOA could put some restrictions on hours of blasting.

Rutta swore in Scott Hermann. Hermann stated this particular site is one of two that is a sand source for the road requirement; the last two feet of the new USH 10 grade must be sand before they put the base down. Hermann stated they have used a Cyra site before, but this site is on the opposite side of the road. They will be making another pond for Cyra upon removal of sand. The haul road will be from Cyra's property to County Road E, to County Road HH (old HWY 10 east), to the project site. County Road O or T, State Hwy 34 or Victory Road, he's not sure what the road(s) are named or renamed at this time. They will use the main road directly to the project. Schedule wise, it shows Mashuda requesting approval from now until 2011; they are scheduled to complete the project by 2010.

Rutta stated the site is not located near the highway construction area. Mashuda will be using County and possibly Town roads for hauling sand to the project. Hermann stated Mashuda is required to notify any Town or County of haul roads they will be using. Mashuda logs in the road(s) to be used prior to and after use; any damage done will be repaired by Mashuda.

Scheider stated she understands State law dictates hours of operation for blasting. Hermann replied there would be no blasting on this site. He incorporated blasting on all four requests because in the past, when they needed to blast and did not have approval, they had to come back before BOA to request a hearing to blast, which delayed their work schedule. It can all be addressed at one time and it will not delay their progress if they need to blast. Hermann stated they drilled test hoses that went down 30 feet. They have a signed agreement for permission to use haul roads from the Town and County Highway Department. The hours of operation are from 7:00 am to 5:30 pm, Mondays through Thursdays, and generally on Fridays. Depending on daylight savings time, they start earlier and work eight hours; as long as there is daylight and work. Casey stated if they need to work on Saturdays and Sundays to meet a deadline, Hermann should inform the Town.

Janowski stated everything looked alright on the inspection and he has no questions. Hermann submitted a good set of plans.

Potratz asked if there were any Town roads needed as haul roads in this request. Hermann replied no, they would be going straight from the Cyra site to County Road E to the road project.

Rutta read a letter into the record from the Carson Town Board recommending approval of this request. The Town has placed no conditions on their approval.

Casey stated a certified survey map (CSM) should be completed and marked every 100 feet showing the setback line between Cyra's site and Riley property. Hermann stated the State wants them to stay as far back

from Riley's property line as possible. Mrdutt stated the County requires a 25 foot setback from property lines. Hermann stated the information packet shows the setbacks. Casey stated the packet is very detailed. Rutta stated the same conditions were set for all previous hearings regarding the USH 10 road project and include a CSM to mark the east property line, slopes, all dewatering done out of wetlands, start of construction July 2009, with completion by November 2011, and topsoil respread and seeded. A signed agreement between the County Highway Department and Mashuda approving use of the haul road is to be on file in the Planning and Zoning Department. The pond will be roughly 4.5 acres, with a maximum depth of 35 feet.

Scheider asked if a DOT contractor handles all reclamation on completion of a project. Rutta replied yes, it is a State project; the owner does not need to handle any reclamation. Hermann stated Mashuda signs a pre and post release documents with the State and they do not get paid unless the site is restored 100% to DOT specifications.

Ward asked how far the borrow site is from the project. Hermann replied 4½ to 5 miles. Ward asked Hermann if he had a signed agreement with the landowner. Hermann replied yes, the materials are to be used exclusively for the USH 10 road project. Ward asked if there are any noise issues BOA needs to be concerned with. Rutta replied BOA has been using the hours of operation to limit noise. The nearest residents will be disturbed until this project is completed by late summer of 2010.

Wendy Kranski, adjoining landowner, stated she is concerned that Mashuda did not purchase fill from Clarence and Rose Kranski. Doug Kranski stated DOT did testing on their site; they were informed all samples were approved, and could be used. He asked why Mashuda did not purchase the fill from their site; it adjoins the proposed USH 10 road project. Rutta stated BOA is only considering the appeal as presented today; any negotiation is between whoever is purchasing the fill and Kranski. It does not enter into this particular request. BOA has nothing to do with where the borrow material is obtained.

Hermann stated the Cyra and Eron sites were the only ones that have the particular specifications needed closest to the project. He has nothing to do with procurement of the sites.

There being no further statement or questions, Rutta closed the public hearing portion of the request.

Deliberation and Decision:

Rutta stated this is one of the borrow pits that BOA has to consider approval because it does not meet requirements of the new law.

Janowski asked if the project moves into Wood County, could they come back and purchase fill from Portage County. The new road needs to be built-up in that area all the way to Marshfield. Rutta replied he thinks it is legitimate, but is all speculation at this time and not part of the appeals being considered today.

Potratz stated he has no comments.

Casey stated the haul roads are needed because these two sites are the only ones in that area that have the correct type of sand used for lift on the project. He would like to see the east and northeast sides marked every 100 feet showing setbacks. All material is to be used only for the project, no outside sales, haul road defined, hours and days of operation, the pond will be approximately 15 acres with a maximum 35 foot depth, and no blasting needed on this project.

Rutta stated he would entertain a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a 15 acre pond, 35 feet deep.
2. The borrow is to be used exclusively for the USH 10 road project.
3. A certified survey map must be completed and the site staked every 100 feet on the northeast corner.
4. All setbacks must be met.

5. Start date of July 2009 and completion date October 2011.
6. Hours of operation are 7:00 am to 5:30 pm, Mondays through Fridays. If weekend work hours would be needed, Mashuda Construction must notify the Town Chairman and Planning and Zoning Department.
7. There will be no blasting on this site.
8. The site is approximately 5 miles from the road project.
9. Use of any haul roads must have a letter of approval by the Town and/or County Highway Department, depending on which road(s) will be used. The proposed haul route is County Road E to County Road HH to Victory Road.
10. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Chester Eron, Owner/Mashuda Contractors, Inc., Agent (09-24)

The Eron/Mashuda request for a special exception from provisions of the Portage County Zoning Ordinance is requested to excavate and blast rock to be used exclusively for the USH 10 road project resulting in a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Carson, was opened by Rutta, who read the public hearing notice.

Rutta read the Carson Town Board letter into the record recommending approval of this request.

Rutta informed Hermann he is still under oath and will be for the following three requests. Hermann stated the pond on this site would be approximately 4½ acres. The site has the specific sand needed for the project and the haul route will be Long Road to County Road D to the project. Roads have been logged and any damage will be fixed upon completion of the project. There will be no blasting on this site.

Rutta stated he understands there was a meeting between Mashuda and adjoining property owners Kitowski and Diehn regarding the haul road. Mashuda stated he met with them, but does not know if any agreement had been reached. Mrdutt stated Planning and Zoning would like a copy of the agreement for the file after it has been signed.

Potratz, Janowski, and Scheider stated they have no questions.

Casey stated this is the same type of request as the previous one; only the haul roads and easement are different. A CSM should be completed on the east half of the north property line and marked every 100 feet showing the 25 foot setback. Casey asked Hermann how far this site was from the project. Hermann replied approximately 2½ miles.

Rutta asked if the hours of operation would be the same. Hermann replied it is a carbon copy. The whole site is surrounded by wetlands and there will be no dewatering done on site. Rutta asked if any steps were taken to approve Eron Road. Hermann replied he has not seen any agreement yet, but knows there has been some discussion regarding staging ingress and egress on that road. Hermann stated the Army Corps of Engineers (COE) were on the site and Mashuda received approval for this and the previous sites. They had no objection to the project.

Ward asked if Mrdutt and Pelky agree that this appeal meets the criteria of State Statute 84.06. Mrdutt replied he does not feel it meets the 'near' definition of the project. Mrdutt stated the engineers should use a Town or County road as a haul road. Ward stated the Statute does not define 'near'. Mrdutt stated if a haul road is needed, staff feels BOA approval is needed, but if it abuts the project, no haul road would be needed, it would meet Statute requirements.

Rutta opened the hearing to the public for comments, questions, or testimony.

Sue Diehn stated she was concerned with the hours of operation being 5:30 am to 7:00 pm. She said she was previously informed that the hours would be 7:00 am to 5:30 pm; this project is right out their front door.

Hermann stated the hours of operation are **7:00 am to 5:30 pm**; they must have gotten them reversed earlier. She said a few years ago, it flooded right up to their front door and she is concerned about flooding again. Mrdutt replied this concern has come up for several past meetings. A pond, if anything, will help with flooding. Water would need to fill the pond before it would overflow and cause flooding in the area. Staff has discussed this with our Groundwater Specialist, Raymond Schmidt, and has found a pond would help in a flooding situation. There being no further comments, Rutta closed the hearing portion of this request.

Deliberation and Decision:

Potratz stated again, this is a carbon copy of the previous request(s), just closer to the project. He sees no problem with the request.

Casey stated DOT needs the sand and could not get it all from the previous site. The pond will be approximately 4½ acres and a maximum of 35 feet deep. The only thing needed is a signed letter of agreement between Mashuda and property owners regarding the haul road. If there is a disagreement, it should be handled between Mashuda, the public, and DOT regarding the haul road and a copy on file in the Planning and Zoning Department.

Janowski stated he has no problem, as long as the Town roads are restored upon completion of the project.

Scheider asked if she understands correctly that the trail to be used for a haul road mentioned today would eventually become a Town road. Hermann replied it is a private road; it will be improved when they are done hauling.

There being no further testimony or questions, Rutta stated he would entertain a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a 4.5 acre pond, 35 feet deep.
2. Site is approximately 2.5 miles from road project.
3. The spoils are to be used exclusively for the USH 10 road project.
4. A certified survey map must be completed and staked every 100 feet on the northeast corner of the proposed site.
5. All setbacks must be met.
6. Start date July 2009 and completion date October 2011.
7. Hours of operation are 7:00 am to 5:30 pm, Mondays through Fridays. If weekend work would be needed, Mashuda Construction must notify the Town Chairman and Planning and Zoning Department.
8. There will be no blasting on this site.
9. Use of any haul road(s) must have a letter of approval by the Town and/or County Highway Department, depending on which road(s) will be used.
10. A signed agreement between Chester Kitowski and Brian & Susan Diehn regarding the road in front of their property to be used as a haul road must be on file in the Planning and Zoning Department.
11. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Scott Pusieko & Delores Pusieko, Owners/Mashuda Contractors, Inc., Agent (A09-25)

A special exception from provisions of the Portage County Zoning Ordinance is requested to excavate and blast rock to be used exclusively for the USH 10 road project, resulting in a pond exceeding 30,000 square feet and a small pond for fill to construct a new driveway for Pusieko in the A4 General Agricultural Zoning District, Town of Eau Pleine, was opened by Rutta, who read the public hearing notice.

Rutta read a letter from the Eau Pleine Town Board and Plan Commission recommending approval of the request, with a condition that County Road N and Long Road be used as haul roads (copy in file).

Rutta stated this is the same type request as the previous two and the next request. This request does not meet new Statute criteria because Mashuda is requesting permission to blast in this area, if needed.

Rutta read the new NR 115 Statute again.

Hermann said DOT road projects meet all criteria in the new Statute. Mashuda has an agreement that is signed by all parties involved. The site will be reclaimed.

Rutta stated this request does not come under BOA's authority to address reclamation, and asked Ward if that was correct. Ward replied the decision must state that all NR 115 criteria were met and the site is exempt from BOA consideration. BOA can address the noise abatement and hours of operation regarding blasting. Hermann stated the hours of operation would be the same as the prior three requests, 7:00 am to 5:30 pm, Mondays through Fridays, and Saturdays and Sundays, if necessary. All blasting will be done according to DOT standards as listed in the plans submitted.

Rutta opened the request to the public for comment, questions, or testimony.

Rose Mary Kranski stated she is concerned about their well and house. Their house is closest to the area. Hermann replied all wells and homes would have a pre and post blast test. Any damage done by blasting would be recorded and corrected upon completion of the project. Hermann stated he is not sure if they need to blast for the primary pond. The small pond fill being used for the driveway will not need blasting.

There being no other comments, Rutta closed the public hearing portion of the request.

Deliberation and Decision:

Rutta stated this is the same as the three previous requests and he has no further comments. He asked BOA members for any additional input. There was none.

Rutta entertained a motion to approve this request.

Janowski moved to approve the request with the following conditions:

1. Approval is granted for a 12 acre pond, 25 feet deep.
2. The spoils are to be used exclusively for the USH 10 road project.
3. All setbacks must be met.
4. Start date July 2009 and completion date October 2011.
5. Hours of operation are 7:00 am to 5:30 pm, Mondays through Fridays. If weekend work would be needed, Mashuda Construction must notify the Town Chairman and Planning and Zoning Department.
6. All WI State codes for blasting must be followed. Blasting would be done between 8:00 am and 4:00 pm.
7. Use of any haul road(s) must have a letter of approval signed by the Town and/or County Highway Department, depending on which road will be used.
8. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Casey seconded the motion, which passed unanimously by a roll call vote.

WI Department of Transportation, Owner/Mashuda Contractors, Inc., Agent (A09-26)

A special exception from provisions of the Portage County Zoning Ordinance is requested to excavate and blast rock to be used exclusively for the USH 10 road project, resulting in a pond exceeding 30,000 square feet in the A4 General Agricultural Zoning District, Town of Carson, was opened by Rutta, who read the public hearing notice.

Rutta read a letter from the Carson Town Board recommending approval of the project.

Hermann stated all State Statute 84.06 and NR 115 rules are met in this request also. The pond will be approximately 8 acres in size, and 25 feet deep; and they will blast only if necessary.

BOA members all agreed no questions were needed for this request. It is a carbon copy of the three previous requests.

Rutta opened the request to the public for input. There was none.

Rutta entertained a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for an 8 acre pond, 25 feet deep.
2. The spoils are to be used exclusively for the USH 10 road project.
3. All setbacks must be met.
4. Start date July 2009 and completion date October 2011
5. Hours of operation are 7:00 am to 5:30 pm, Mondays through Fridays. If weekend work would be needed, Mashuda Construction must notify the Town Chairman and Planning and Zoning Department.
6. All WI State codes must be followed for blasting. Blasting would be done between 8:00 am and 4:00 pm.
7. Use of any haul road(s) must have a letter of approval signed by the Town and/or County Highway Department, depending on which road will be used.
8. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Approval of May 18, 2009 Minutes

Scheider moved to approve the minutes as corrected, Janowski seconded the motion, which passed by a voice vote.

Correspondence/Updates

Pelky stated there will be a special BOA meeting on Monday, August 3, 2009, with on-sites prior to the meeting. The regular BOA meeting will be held on August 17, 2009, with on-sites on Friday, August 14, 2009.

Adjournment

Janowski moved to adjourn, Potratz seconded, all in favor. Meeting adjourned 4:05 pm.

Respectfully submitted,

Judith J. Liebe, Recording Sec.

James Potratz, Board Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, August 3, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 2:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Phil Janowski. Staff included Tracy Pelky, Chris Mrdutt, and Judith Liebe, Planning and Zoning Department, J Blair Ward, Portage County Deputy Corporation Counsel.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARING:

Joseph Somers, Owner/David Ladick, (ConsTrucks) Agent (A09-29)

The Somers/Ladack request for a special exception and variance from provisions of the Portage County Zoning Ordinance to extract clay, and create a pond greater than 30,000 square feet in the A4 General Agricultural Zoning District, Town of Linwood, was opened by Rutta, who read the public hearing notice. This hearing will provide the public a chance to discuss the Reclamation Plan for this project as per NR 135 and the Portage County Nonmetallic Reclamation Ordinance.

Pelky explained the variance request stated in the appeal is not applicable in this request. In 2003, this site was adjacent to Somers property, but owned by someone else. The special exception will be for the pond exceeding 30,000 square feet and they will be hauling material off site. There is a letter from the Portage County Highway Department requesting a \$100,000 security bond for use of the County road as a haul road. There is also a letter from the Town of Linwood approving the request. The variance is not necessary because Somers owns all the property now.

Rutta stated he would entertain a motion to delete the word variance from the application and legal documents that were published. Scheider moved to approve, Janowski seconded the motion, which passed by a voice vote.

Rutta read the letters into the record (copies in file).

Rutta swore in Joseph Somers and David Ladick. Ladick explained they had the site engineered for a clay borrow site about 15 years ago. There is a good source of clay on the site and there is a market for it at this time. They want to strip the topsoil back, remove any other overburden they need to, and then excavate a small layer of clay, approximately three to four feet deep, deeper in some areas. They would level the bottom, put the subsoil back on, and restore the topsoil to agricultural use for farm fields. Rutta stated he saw a reference for a pond and asked why staff was calling it a pond. Ladick replied there will be a retention pond on the lower end, which would remain upon completion of the project. Mrdutt stated anytime you see 30,000 square feet of excavation, a pond is usually the result.

Ladick stated he understands all the requirements from the Highway Department. He spoke with Dale Petersen and they will comply with the Highway Department's request regarding a bond. They do not want

to put the bond in place until they actually start hauling. The bonds are expensive now and they have a customer for the clay at this time, all they need is a permit from Portage County. The clay will be used for a runway at Central Wisconsin Airport, Mosinee.

Somers stated the pond was the most economical way to go because they are lowering the site and, therefore, the finished result will be a pond at one end. Water quality personnel informed them on how to complete the pond.

Casey stated this is basically the same request as in 2003, the timetable has expired, and Somers now own the site. Ladick stated he would like approval for ten years. Casey replied BOA usually only grants approval for three years at a time. If an extension is needed, they only need to come back to the permanent staff for another three year approval unless there would be a major change in plans.

Potratz stated this is only for one parcel. Ladick replied that is correct, if they would need the other parcel, they would come back at that time. The project would only take about ¼ of the resources at this time. Potratz asked if there would be a setback from the two parcels. Somers replied yes. Ladick stated there will be a few wet spots, but it will still be farmable.

Scheider asked what the size of the pond would be. Ladick replied approximately 1½ acres. Somers stated just barely over one acre. Scheider stated she was looking at the information before her from three years ago.

Janowski asked how deep the pond would be. Somers replied fairly shallow, it would not support fish. Janowski asked if there would be any blasting. Ladick replied no, they only want clay. Janowski asked if it would be tillable when the project is complete. Somers replied yes, he always leaves a site better than he found it.

Scheider asked Somers if he was the property owner. Somers replied yes.

Rutta stated one of the conditions would be staking every 100 feet from the property line and road right-of-way. There are two areas that are critical; Somers needs to meet the 75 foot setback from the centerline or 42 feet from the road right-of-way of County Road II. Ladick replied that is no problem.

Rutta opened the request to the public for testimony, comments, or questions. There were none.

Pelky stated there was a letter in the old file from the Army Corps of Engineers (COE). They usually do like to get involved in extractions. The applicant has a copy of that letter and he just wants to make sure to let them know nothing has changed since 2003. The applicant should contact Brad Johnson, Department of Natural Resources (DNR), and/or work with Dan O'Connell, Senior Technician, Land Conservation Section of the Planning and Zoning Department regarding any runoff issues. Ladick replied he has contacted Johnson and has an 18 page permit from the DNR. He also spoke with Simone Kolb, COE, she informed him COE has no concerns because this project is not in their jurisdiction and no wetlands are being impacted. Pelky stated there is a copy in the file.

There being no further comments, Rutta closed the public hearing.

Deliberation and Decision:

Potratz stated basically everything is in order; this project will probably improve the site upon completion. Potratz asked if a start and completion date had been proposed. Rutta replied, he had made a note for himself if BOA would approve this request, start date would be August 1, 2009 with completion August 1, 2012, unless they would prefer a later start date.

Casey asked if there would be any stockpiles on the site. Ladick replied no clay stockpiles, but there will be topsoil and subsoil that would be put back upon completion of the project. Rutta stated BOA could refer back to the conditions of the 2003 approval and just amend the additions to reflect today's date, if approval is granted.

Janowski stated he feels this is a good project and the site will be more suited to farming upon completion. Scheider agreed.

Rutta stated after reading the approval of A03-13, 2003, condition 5, the start and completion dates need to be changed to show start date of April 1, 2009 and completion date April 1, 2012. Condition 6 should be changed to show the Highway Department requires a \$100,000 bond to fix any damages on the haul road. The road should be logged prior to and completion of the haul period. The west and south boundary, the west one in particular, should be staked at the 42 foot mark from the road right-of-way. The south boundary should be surveyed to be absolutely sure the setbacks are met and staked every 100 feet. Rutta stated Somers should survey both boundaries. The pond should not be greater than one acre, with a maximum depth of six feet. Slopes should be 3:1 (three feet horizontal to one foot vertical) or greater.

Pelky stated item number 2 is regarding the driveway, and asked Somers if it would be moved further north or left where it is on the high spot. Somers replied they are going to leave it where it is because if they move it north, it will be in a low area and will be detrimental to safety. Somers stated he checked with Dale Petersen, Portage County Highway Department previously, and his suggestion was to leave this one as is.

There being no further discussion, Rutta entertained a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for clay extraction from the Somers pit approximately 23 acres in size.
2. Approval is granted for three years, if work is not completed by that time, an extension may be applied for from permanent staff of the Planning and Zoning Department.
3. All conditions specified on the A03-13, April 28, 2003 hearing must be adhered to as follows:
 - a) The driveway should be located per Dale Petersen, Highway Department's recommendation for vision safety.
 - b) The proposed excavation must be a minimum of 75 feet from the centerline or 42 feet from the right-of-way of County Road II, whichever is greater.
 - c) The new design for the proposed excavation and pond must be on file in the Planning and Zoning Department prior to issuance of a Zoning Permit.
 - d) The proposed start date is August 1, 2009 with completion by August 1, 2012.
 - e) Hours of operation are 6:00 am to 8:00 pm, Mondays through Fridays. If they must work on a weekend, the Town Chairman and/or County Planning and Zoning Staff must be notified.
 - f) A \$100,000 bond is requested by the Highway Department "per construction season" to cover damage, if any, to County Road II. County Road II should be logged prior to start of hauling.
 - g) The haul road, County Road II, must have the clay cleaned off daily.
 - h) The overburden and topsoil may be stockpiled on the site. Upon completion of the project, the overburden and topsoil must be spread and seeded.
 - i) The approximate size of the proposed pond is one acre with maximum depth of 10 feet. All slopes must be a minimum of 3:1 (three feet horizontal to one foot vertical).
 - j) Inspection by Portage County permanent staff is allowed to document conditions of the site.
 - k) Any new plans must be approved by permanent staff prior to start of the project and issuance of a Zoning Permit.
4. A certified survey map must be completed on the west and south boundary lines and staked every 100 feet.
5. Runoff requirement must be approved by Brad Johnson, Department of Natural Resources.
6. No blasting is allowed.
7. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Correspondence/Updates:

Pelky stated the next meeting is Monday August 17, with on-sites on the previous Friday, August 14. There are two requests at this time.

Rutta stated he would like to discuss the Modrzewski decision. BOA members all have a copy of the rough draft. Scheider recommended changing some of the wording in items 1 and 2. The wording is not recording a decision. Rutta replied that wording is a statement of fact. Scheider said it is still not a part of the decision. A discussion was held regarding the Modrzewski draft decision.

Scheider stated the wording on the decision "approved by majority vote," should have read approved by 4 in favor, 1 opposed. Rutta replied he just wanted to convey to Judge Finn as to why BOA thinks the property does, in fact, abut the waters of Love Creek, and therefore is susceptible to the Portage County Shoreland Ordinance. He feels this request should not have come back to BOA.

Pelky informed BOA members the Modrzewski decision draft had been sent to J Blair Ward, Portage County Deputy Corporation Counsel, for his review and suggestions. He will notify members when staff gets a copy from Ward with his proposed wording.

There being no further business to come before the Board, Rutta entertained a motion for adjournment. Janowski moved to adjourn, Scheider second, all in favor. The meeting adjourned at 2:45 pm.

Respectfully submitted,

Judith J Liebe, Recording Sec.

James Potratz, Board Secretary

September 21, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, August 17, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Marj Bachhuber. Staff included Tracy Pelky, Chris Mrdutt, and Judith Liebe, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing. There are two hearings today, both for special exceptions.

PUBLIC HEARINGS:

Kelly & Ericka Kizewski (A09-30)

The Kizewski special exception request from the provisions of the Portage County Zoning Ordinance to conduct an embroidering business out of her garage, as a home occupation, in the R1 Rural & Urban Fringe Residential Zoning District, Town of Stockton, was opened by Rutta, who read the public hearing notice and swore in Ericka Kizewski.

Pelky stated Kizewski is operating an embroidery business out of her attached garage. She is allowed to have two outside employees that are not family members.

Rutta read a letter from the Stockton Town Board into the record, recommending approval of this request.

Rutta swore in Erika Kizewski. She explained she operates her embroidery business out of her garage. There are no other employees and there will not be any. She takes customers by appointment only. There is about two to three vehicles a week that come to her shop. She usually works in the evenings after her husband comes home and watches the children.

Scheider asked Kizewski what is her source of heat. Kizewski replied the door between the garage and home is left open. Scheider stated she is concerned about the electrical source Kizewski has for operation of her embroidery machines. Kizewski replied she had a licensed electrician do the wiring for her. The wiring is up to code.

Bachhuber stated the overhead garage door is very near the electrical outlet. Kizewski replied the automatic garage door has been disconnected. There are no extension cords, the cords they see are plugged directly from the machine into the outlet.

Potratz stated this is an 'after the fact' request, and this is no longer a garage, a window has been added, vinyl flooring has been installed and a sign erected.

Pelky replied this is an after the fact request, that is why BOA is considering whether this use should be approved. Kizewski should have called prior to the start of her business.

Casey asked if the sign met Ordinance requirements. Pelky replied yes. Casey asked if there are any delivery trucks and how many a week. Kizewski replied there is a UPS truck about once a week. Casey

asked her hours of operation. Kizewski replied she takes clients by appointment only. She usually works on the embroidery machines in the evening from 6:00 pm until 10:00 pm after her husband is home to watch the children.

Rutta asked Kizewski what her days of operation were. Kizewski replied Mondays through Fridays, no weekends. Rutta asked if there was going to be any outside lighting added. Kizewski replied no. Rutta stated he is concerned with the safety of the customers in the garage and asked if Sam Solberg, Department of Commerce (COMM) had been on the site for an inspection. Pelky replied no, it would be a good idea to have Solberg or Mike Bembenek, Stockton Building Inspector, check it out. Rutta stated he felt there should be some sort of defining area to keep customers from wandering through the machine area and/or tripping on cords. Kizewski replied that is why her desk is by the entrance, she does not allow customers into her work area. Rutta asked if BOA gave her an August 17, 2009 start date, would that be alright with her. Kizewski replied yes. Rutta stated there is no completion date because there is no construction, this is a home occupation.

Scheider asked if she had any plans to change the working environment. Kizewski replied no, she does not see her business expanding. Mrdutt stated if an expansion would be wanted, Kizewski would need to contact the Planning and Zoning Department, she would need BOA approval for any expansion.

There being no further testimony or questions, Rutta opened the hearing to the public for comments, testimony, or questions. There were none. Rutta closed the public hearing portion of the meeting.

Deliberation and Decision

Scheider stated she is concerned about all the cables from the machines all over the area. She needs to have some sort of cable management for safety purposes, as well as for looks.

Bachhuber stated she sees no problem with this request. Kizewski stated she had the machines wired by a licensed electrician, so it should be done correctly. She stated if someone ventured by the machines and got hurt, it would be Kizewski's liability. She takes customers by appointment, so there should not be anyone wandering around.

Potratz stated the garage has been modified, it is no longer a garage, it is living space. Rutta replied that is after the fact. Mrdutt stated we would not be here if it were part of her house. If she had done things correctly and got her permits prior to starting her home occupation, we would not be here. Potratz stated he still feels this should not be allowed in the R1 Zoning District.

Casey stated he has no complaints, this is after the fact, but it is a small business and it does not disrupt the neighborhood.

Rutta stated this is one of the least invasive requests to come before BOA. He feels Solberg should be contacted to check out the electrical work.

Rutta stated he would entertain a motion for approval.

Casey moved to approve the request with the following conditions:

1. Sam Solberg or Mike Bembenek must be contacted to check the safety of electricity for the home occupation.
2. The days of operation are Mondays through Fridays, 8:00 am to 10:00 pm.
3. Any expansion of the business must be reviewed by the Planning and Zoning Department.
4. The start date is August 17, 2009.
5. Signage is not to exceed six square feet and must be located outside the road right-of-way.
6. The business can operate out of the existing garage only.
7. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Scheider seconded the motion, which passed unanimously by a roll call vote.

Kathleen Sankey & Bruce Fletcher, Owners/Robin Engum, Agent (A09-31)

The Sankey/Engum special exception request from the Portage County Zoning Ordinance to construct a new office, maintenance shop, and garage as a home occupation, and contractor's storage yard in the A2 Agricultural Transition Zoning District, Town of Plover, was opened by Rutta, who read the public hearing notice.

Pelky stated this request consists of an office, maintenance shop, and garage for their taxi service. Her office is in her kitchen at present and she would like a separate detached building for her office and the business. She needs BOA approval because she will be operating her business out of a detached accessory building, not out of her home. If she continued her business out of her home, she could use 50% of one floor to operate it without special exception approval by BOA. Her home is on this parcel and if for some reason it would be destroyed, she would not be able to rebuild it because of the Zoning District. That district allows for living quarters attached to a business only. Sankey's house is and will be separate from her business.

Rutta read a letter from the Plover Town Board and Plan Commission recommending approval of this request.

Rutta swore in Kathleen Sankey and Robin Engum. Sankey stated she would like the paper mess moved out of her house and into an office, she has operated the business out of her kitchen for 17 years. She operates the Courtesy Cab service for handicapped. The State requires her to keep files for 10 years. She also has a taxi service for Plover.

Potratz stated this seems to be a commercial business, not a home occupation.

Pelky stated the Town checked into rezoning the house on the site to a separate zoning district, but there is not enough area to do it. The house needs to be attached to the building and it was decided that a home occupation request would work well in this area. All the land surrounding this site has been annexed to the Village of Plover, leaving her in a little island of A2 Zoning.

Potratz asked how BOA could approve a commercial structure. Rutta replied BOA did it for several businesses (home occupations) in the past.

Potratz asked Sankey how many employees she had. Sankey replied 35. She said there are probably no more than three employees on site at one time, they work shifts, and there are a few more employees on site during shift change.

Pelky stated this use is very compatible for the area. She is surrounded by the Portage County Highway Department and Del Monte Foods. There are not many residents in that area. In order for Sankey to be zoned Commercial, her home would need to be physically attached to the business.

Potratz asked Sankey her hours of operation. She replied 24/7 on weekends for the cab service and the Courtesy Cab service operates about 20 hours a day.

Casey asked what type of maintenance of vehicles is done on-site. Sankey replied just light maintenance; she has a certified mechanic working for her. He does oil changes, anti-freeze, repair on handicap lifts on the vehicles, small things like that. They do not keep fuel onsite; they fuel up at a service station. They have a small amount of oil, anti-freeze, etc. on site. Rutta replied she would need to designate a storage area in the proposed maintenance garage to hold 150% volume of the products stored. She also needs to inform the local Fire Department, Sheriff's Department, and Emergency Management of what and where it is stored in case of an emergency. Engum stated the new building specified the area, and it must be approved by COMM.

Pelky stated a storm water detention pond, if one is needed, must be approved by Dan O'Connell, Senior Conservation Technician, Land Conservation Section, Planning and Zoning Department.

Casey asked if there would be additional lighting. Sankey replied she has one pole light at this time and does not plan on installing another. Casey asked her where the business vehicles are parked. Sankey replied all vehicles are parked in the garage, and will be in the proposed building. They are always parked inside. Casey asked Sankey how many vehicles she has. Sankey replied 17.

Casey asked if they were planning on putting in a floor drain. Engum replied yes, it would have a holding tank, as required by State. Casey stated Engum must also abide by County Ordinance regarding the floor drain and holding tank. Casey asked if the three old buildings would be demolished. Sankey replied yes, prior to construction of the new building.

Bachhuber asked what makes this a commercial building. Engum replied any building over 50,000 cubic feet in size requires COMM approval. Bachhuber asked if there were any other situations like this with a detached residence on commercial property. Mrdutt replied yes, but if anything happens to the home, it could not be rebuilt.

Bachhuber asked why the Comprehensive Plan did not handle this situation. Scheider replied the Plan Commission did not come back and check for any zoning change requests. All the surrounding property had been annexed to the Village in the past few years, except this small area.

Rutta asked Engum what the start and completion dates for construction would be. Engum replied they would like to start immediately after State approval is received. Rutta suggested a start date of August 17, 2009 with completion March 31, 2010. Engum replied that it would be completed by then. Rutta stated there would be a 56 foot by 60 foot building with 14 foot sidewalls and a 40 foot by 28 foot building with 9 foot sidewalls. Engum replied that is correct. Heat, water, and electricity would be in the proposed buildings. All vehicles would be stored inside. The buildings would be single story with a mezzanine to be used for storage. Rutta asked what the old grain building is used for. Sankey replied her husband uses it for storage, and it will be resided to match. Rutta asked what the old chicken coup is used for. Sankey replied it is her husband's work shed. Rutta asked what would be done with the old van on site. Sankey replied they are donating it to Rawhide Boys Ranch.

Rutta asked what is the acreage of the site. Sankey replied 4.92 acres; the highway took some of their land. Mrdutt stated this site could not be split in the future. He also stated O'Connell would check if a storm water detention area is needed.

Casey asked if BOA gives Sankey approval for a maximum of 20 vehicles for her business would that be enough. Sankey replied yes, she does not want to expand her business

Scheider stated she noticed a lot of vehicles parked all over the site. Sankey replied those are the employee cars. Scheider suggested a designated area should be marked for employee parking; it would keep the area looking neater. Sankey replied they have one in the new plans. Scheider asked if the business vehicles are parked inside. Sankey replied yes, but most of them are gone for the better part of the day. They might all be there from 3:30 am to 6:00 am. Mrdutt stated a designated parking area for employees is a great idea. Engum stated Grunwaldt & Associates has parking and storm water plans incorporated on their plans as submitted.

Rutta stated there is a sitting room shown on the plans and asked what that will be used for. Sankey replied it is a small area for the employees to come in and wait for their vehicles. This is strictly a staff lounge, not open to the public. At present, they all come into the kitchen area, which she uses for the business. She has no privacy in the house. The employees are there when she is trying to get paperwork completed for the State; with the sitting area, it will separate the employees from the private area in her office.

Sankey asked if the mechanic working for her could be allowed to work on private handicap vans, lifts, etc., mainly State and County owned handicap vehicles, in their maintenance garage. Pelky stated she would need to come back before BOA for approval. This was not mentioned on the original request. The mechanic she has hired can only work on company vehicles in her shop.

Casey asked what kind of building this would be. Engum replied wood frame, metal outside, with a brick front to match the house. All existing buildings would match.

There being no further questions, Rutta opened the request to the public for testimony, statements, or questions. There were none. Rutta closed the public portion of this request.

Deliberation and Decision

Potratz stated he is not comfortable with approval; this sounds more like a commercial venture than a home occupation. He is inclined not to go along with this request.

Scheider stated Sankey is located in an island and is not responsible for that situation. There is a potential that her site may still be annexed to the Village of Plover. She supports this request.

Bachhuber stated she likes the plan; it makes a lot of sense. She can see the potential for it to grow into servicing other handicap vehicles and if that happens, Sankey would need to have her site rezoned. Pelky stated if an expansion or a request for more than 20 vehicles is needed, either rezoning to Commercial or annexation to the Village of Plover must be sought.

Casey stated this is beyond a home occupation; there are 17 vehicles, which is a good fleet and 35 employees. She is governed by the Department of Transportation. The building plans are fine, just the area would need to be zoned properly.

Rutta stated BOA could put restrictions on the request. He stated A2 Agricultural Transition Zoning follows the same rules as A4 General Agricultural Zoning. A home occupation is allowed in that zoning, and contractor's storage building is allowed in that zoning. The conclusion is that this request is larger than any BOA has dealt with in the past, but he feels it is perfectly legal in the A2 Zoning District. Sankey's house would be nonconforming for a Commercial Zoning District because it is not attached to the building, and if it would be damaged or destroyed, she could not rebuild the detached house, it would need to be attached to the business. In all fairness, he feels BOA can approve this request and justice will be done. Approval of this request seems like the simplest solution.

Rutta stated he would entertain a motion for approval and if there were none or no second, he would entertain a motion for denial. If approval is granted, he will then entertain a motion for approval with conditions.

Scheider moved to approve the Sankey request. Casey seconded the motion. Approval for the request was approved by a roll call vote of four to one, with Potratz voting nay.

Rutta entertained a motion for approval with conditions:

Casey moved to approve the request with the following conditions:

1. Approval is granted for a 56 foot by 60 foot commercial building with 14 foot side walls, and a 40 foot by 20 foot building with nine foot sidewalls, the roofs and color must match the existing house on site.
2. A copy of State approved plans must be on file in the Planning and Zoning Department prior to issuance of a Zoning Permit.
3. The maximum number of vehicle allowed is 20. They must all be stored inside when not in use.
4. A containment area for storage of volatile substances must be constructed to hold 150% volume of items to be stored (i.e., oil, anti-freeze, grease, etc.).
5. Start date is August 17, 2009, with completion by March 31, 2010.
6. A six foot square sign is allowed and must be placed outside the road right-of-way.
7. A storm water retention plan must be approved by Dan O'Connell, Senior Conservation Technician, Land Conservation Section, Planning and Zoning Department.
8. No maintenance work on any privately owned handicap vans, lifts, or vehicles may be done on this site. The mechanic is allowed to work on Company vehicles only.
9. An employee parking area must be designated so vehicles are parked in one area and not all over the site.
10. All refuse including an old vehicle, must be removed from the site.
11. There is to be no outside storage. All company vehicles must be stored inside.
12. Three old buildings will be removed.
13. Any further expansion request will require annexation to the Village of Plover or a request for a Zoning change.
14. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Scheider seconded the motion, which passed unanimously by a roll call vote.

Correspondence/Updates

Pelky stated BOA needs to elect officers. It is usually done in July, but the Board was short one member. We now have a full Board. Rutta replied he agrees.

Rutta asked for nominations for Chairman. Scheider stated she nominated Rutta. Rutta asked three times for nominations for Chairman. There being no other nominations, Rutta closed nominations for Chairman.

Rutta asked for nominations for Vice-Chairman. Rutta nominated Casey. Rutta asked three times for nominations for Vice-Chairman. There being no other nominations, Rutta closed nominations for Vice-Chairman.

Rutta asked for nominations for Secretary. Rutta nominated Potratz. Rutta asked three times for nominations for Secretary. There being no other nominations, Rutta closed nominations for Secretary.

Rutta asked for approval of the nominations as they stand. BOA members voted in favor of the new officers by a roll call vote.

Mrdutt stated the next BOA meeting is scheduled for Monday, September 21, with on-sites on Friday, September 18.

Adjournment

There being no further business to come before the Board, Rutta asked for a motion to adjourn. Scheider so moved, Bachhuber seconded, all in favor. Meeting adjourned 5:30 pm.

Respectfully submitted,

Judith J Liebe, Recording Sec.

James Potratz, Board Secretary

September 21, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, September 21, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Marj Bachhuber. Staff included Tracy Pelky, Chris Mrdutt, and Judith Liebe, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing. Rutta stated there is only one hearing today.

PUBLIC HEARINGS:

Thomas W. Edison (A09-32)

The Edison variance request from provisions of the Portage County Shoreland and Floodplain Ordinances is to modify and replace a roof located within the setback and floodway of the Wisconsin River, in the A4 General Agricultural Zoning District, Town of Linwood, was opened by Rutta, who read the public hearing notice.

Pelky stated Edison wants to remove a flat roof and replace it with an 8:12 pitch roof to open the space up inside the structure. This requires a variance. He also wants to exceed the 30 inch overhang out to 5 feet 3 inches, which would act as a covered porch. Edison needs a variance for setback from the water and changing of a roofline in the Floodplain.

Pelky gave BOA members a copy of the contractor's estimate to remove the existing roof, insulate and rebuild walls, two gable ends, and shingle the new roof for \$6,300. Pelky stated he spoke with the Assessor who informed him the two homes on the site were assessed at \$23,600. Pelky stated the two homes may stay on the site, but neither one can be replaced if destroyed or damaged by an act of God (fire, tornado, flood, etc.).

Rutta read a letter from Joe Behlen, Department of Natural Resources (DNR) into the record (copy in file).

Pelky stated a survey dated October 8, 1993 shows the building at 34 feet from the right-of-way of Blue Heron Lane.

Rutta swore in Thomas Edison. Edison stated he replaces the flat roof almost every two years. He would like to replace it with an 8:12 pitch roof to allow rain and snow to run off so he would not need to replace it as often. There is no insulation or ventilation in the building. The DNR letter than the footprint must remain the same and no maintenance or construction over 50% of equalized value is allowed.

Potratz asked if it is a seasonal building. Edison replied yes.

Rutta asked if there was a second house on the site. Edison replied yes, he has two sons that use both as vacation homes. He would like to have this one insulated to bring the heating cost down.

Potratz asked Edison what size is the cottage. Edison replied he is not sure. Casey stated the cottage is approximately 608 square feet; the plans are not clear as to the exact footage. Mrdutt stated in order to be used

as year-round living quarters, it would need to be a minimum of 720 square feet. Edison stated they only vacation there, not live year-round.

Bachhuber asked Edison when he purchased the property. Edison replied he is not sure, somewhere between three and five years ago. Bachhuber asked Edison if he knew when the original roof was put on. Edison replied no.

Rutta read a letter into the record from the Linwood Town Board recommending approval of a roof, but not for a loft inside. They would recommend a roof that would give Edison just enough height for proper drainage. Town Board stated, Edison's request, there would be just enough height for a loft. Edison replied he has no plans for a loft.

Scheider stated she does not think BOA should get involved in telling the applicant how the building should be constructed. That should be left up to him and the Planning and Zoning Department. She does have a problem with putting a pitched roof on the building.

Casey asked Edison where his well is located. Edison replied as far as he knows, it is where the cover was that BOA parked near when they came out for the inspection. Casey stated it is probably a sand-point well. Mrduitt asked if it met setbacks from the septic system. Potratz replied it could not. Pelky stated the well should be evaluated along with the septic system. If they are too close, one or the other would need to be relocated and updated.

Casey asked Edison if he would consider changing the roof so it would go the other way. Edison replied if possible, but the structural walls are the front and back ones. Casey replied it does not make a difference. Rutta stated you could put trusses on it. Casey asked Edison what type of ceiling he wants. Edison replied he does not care. He told Pelky he has no preference; whatever you say he can do. Casey stated he has a problem with this request. Edison has no plans, no drawings, and does not know where the well and septic are located. Casey stated he has no idea what Edison is doing. He has a construction estimate that tells BOA nothing. The building is torn apart on the inside, the septic is more than likely failing or running into the river, and the well is underneath the cabin, which is not allowed anymore. How is BOA supposed to make a decision? Edison stated the request is for a cathedral type ceiling; a joist prefab ceiling. Casey stated that would probably require scissor trusses and asked if that is what he is requesting. Edison replied he does not know what scissor trusses are.

Rutta stated the plans as presented to BOA are incomplete. They do not show or mention any square footage or height of trusses; all BOA has is an estimated cost of construction.

Pelky stated when staff reviewed the request with Edison; they came up with a solution that would not require BOA approval. Staff would allow a 4:12 pitch roof, full cathedral ceiling, and allow up to a 30 inch overhang. Pelky stated they did present the option to Edison. A permit could have been issued to allow that as routine maintenance of the building without a variance request. That would have been a solution without a public hearing to correct the snow and water issues with the existing roof. Edison chose instead to present his plans to BOA for approval. Rutta replied a 4:12 pitch roof would be acceptable. Casey asked what the current pitch of the roof is. Edison replied 1:12. He was told that a 4:12 pitch is not good around here. Rutta stated most homes around here are built with 4:12 pitch roof.

Bachhuber asked Edison if he had considered a metal roof. Edison replied only if he must; it is too noisy for him. Bachhuber stated they are better than a regular roof, and do not need to be replaced as often.

Rutta asked Edison if he knew what a 4:12 pitch was. He replied yes, you go up four feet for every 12 feet of roof. Rutta stated he lives on the river, has a 4:12 pitch roof, and it works very well. Rutta stated Edison could go a maximum of 6:12 pitch. Edison replied a 6:12 pitch would probably be doable; a 4:12 pitch scares him.

Bachhuber stated Edison said he needed to replace his roof every two years that is why she is suggesting a metal roof; you could extend the life of the roof greatly.

Bachhuber asked how much is 50% of equalized value of the cottage. Would Edison still be able to put on a new roof and replace the septic system, if it went over the 50% allowed. Mrdutt replied the septic system does not enter into the 50% allowed. It is strictly 50% of the existing building, if there would be any act of God, or other reasons that more than ½ of the cottage would be destroyed. Bachhuber asked if the 50% allowed would be considered for replacing the well. Mrdutt replied that would be a separate issue and not be included in the 50% allowed. BOA or staff could request an inspection of the septic system and well as part of the conditions prior to issuing a zoning permit.

Scheider stated she has a major concern regarding where the septic systems and drainfields are located for the two houses on site. Edison replied at present it runs to the drainfield and then to the gully. Scheider stated it runs toward the front and then toward the water

Casey stated the five foot seven inch overhang would probably not be allowed; probably only a 30 inch overhang would be allowed. Edison asked if the overhang would be grandfathered in. Casey replied no. Pelky stated BOA could consider only what Edison has requested in this variance. The variance request is to allow the overhang to go out greater than 30 inches. Casey replied he realizes that, but when you are only twenty-feet from the river, he would not allow that large of an overhang. Rutta stated there are things that could be done and gave an example. You could add a little peaked roof addition to cover the door, it is perfectly legal. You would need a variance for it, but it is legal. There are things allowed to protect the door grade from being inundated with snow or rain.

Mrdutt stated for his clarification, he is saying that Edison could put a small 40-42 inch overhang right above the door entrance. Rutta replied that is correct. It would still require a variance because of the water setback.

Potratz stated as he sees this, there are sidewalls of unequal height and structurally, you would need to modify the sidewalls before you could put on any type of roof. They need to be of equal height on both sides for the trusses to sit on. Rutta referred to page 7 of the plan submitted showing extending the low sidewalls up so the height will be even all the way across. Structurally they are altering all the sidewalls. Rutta stated he may also drop them a little; he does not know how it is going to work.

Edison stated he thinks the trusses will just go down on the cottage as it exists. Rutta replied the sides would need to be even. Edison is going to lower the higher sides and modify it to fit. Potratz stated structurally Edison is modifying more than just the roof. Rutta stated he is modifying the sidewalls and remodeling the whole inside, which we saw that at the on-site. The inside is completely modified; it will be a major rehab in that building. Edison replied he is only replacing drywall. The inside was saturated with mouse urine, and he could not stand the smell. There will be new kitchen appliances also. He is not changing anything inside. Rutta asked Edison if he would rewire it. Edison replied yes. Rutta asked if he would re-plumb it. Edison replied yes, partially. Rutta stated the complete skeleton of the house is going to be altered, along with the outside walls. It will be a major modification.

Scheider asked what Edison was doing to improve the quality of living in that structure because mold in that building is terrible. Edison replied that is why he is removing all the plasterboard and replacing it. Scheider asked Edison if he thought he would get enough out of the building to do away with the mold. Edison replied he is going to get it all out; he is not going to live in a place that is like that. Scheider stated she thinks his expense is going to be more than the 50% allowed. Edison stated the 50% only applies to the roof, what he does inside is totally irrelevant to the situation at hand. Rutta asked if that is true. Pelky replied that is correct.

Bachhuber stated BOA cannot say anything about the inside changes.

Rutta stated the construction must have been prior to 1968. Pelky replied that is correct; we do not have any documentation showing exactly when the cottage was constructed.

Rutta stated there are two residential buildings on that parcel. Pelky replied that is correct. Rutta stated there should only be one on each parcel in Portage County, and asked Pelky if that was correct. Pelky replied he could not think of any other situation similar to this one. Pelky stated BOA could set a condition that if something happens to one of the houses, it cannot be rebuilt.

Rutta stated Edison could just raise the high end another three feet. Edison replied he would love to do that; it would solve all the problems. Rutta asked why he doesn't do that. Edison replied he has a hard enough time doing this.

Rutta stated his suggestion is that the high end be raised three feet. With that, the roof would be at 15 or 16 feet and all the water would slope away from the river. Edison stated he needs something that faces the river higher than the back. Rutta asked why. Edison replied so the wind would not rip the shingles off the roof. He stated if he lifted up the whole thing, that would solve his problem also. Edison stated he would be happy with anything that would take care of the drainage. The gable was the easiest and most agreeable thing he thought. What he wants is better circulation and some sort of insulation that the snow will melt off. The flat roof is not insulated at this time.

Potratz stated there are several ways to accomplish Edison's request. Whatever way you look at it, it is a major project. It isn't just setting new trusses over the old roof. It is a major project because he will probably need to modify both bearing sidewalls for the trusses; in fact, all four walls will need to be modified. Potratz stated he just does not see this as a roofing project.

Rutta stated the equalized assessed value of the building is \$23,600 and Edison cannot do any major project exceeding \$11,800 for total cost of the exterior work.

Rutta asked Pelky if he found anything stating the inside walls are exempt. Pelky replied yes, in the Floodplain Ordinance 7.6.7.1(2)(a). Under nonconforming uses it says ordinary repairs and maintenance are not considered an extension, modification, or addition, which includes painting, decorating, or replacement of doors or windows and other nonstructural components. It does not include well or septic maintenance or replacement.

Carl Karcheski, Town of Linwood Chairman, stated this request was discussed at the Town Board meeting and they have no objections as stated in the letter read earlier.

Rutta asked if there were any more questions, comments, or testimony. There being none, Rutta closed the public hearing portion of the request.

Deliberation and Decision

Rutta stated members should keep in mind all variance criteria must be met and what type of variance they can grant. There are a set of rules that must be met.

Potratz stated this is not just a roof repair; it is major renovation of this structure. It may not change the footprint, but he is changing just about everything else. Four walls need to be modified for new trusses and the outside walls must be modified to meet the interior walls. It is not feasible as presented.

Casey stated they do not make any standard trusses 27 feet 8 inches long. The overhang would be almost six feet. Casey asked if that would be allowed. Rutta replied that is one thing BOA would need to decide along with the setback from the river. It would be a variance for the construction within the setback of the river and variance for the roof overhang exceeding 30 inches. Casey stated he does not feel the overhang should exceed 30 inches. He stated the pitch could be cut down to a 4:12 pitch, which would allow the roof to have interlocking shingles or a metal roof. An 8:12 pitch is not necessary.

Potratz stated the roof should not exceed 4:12 to 6:12 maximum. An 8:12 roof is not necessary; most houses have a 4:12 pitch roof.

Casey stated all shingles are guaranteed for 15 to 30 years.

Scheider stated her main concerns are the septic system and well. She cannot understand why Edison did not come in with a different plan for the roof. The roof overhang would be influenced by the type of roof he puts on; otherwise, she thinks a 30 inch overhang is sufficient.

Bachhuber stated she wants to see gutters placed on the new roof so Edison can control where the water goes. Land Conservation should determine where the runoff flows so it does not flow into the river. Edison should not exceed the 50% equalized assessed value. She has no objection to Edison remodeling the inside of the cottage. She would like to see the septic system and well evaluated to be sure nothing is going into the river.

Pelky asked if BOA would approve a cathedral ceiling. Casey replied a complete set of plans must be submitted to Planning and Zoning prior to issuance of a Zoning Permit. Scheider stated permanent staff should make that decision when they see the set of plans. No loft is allowed with a cathedral ceiling. No additional bedrooms are permitted.

Rutta summarized what was said during deliberation.

Bachhuber stated the mold is a health hazard that should be addressed. She agrees with Scheider that the septic system and well should have an evaluation.

Mrdutt stated this whole request could have been avoided if Edison had taken staff's suggestions for a 4:12 pitched roof, 30 inch overhang, and no cathedral ceiling. Edison did not accept that suggestion.

BOA can deny the total request and have Edison come back for a Zoning Permit without a septic and well evaluation. A discussion was held regarding a cathedral ceiling, insulation, ventilation, and possible addition of a loft. A decision was made that no loft be allowed.

There being no further discussion, Rutta closed the Edison hearing.

Rutta entertained a motion for approval.

Casey moved to approve the request with the following conditions:

1. Approval is granted for a maximum 6:12 pitch roof to replace the flat roof on the cottage.
2. The cottage is to remain in the existing footprint, no additions allowed.
3. No loft is allowed in the cottage upon completion of the roof.
4. A septic system evaluation must be completed prior to issuance of a Zoning Permit.
5. A well inspection must be completed prior to issuance of a Zoning Permit.
6. Eaves must be installed to allow the gutters to empty on the road side of the cottage.
7. The maximum overhang allowed on the proposed roof is 30 inches.
8. A 4 foot by 4 foot overhang is allowed only over the main door on the north side of the building.
9. Appellant is to contact Dan O'Connell, Senior Conservation Technician, Land Conservation Section of Portage County Planning and Zoning Department regarding surface water retention.
10. A complete set of detailed plans must be presented to the Planning and Zoning Department prior to issuance of a Zoning Permit.
11. The cost of the new roof shall not exceed 50% of present equalized assessed value. Owner must provide detailed cost estimate of construction.
12. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Scheider seconded the motion, which passed unanimously by a roll call vote.

Approval of April 20, August 3, and August 17, 2009 Minutes

Scheider moved to approve April 20, 2009 minutes, Casey seconded, all in favor.
Casey moved to approve August 3, 2009 minutes, Scheider seconded, all in favor.
Casey moved to approve August 17, 2009 minutes, Potratz seconded, all in favor.
Minutes stand approved.

Correspondence/Updates

Pelky stated there are two requests submitted for the October BOA meeting.

Casey stated he will be gone October 10 through the 23, 2009

Rutta asked BOA members to write down suggestions they have to make meetings go faster.

Adjournment

Casey moved to adjourn, Scheider second, all in favor. Meeting adjourned 5:40 pm.

Respectfully submitted,

Judith J. Liebe, Recording Sec.

James Potratz, Board Secretary

November 16, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, October 19, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, James Potratz, and Phil Janowski. Members excused Marj Bachhuber, Joan Scheider, and Patrick Casey. Staff present included Tracy Pelky, Chris Mrdutt, and Judith Liebe, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing. There are three special exception requests today.

PUBLIC HEARINGS:

Dean Altmann (A09-33)

The Altmann request for a special exception from provisions of the Portage County Zoning Ordinance to construct a sign greater than six square feet in the A3 Low Density Agricultural Zoning District, Town of Carson, was opened by Rutta, who read the public hearing notice.

Pelky stated the applicant would like to install a four by eight foot sign, the Ordinance allows six square feet for a sign in that zoning district. BOA has to decide if that is acceptable. Plans submitted show what the sign will look like.

Rutta read the Carson Town Board letter into the record. They recommended approval with a condition that all lighting face inward from the highway (copy in file).

Rutta swore in Dean Altmann. Altmann stated he basically wants to construct a 4 foot by 8 foot sign. He felt he needs a larger sign to make his business name more visible. The Town has a small meeting sign on his property for meeting notices. He feels you can hardly read it.

Rutta stated BOA was on the inspection Friday and he feels this could be accomplished without much problem. This is a very rural area.

Potratz stated he is concerned about the lighting being on 24/7, 365 days a year. Altmann replied it would be on during night hours. He stated lighting was discussed at the Town meeting. He spoke with the electrician, and the florescent light that will shine on the sign should not cause any problems, but he can put a shield on it that would take most of the glare out. The electrician did not think it would be necessary. Rutta replied he would not know until the sign is in place. Altmann stated the lighting would be pointing toward his house.

Janowski stated he could use a timer. Altmann replied he was just going to leave it on and not use a timer now.

Pelky stated the sign cannot be flashing. Altmann replied he knows, therefore it is a steady light. Rutta asked Altmann if he considered turning off the lighting later in the year. Altmann replied he is probably going to leave it on 24/7. Rutta asked if pointing the lighting down and away from the highway was discussed at the Town meeting. Altmann replied yes. Rutta stated BOA does not want any lights pointing toward the highway at all. Rutta stated the plan shows the sign to be 18 feet out of the road right-of-way (ROW). Altmann replied correct. There were a few more issues that were brought up at the Town meeting. Altmann said he spoke with the Department of Transportation (DOT) and was told he meets the contingencies that allow him to install the sign closer than the 100 foot setback from the centerline. The DOT sent him paperwork to fill out and told him

exactly what he could do and how far from the road ROW he must be. His secretary informed him DOT approved the 18 foot setback. The sign will be placed exactly as shown on his plans.

Potratz stated the lighting was his biggest concern. It would face directly into Altmann's house. Altmann replied it would be ground lighting. It will shine up on the sign. Rutta stated if it bothers his home, he could put the shields on. Potratz replied his only other recommendation would be that the sign not be over eight feet high. Altmann replied the bottom of the sign would be 30 inches from the ground; his wife wants to put some shrubs around it. Potratz stated he could not find anything in State regulations telling the difference in size of a sign before it would be considered a billboard. Potratz asked if there were any restrictions. Pelky replied not that he is aware of. Potratz stated if it is of a certain size, the State may look at it as a billboard and not a sign. Then BOA would need to follow a whole different set of rules.

Mrdutt stated staff would leave that up to Altmann and the DOT to work out. Rutta stated BOA has allowed a lot of these signs over the years, it is very common. Altmann stated he spoke with Tony Gilbert, DOT, and he is following Gilbert's recommendations.

Rutta asked if Altmann needed to work with the Portage County Highway Department regarding the sign. Pelky replied no, just the DOT, being on a State road.

Rutta asked if there were any further questions. There being none, Rutta stated he would make a motion to approve Altmann's request with the following conditions:

1. All Department of Transportation permits must be obtained prior to issuance of a Zoning Permit.
2. The proposed sign is to be no greater than four feet by eight feet.
3. Any lighting must be pointed inward and downward, away from the highway.
4. The sign is approved for the existing business on the site. Any change in ownership would require a new hearing for a new sign.
5. The sign must be 18 feet out of the road right-of-way of STH 34.
6. The sign may be lighted year-round.
7. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Paul Yenter, Owner/Dean Altmann, Agent (A09-34)

The Yenter/Altmann request for a special exception from provisions of the Portage County Zoning Ordinance to change Condition #10 from the Board of Adjustment January 20, 2007 meeting for appeal A07-01 decision to allow more time to remove fill from the excavated pond in the A1 Exclusive Agricultural and Conservancy Zoning Districts, Town of New Hope, was opened by Rutta, who read the public hearing notice.

Pelky explained the request before BOA is for a special exception to extend the completion date set by BOA at the January 2007 meeting for Appeal A07-01, which gave Altmann a completion date of January 1, 2009.

Pelky stated if BOA approves the extension, he would like to know if Altmann would need to come back before BOA in two years for an additional two years extension, or could permanent staff give him an additional two year extension up to 2014.

Altmann stated he started digging this pond for a farmer with the intent of selling the sand as his payment. Things changed; there is a lot of peat on site, which brought the project to a halt. He did not realize the peat would go that deep. What he has been doing is rolling the material to dry it and when it is dry enough, Wausau Materials would take it, bag it up, and sell it for peat. They need to have it much dryer, it was really soupy. He has rolled it three times this year and twice last year. He is trying to dry it enough to sell. The farmer is really looking for an irrigation pond. Altmann's plan at present, before going any further, is to get rid of the peat that is there now.

If it works, he would dig out more, a little at a time. If BOA gives him an extension, that is great and if not, he understands. This is the only way he can protect himself because he does not want to dig the whole works out,

and have it sitting until it would dry, probably another three years, or so. He would rather dry what is there, sell it, then dig a little more, but he is letting BOA know that it takes time. The material is getting pretty dry, he just

needs to get it checked by Waupaca Materials to see if it meets their specifications. This fall he wants to take some of the sand out of the front part.

Potratz stated he thought the pond was a lot smaller than when BOA originally looked at it. Altmann replied his plan was enlarge the pond to that point. The farmer wants to irrigate everything on the south side of the road out of that pond. That was his intent.

Janowski asked Altmann how deep the pond is. Altmann replied at the deepest, approximately 12 feet.

Rutta stated Pelky asked if permanent staff could grant a time extension if Altmann needs one after October 31, 2011. Staff could grant Altmann an extension without coming back before BOA. Pelky asked if BOA has an 'absolute' finish date that the project should be completed by or need BOA approval. Rutta replied if the project were not completed by October 31, 2014, Altmann would need to come back before BOA for consideration as a new request. Rutta asked Altmann when he felt he had enough time to complete the project. Altmann replied when BOA tells him enough is enough, that's how he feels about it. Rutta stated if BOA gives him a two year extension now, and allows permanent staff to give him another two year extension, that would give him four years; he ought to get the pond done in four years. Altmann replied he knows he will not have it done by then. If you looked at the proposed size of pond the farmer wants, and what he has done so far, the peat is just drying out now. That material has been drying for three years already. Altmann stated he thinks the time limit BOA is giving him is more than fair.

Pelky asked Altmann if there were any other issues or conditions he would like altered or changed and if everything was alright with the bond. Altmann replied he has no other issues, he finishes the sides as he goes along.

Potratz stated we can only act on the time period because that is what Altmann is asking for.

Rutta stated if there were no further questions, he would make a motion for approval of this request with the following conditions:

1. All conditions set at the January 15, 2007 Board of Adjustment meeting for Paul Yenter, Appeal A07-01 are to remain the same except for Condition #10.
2. Condition #10 is to be changed to allow a time extension until October 31, 2012.
3. The Planning and Zoning permanent staff is allowed to approve another two year extension, if needed, until 2014.
4. After 2014, if more time is needed to complete the project, a new Board of Adjustment hearing will be required.
5. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Wayne Anderson, Owner/Chris Anderson, Agent (A09-35)

The Anderson special exception from provisions of the Portage County Zoning Ordinance is requested to open a daycare as a home occupation in an accessory house located in the A1 Exclusive Agricultural Zoning District, Town of Almond, was opened by Rutta, who read the public hearing notice.

Pelky stated this request is for a home occupation as a special exception on the property. The applicant wants to open a daycare center. It is up to BOA to decide whether to allow a daycare in that area.

Rutta read from the Ordinance, page 14, 7.1.2.3(A)(15)states: "Home occupation when such occupation may be conducted anywhere on the premises for retail uses and manufacturing, assembly and artisan. If conducted out of the residence, not more than 25% of only one floor of the dwelling shall be used, there shall be no external alterations that would effect a substantial change in the residential character of the building, and that no more than two persons not members of the resident family may be employed in such occupations." Rutta stated he spoke with J Blair Ward, Portage County Corporation Counsel, about this request and Ward explained a

'premises' is a plot of land and the buildings thereon. His question is can BOA act on this in view of the appeal addressing two plots of land. Mrdutt replied the two lots are being combined into one. Rutta replied as of now, they have not been combined. Anderson stated they contacted the Register of Deeds (ROD) Office and it is in

the process of being combined as we speak. His brother provided necessary paperwork to ROD to combine the parcels. Mrdutt stated he spoke with the ROD office and they have no problem with combining the parcels. Rutta stated he would feel more comfortable if the parcels were combined. What we are doing is contrary to the Ordinance. At present, we have two parcels of land and that is a bit of a problem. The Ordinance is quite clear as it relates to a home occupation on the premises of a single parcel.

Rutta stated he does not know how BOA members feel. Potratz stated this is only one concern. Rutta asked BOA members to keep this in mind.

Rutta read two letters into the record, one from a neighbor recommending approval and one from the Almond Town Board recommending approval.

Rutta swore in Chris Anderson. Anderson explained the neighboring property belonged to a longtime friend that has passed away and the land was donated to the Church. He has the opportunity to purchase that property. The present owner is Wayne Anderson, his brother; he purchased it from the Church. Anderson stated he is waiting for funding from the Farm Service Agency (FSA). As soon as the funding comes through, he would be purchasing the whole 50 acre parcel from his brother. The daycare his children stay at has closed and the woman who operated it is looking for a facility to upgrade to a group daycare center. She had a family daycare center for the past nine years. That is why he chose to purchase this property. They thought it was a need in their community.

Rutta stated that two BOA members went inside during the inspection, and he would like to complement Anderson on the inside of the facility which is done very nice. There are some other issues that need to be addressed, but not the inside of the building.

Potratz stated he does not see this as a home occupation, he sees it more as a commercial venture. As far as he is concerned, it is controlled by the State. The permit says up to 50 children. Anderson replied no, they would only be licensed for a maximum of 24, and would begin with only 12 children. Rutta asked if that was what the State calls an 'eight to twenty-four category'. Anderson replied it depends on how many square feet you have in the daycare and how many teachers you have. Rutta stated Anderson is licensed for 24 children now. Anderson replied they applied for a license for twelve children, two to twelve years old.

Pelky asked how many employees they would have. Anderson replied only one besides his wife. In the future, if the daycare grows, they would add another teacher/employee if/and when they would get licensed for infants. The maximum number of children at any one time would be 24.

Rutta asked when you open the daycare; will there be one other employee besides your wife? Anderson replied that is correct; it will be my wife and the woman who operated the daycare he mentioned earlier. Pelky informed BOA the Ordinance allows for two outside employees besides family members.

Rutta asked Anderson when he planned on opening the daycare. Anderson replied as soon as they get BOA approval. The State licensing technician would come back, inspect the site, and issue the permit at that time. They are hoping to open November 1, 2009. They are kind of at the mercy of when the licensing technician can come back.

Rutta stated one of the things BOA is going to insist is that the well be tested. Anderson replied they have already had it tested. There is no bacteria or lead in the water, and the nitrate level is alright. Rutta stated a copy must be provided for Planning and Zoning Department files. Anderson replied he actually sent the results to Early Care Development of Rhinelander. They require all the paperwork before getting licensed. Rutta asked Anderson if they tested the septic system. Anderson replied he did not have it tested. Rutta stated a septic system must be evaluated to see if it can handle the daycare users. Pelky stated an evaluation is usually required for public use. Anderson would need to contact a soil tester/plumber licensed to evaluate the septic

system. Anderson stated they hired a licensed plumber to update all the toilets, sinks, etc. in the building and asked if he could do it. Pelky replied a licensed septic system pumper must do the job, if the person doing the inside plumbing is licensed to do the evaluation, that would be fine. A copy of that report should be given to the

Planning and Zoning Department. Pelky stated it would be best if he contact Ralph Loeffler, Portage County On-site Waste Specialist, to be sure exactly, what is needed so he would only need to have it inspected once.

Rutta asked Anderson what his hours of operation would be. Anderson replied twelve hours a day, 5:30 am to 5:30 pm, Mondays through Fridays, no weekends.

Rutta asked Anderson about the banner/sign by the road, it looks like a temporary sign. Anderson replied it is a temporary banner to let people they will be opening soon. Rutta informed Anderson he is allowed a sign not to exceed six square feet and must be outside the road right-of-way.

Rutta asked Anderson if he would be installing exterior lighting on the site. Anderson replied he put up a pole light. Rutta stated it needs to be directed downward and inward onto the property. Anderson replied it is, it is directed east, toward the back yard. Anderson stated he does have outside lights by the two outside backdoors.

Rutta stated Anderson still has work that needs to be completed and asked him if it would be done prior to opening. Anderson replied he didn't know what Rutta needed. Rutta replied when you walk up the approach to the building, it looks like there is going to be concrete poured. Anderson replied it will not be poured until spring, because he was told to wait at least a year for the sand to settle, that is why they just put patio pavers in for now. Rutta stated it looks like dirt and stone. Anderson replied it is just gravel. Rutta stated it really does not look like a safety hazard, but a lot of sand and dirt will be dragged indoors. Anderson replied that is why they had indoor-outdoor carpeting put in.

Rutta stated he noticed there is a fenced in play area for the children, and asked Anderson how he selected that particular area. Anderson replied that was the backyard since the house has been there. Rutta stated that is where the septic system drainfield is located. Anderson replied, being a farm kid, he did not think of that, everyone who lives in the country has a drainfield in the backyard. Rutta stated that's right, but you do not put a fence around it and put 20 kids on it. Anderson replied he could move the fence. Rutta asked if permanent staff spoke with the On-site Waste Specialist. Mrdutt replied he was not able to contact Loeffler regarding this request as Rutta asked him to. Mrdutt stated looking at licensing forms; it does not seem the State was concerned. Anderson stated when they had the initial State inspection from the licensing technician, she thought it was great, as far as the size, she checked the fence height and everything. He did not even consider that being a problem. Janowski stated with kids playing there during the winter, the drainfield would have a tendency to freeze; it would be like driving over it and compacting the snow. When you take the snow away or pack it down, the ground tends to freeze deeper and it may freeze the pipes. Rutta stated if there would be a lot of kids playing there, from that point-of-view, it would not be good. Anderson stated he could move the play area.

Rutta stated in the back area, where the playground is established, it looks like there is an old chicken coup or something. Anderson replied it was a chicken coop that could be used for storage. Rutta asked Anderson if he would be willing to tear it down. Anderson replied he could remove it. Rutta stated there is another building as you drive in the horseshoe driveway, just past the drive through. That building is also a candidate for removal. Anderson replied that is not a problem. Rutta stated it is a safety hazard. Kids have a way of escaping and exploring. Anderson replied it could be fenced off. Rutta replied that would help a lot. Anderson showed him where he would put the fencing on the plans submitted. A discussion was held regarding which buildings should be removed and which buildings should be fenced off. Rutta stated there are an awful lot of little buildings on the site that are structurally unsafe and should be removed. Anderson agreed. Rutta stated the barn isn't much of a building. Anderson replied it is good for hay storage. Rutta stated the buildings that could pose a problem for children should be either removed or fenced off. Anderson stated that is not a problem, he can fence off anything that would pose a problem. Rutta stated he thought there were three small buildings. Anderson replied he thought that is correct.

Rutta stated you probably will need a driveway to get to the barn and asked how he would do it if it were fenced off. Anderson replied that is not a problem, he would use the other driveway and showed BOA on the plans his

route. Rutta asked what another small building was used for. Anderson replied for small tools, rakes and other things like that. Rutta stated all those building are just taking up space and have no value, he should burn them. He said Anderson might consider a play area that would come into the front yard. Anderson replied that

is probably what he would do. Rutta stated it would be better if the play area would not be too close to the road, which is a high speed highway. Anderson replied that is why he had the play area in the backyard. Rutta said he understands, if there is a place you could put it after you remove the buildings would be even better.

Rutta asked if there were any other issues he did not cover. Mrdutt noted the dog. Anderson stated that is actually his dog. Rutta stated that dog cannot be there. Anderson replied he would be at his house down the road. Rutta stated when BOA went to do the inspection; the dog made a very very good statement of where BOA could and could not go. Anderson replied he just talks and howls. Rutta stated he felt very intimidated.

Potratz stated the small external buildings should not be part of the daycare. The shop and barn could be renovated and fenced off so as not to create a hazard for children 2-12 years old. They can get into a lot of things to explore. Anderson replied he understood, he has three children of his own. Potratz asked Anderson if he had any plans for play equipment in the play area. Anderson replied he does, he has already spoke with the licensing technician, and she told them to wait until spring. They need to put down certain materials for a nine inch base. They know what is needed for the play area.

Rutta asked Anderson what the wooded brush area is behind the house. Anderson replied it is all nice shade trees. Rutta stated there is a lot of junk in there also. Anderson replied they just purchased the place and it would all be cleaned up.

Mrdutt asked Anderson if he had any information from ROD regarding combining parcels. Anderson replied yes, and gave Mrdutt a copy to look at. Mrdutt stated everything has been submitted and this is a copy of what is taking place. Mrdutt stated there is usually a day or two delay from when the papers are submitted until they get recorded. Rutta stated they would make it a condition that this cannot be approved until the lots are combined.

Pelky stated it would be a good idea to have Gary Garske, Public Health Environmental Specialist, at Health and Human Services, take a look at everything to be sure it is up to County Codes. Rutta replied he left messages, but Garske has not returned his calls.

Rutta asked if there were more comments or questions. There being none, he stated he would make a motion, first to approve the request, if there is not a second for this motion, or did not pass, he would ask for a motion to postpone. If there is not a second for that motion, he would ask for a motion to deny.

Rutta motioned to approve the request A09-35 for a daycare center with the following conditions:

1. The two parcels must be combined prior to issuance of a Zoning Permit.
2. A copy of the State License must be completed and received for 12 children 2 to 12 years of age, approval for up to 24 children in the future.
3. Not more than two nonfamily employees are allowed.
4. A copy of the water test must be on file in Planning and Zoning and Health and Human Services Departments.
5. The septic system must be evaluated.
6. Gary Garske, Health and Human Services, be contacted to inspect the site. (715-345-5350)
7. Hours of operation would be 5:30 am to 5:30 pm, Mondays through Fridays. No weekends.
8. The temporary sign in front of the day care must be removed prior to opening the center. A six square foot sign is allowed outside of the road right-of-way.
9. All lighting must be pointed downward and inward toward the property
10. Four small buildings are recommended to be removed.
11. The fenced in play area should be moved so it is not over the septic system drainfield.
12. All hazardous areas, shop, barn, etc., should be fenced in for safety reasons and if possible, kept closed.
13. Planning and Zoning permanent staff the authority to inspect the site at any time.

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14. Dog should not be allowed to roam around the daycare center area.
15. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion to approve, which failed by a two to one roll call vote, with Rutta and Potratz voting nay.

Rutta stated he would entertain a motion to postpone this request until the regular November BOA meeting. BOA members would like to do another on-site inspection, without the presence of the dog, to satisfy their concerns.

Rutta motioned to postpone the hearing until the November 2009 BOA regular meeting.

Potratz seconded the motion, which passed unanimously by roll call vote. The request is postponed until the November 16, 2009 BOA meeting. An on-site inspection will be completed the Friday prior to the meeting. Rutta stated hopefully this would give Anderson time to have some of the things done before the on-site. They would like the dog to not be present. Anderson replied ok.

Minutes:

April 22, 2009 minutes. Potratz moved to approve the April 22, 2009 minutes as submitted, Janowski seconded, all in favor; minutes approved.

June 15, 2009 minutes. Janowski moved to approve the June 15, 2009 minutes as submitted, Potratz seconded, all in favor; minutes approved.

July 20, 2009 minutes. Potratz moved to approve the July 20, 2009 minutes as submitted, Janowski seconded, all in favor; minutes approved.

Correspondence/Updates

Pelky stated the next meeting is scheduled for Monday, November 16, 2009 with on-sites on Friday, November 13, 2009.

Adjournment

There being no further business to come before BOA, Janowski moved to adjourn, Potratz seconded, all in favor. Meeting adjourned 5:15 pm.

Respectfully submitted,

Judith J. Liebe, Recording Sec.

James Potratz, Board Secretary

November 16, 2009
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, November 16, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:05 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, James Potratz, Joan Scheider, Marj Bachhuber, and Phil Janowski. Member excused included Patrick Casey. Staff present included Tracy Pelky, Chris Mrdutt and Judith Liebe, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Reconsideration of Held Open Request:

Wayne Anderson, Owner/Chris Anderson, Agent (A09-35)

The reconsideration of the held open request of a Special Exception from provisions of the Portage County Zoning Ordinance is requested to open a day care as a home occupation in an accessory house in the A1 Exclusive Agricultural Zoning District, Town of Almond, was opened by Rutta, who read the public hearing notice.

Potratz stated the owner only needs to come forward if new information is needed. Scheider and Bachhuber stated they are satisfied with the information available.

Rutta swore in Chris Anderson. Rutta stated nitrate levels are high on the proposed site and the State requires bottled water for infants in that case. In addition, the hours of operation are 5:30 am to 8:30 pm. Anderson stated the State tests the water yearly and the records are on file. There was discussion regarding water issues in addition to farming across the road and aerial overspray. Anderson stated he will watch that it does not drift. Scheider stated Ray Schmidt, Portage County Water Quality Specialist, was concerned about high nitrate levels in the water and there must be a sign informing parents of this. Anderson stated parents will be informed. Schmidt should be contacted with concerns regarding water testing. Anderson stated the State would not approve their license, if there were water problems. Scheider stated Schmidt should check to see if a pesticide scan is needed.

Potratz stated he has concerns that this matter is outside the realm of BOA. Additional concerns were that the roadway is 55 mph, the number of vehicles entering/leaving, and the school bus would add to the situation. Anderson stated the bus will use the round driveway. Janowski stated there are several "children present" signs in the 55 mph area. Anderson stated Jeanette Wilson has been providing daycare for 17 years and the State has the final say on most issues/concerns mentioned.

Deliberation and Decision

Rutta stated that a month ago there were many unresolved issues, and the applicant did a terrific job of cleaning up the site and all issues have been resolved. Scheider stated this is not the ideal site for a daycare, but corrections have been done. Scheider has concerns regarding the nitrate levels and stated there should be routine tests. Bachhuber stated this issue came at BOA backwards. The daycare already has State approval. Janowski stated there are no problems and the daycare is licensed by the State. Potratz stated he is not happy the ordinance allows a daycare as a home occupation in A1 Zoning. He stated the applicant must comply with the ordinance and

conditions. The conditions are not for the BOA to set as this is up to the State. A parcel zoned A1 can be a home occupation.

Rutta asked if there were more comments or questions. Hearing none, he stated he would make a motion for approval of the request with the following conditions:

1. A copy of the State License be completed and received for 12 children, aged 2 to 12.
2. A maximum of two nonfamily employees are allowed.
3. All lighting must be pointed downward and inward.
4. Planning and Zoning staff have the ability to inspect the site at any time.
5. The hours of operation are 5:30 am to 8:30 pm, Monday through Friday. No weekends.
6. A copy of the State annual inspection/water tests must be sent to the Planning and Zoning Department.
7. Ray Schmidt should be contacted to see if any additional water tests are necessary regarding a pesticide scan and nitrates.
8. Bottled water must be present on site.
9. A sign should be posted at the entrance stating there are high nitrates in the water.
10. The Portage County Highway Department should be contacted regarding signage to be placed on County Road D reminding the public "Children Present or Bus Stop Ahead."
11. Copy of October 19, 2009 conditions attached.
12. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Janowski seconded the motion, which passed unanimously by a roll call vote.

Jay and Deborah Lenski (A09-36)

A variance from provisions of the Portage County Shoreland Ordinance is requested to construct a deck within the 100 foot setback of Rinehart Lake, in the R1 Rural and Urban Fringe Residential Zoning District, Town of New Hope, was opened by Rutta, who read the public hearing notice.

Pelky explained the request before BOA is to replace an older deck with a new, larger deck. BOA has to decide on a variance to enlarge the deck. Rutta explained the variance standards. Rutta read into the record minutes from the Town of New Hope meeting recommending approval of the variance. Rutta stated neighbors also recommend approval. Mrdutt noted that Keith Patrick, DNR, stated that because the project is done, is no reason to grant the variance. Patrick wanted BOA to know his position.

Rutta swore in Jay Lenski. Lenski stated he ripped down the old 10'x10' deck and wants to take the new deck all the way down to the end of the house. The steps in the front are gone and new steps will go down the side. Lenski also stated the new deck is longer and will be further from the water. Mrdutt stated the deck is 34' from the ordinary high water mark of Rinehart Lake. Rutta read Lenski the variance criteria (copy in file) and noted he did not meet the three criteria. If the structure is removed, the new structure must meet the current ordinance and will not be grandfathered in. There must be no interference with wildlife or water. Potratz stated he must abide by the ordinance and there is no way to meet conditions. He realizes the need for a way in/out of the dwelling. Bachhuber stated the deck is rotting and asked if he could have replaced it with the same size deck. Mrdutt stated if it was maintained, only a few boards would have needed to be replaced, not complete removal. Lenski stated if he had known, he would have gotten a permit. He also stated that all the decks along the lake are the same. Rutta asked Lenski if he stopped construction when notified. Lenski stated he did. Lenski stated the deck is not attached to the house as it is sitting on deck post blocks. There was discussion on considering a level patio. There was also discussion of a shed located north of the house that was purchased this summer and is portable. Lenski stated the size is 10'x14' or 12'x14'.

Rutta asked if anyone in the audience would like to testify or comment.

Rutta swore in Butch Pomeroy. Pomeroy stated he is in favor of granting the variance. Pomeroy also stated Lenski is from Waukesha County and was unaware of our zoning.

Rutta swore in Nancy Turyk, Water Resource Scientist, who assisted Portage County with the Lakes Study. She stated State Ordinances are in place to protect water for all citizens.

Bachhuber asked if there are any changes to NR115 coming through. There was discussion regarding NR115 and possibly having more restrictive grandfathering. Pelky stated we need to work with the landowner on the setback from the water. If a violation exists, Zoning will handle it. Scheider asked when the property was purchased and Lenski stated it was purchased four years ago.

There being no further testimony or questions, Rutta closed the hearing portion of this request

Deliberation and Decision

Scheider stated most people know the regulations to abide by when making improvements. They should know to check before starting. She sympathizes, however, Lenski should have checked.

Bachhuber stated she sympathizes, however, she agrees. This is waterfront property and Lenski should have checked what he could/could not do.

Lenski stated the Town recommended approval. Rutta stated the Town recommended approval, they did not grant it. The ordinance is in place to keep buildings away from the water.

Potratz stated he sympathizes; however, this does not change the issue of a conflict with the ordinances. The construction has to be eliminated.

Janowski stated he sympathizes; however, he cannot approve the deck.

Rutta summarized with the following:

1. The definition of a hardship is not valid. Must meet all three variance criteria and Lenski has not met any.
2. The new deck will not be grandfathered. Must be removed to meet ordinance criteria.
3. Not in the public interest; deck is too close to the water.

Rutta stated that prior conversations with permanent staff would have saved money. Lenski will not consider a deck on the north side of the home. There is a minimum amount of unnecessary burden. The old 10'x10' deck did the job; therefore, this request is not valid. The addition of a 12'x20' building on site is a violation of the ordinance. Permanent staff will check and bring this into compliance. Mrdutt stated there is a landing provision in the ordinance.

There being no further discussion, Rutta entertained a motion to deny the request.

Motion by Scheider to deny the request for variance for the following reasons:

1. The three variance criteria cannot be met to allow minimal relief to construct a deck within the ordinary high water mark of Rinehart Lake.
 - a. Unnecessary hardship cannot be shown.
 - b. Unique property characteristics are not applicable.
 - c. It is contrary to public interest.
2. The deck construction was started without a zoning permit.
3. The deck is within 36 feet of the ordinary high water mark of Rinehart Lake.
4. The Portage County Zoning staff offered a viable option to the appellant, which he refused to consider.
5. The Department of Natural Resources recommended denial.

Motion seconded by Potratz. Motion passed by unanimous roll call vote.

Bonnie L VanDecar, Owner/Ken Lepak, Agent (A09-37)

A Special Exception from provisions of the Portage County Zoning Ordinance request to construct an attached garage exceeding 2,000 square feet of total accessory building space in the R1 Rural and Urban Fringe Residential Zoning District, Town of Stockton was opened by Rutta, who read the public hearing notice.

Pelky explained the request before BOA is to attach a 28'x24' garage to the house, which would exceed the 2,000 square feet of total accessory building space. Rutta read a letter into the record recommending approval.

Rutta swore in Ken Lepak. There was discussion amongst BOA and Lepak regarding the age of the buildings, the paint color of the buildings, and whether the neighbors are okay with this request.

Bachhuber stated it looks like the house is already under construction. Pelky stated they have a permit for the house to be built without an attached garage.

Bonnie VanDecar and Gerald VanDecar were sworn in by Rutta. There was discussion amongst BOA and the VanDecars regarding another storage unit on the property and as to the specifics of the new garage.

Janowski stated he believes there is no problem with the shed at all as there is only personal property in it and it is being maintained. Pelky stated it is for private storage only. Mrdutt stated there are no farm animals allowed. Potratz stated they should remove the shed and build a larger garage.

Deliberation and Decision

This request is for a 24'x28' attached garage for a combined 3,872 square feet. They are not asking for a shed, they are asking for a smaller attached garage that will be constructed at the same time as the house.

Gerald VanDecar stated the basement is in. Potratz stated it would be good if he removed the shed and replaced it with one half the size. Janowski stated it would look better if the house and building matched. Bachhuber sees no problem with this request. Pelky stated the wording is 2,000 square feet; whereas R2 used to be 1,200 square feet until the County Board increased the amount. Scheider stated Planning and Zoning is aware of the situation and the public has been forewarned. She supports the request. Pelky stated if the request is approved, they will need a zoning permit for the garage. Rutta stated the total accessory footage is 3,872 square feet and unless damaged by an act of God, cannot be replaced without coming before the BOA. Pelky stated permanent staff supports this request.

Rutta asked if there were more comments or questions. Hearing none, he stated he would make a motion for approval of the request with the following conditions:

1. Approval is for a 24 foot by 28 foot attached garage.
2. There is to be no floor drain allowed in the existing storage building.
3. The existing storage building is to remain single story with no loft allowed.
4. Heat and electricity will be allowed. No running water allowed in the storage building.
5. The building is to be used for personal storage only, no commercial business or animal boarding allowed.
6. The total accessory footage, including the existing building and proposed attached garage, is not to exceed 3,872 square feet.
7. If the existing storage building is damaged, by an act of God, greater than 50%, it cannot be rebuilt without coming back before the Board of Adjustment.
8. The existing storage building color must match the proposed home and attached garage.
9. A zoning permit must be obtained for the proposed attached garage.
10. Start date November 16, 2009 – Completion date February 28, 2010.
11. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Motion seconded by Janowski. Motion passes by a 4-1 roll call vote with Potratz voting no.

Approval of Minutes

Potratz moved to approve the May 20, 2009 minutes as submitted, Rutta seconded, all in favor; minutes approved.

Potratz moved to approve the September 21, 2009 minutes as submitted, Bachhuber seconded, all in favor; minutes approved.

Rutta moved to approve the October 19, 2009 minutes as submitted, Janowski seconded, all in favor; minutes approved.

Correspondence/Updates

Pelky stated the next meeting is scheduled for Monday, December 21, 2009 with on-sites on Friday, December 18, 2009.

Adjournment

There being no further business to come before BOA, meeting adjourned 6:15 pm.

Respectfully submitted,

Judith J. Liebe, Recording Sec.
Composed by Gayle Stewart

James Potratz, Board Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, December 14, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 8:47am in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Marj Bachhuber. Staff included Chris Mrdutt, Tracy Pelky, and Jamie Phillis, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noticed by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

G&D Acres LTD Partnership, Owners, Point of Beginning, Agent (A09-41)

The G&D Acres/Point of Beginning request for is a special exception from provisions of the Portage County Zoning Ordinance to create a parcel under 35 acres for farm related buildings or uses, in the A1 Exclusive Agricultural Zoning District, in the Town of Plover, was opened by Rutta, who read the public hearing notice.

Pelky stated the applicant is looking at creating an outlet. The property is currently zoned A1, Exclusive Agricultural, which has a special exception as a use of land consisting of 35 acres or less. The .60 acre outlet being created is for farm machinery storage. Pelky noted this parcel may not be used as a building parcel for the residence.

Rutta read the Plover Town Board letter into the record, which was dated December 12, 2009 and approved of the request and the Certified Survey Map (CSM) was signed at that time.

Pelky stated the Village of Plover has also approved and signed the CSM, because this parcel falls within the mile and a half extraterritorial review. After BOA approval Planning and Zoning Department can sign the CSM.

Rutta swore in Pete Tenderholt and Dana DesRochers. Tenderholt stated Del Monte is purchasing the land south of Roosevelt Road. The original intent was to purchase the entire parcel, however this outlet has been utilized for years by G&D to park their equipment because there is no room near their storage buildings and warehouses. To give G&D the ability to remain parking there, an outlet was created.

DesRochers stated Point of Beginning (POB) performed the survey work and established the road right-of-way as it is shown on the CSM.

Tenderholt stated it is Del Monte's intent to purchase the outlet 1 with Phase 2, which is purchasing the land north of Roosevelt Road in the future in order to keep the parcels together. The outlet will never be sold to a third party on its own. The creation of this outlet is mainly to allow G&D to park their equipment on the parcel until Phase 2 takes place.

Potratz asked when the outlet is created if it will be independent or if it will become a portion of the parcel on the north side of the road. Tenderholt replied it has to remain on its own because it is divided by Roosevelt Road. DesRochers stated Roosevelt Road goes right to the I-39 right-of-way, so there is no strip of land to connect the two parcels.

Potratz asked if this is approved, a contingency can be attached that states this outlot stays with the parcel on the north side of the road. Rutta stated or it can go with the parcel on the south side of the road, which would be more logical.

Scheider stated she is aware there was discussion regarding a cul-de-sac and concerns if what currently exists will remain. She asked if that was correct. Tenderholt replied absolutely. Rutta asked if there was a cul-de-sac there. Scheider replied no.

Bachhuber asked if Roosevelt Road is abandoned by the Town, what would happen to this parcel. Rutta replied a landlocked parcel cannot be created. Tenderholt replied if the road would be abandoned, then it would be contiguous with the land to the north and part of one parcel.

There being no further questions or comments Rutta closed the public hearing at 9:01am and moved the meeting into deliberation.

Rutta stated the lot split meets the standards of the Portage County Zoning Ordinance. Some conditions may be placed on the approval of this request to negate the creation of this lot for long term.

Potratz asked if it would be necessary to place a deed restriction on the parcel stating no building is allowed. It cannot be foreseen what may happen with future ownership and their intent for the parcel. Mrdutt stated this parcel is described as an outlot, which means the Portage County Zoning Ordinance would not allow a building to be constructed. Pelky stated if BOA places a condition on the approval staff does take those conditions into consideration when issuing a permit.

Potratz asked if Del Monte purchases the land north of Roosevelt Road, will this parcel be irrelevant. Rutta replied it would still be a separate deed. What he would like to see if the parcel north of Roosevelt Road is purchased by Del Monte, then the outlot 0.6 acres would be reattached to the parent parcel.

Bachhuber asked if the use will change at the time of purchase. Rutta replied the parcel can be used for any agricultural purposes as long as it stays in the A1 Zoning District. Bachhuber asked if there needs to be a condition placed on the request to say only agricultural use is allowed. Pelky replied it is already on the CSM the outlot was created for the farming use and not residential purposes.

Rutta asked if there were any further questions. There being none, Casey stated he would make a motion to approve the G&D Acres/POB request with the following conditions:

1. The outlot may be used for parking and agricultural purposes only, no buildings may be constructed.
2. At the time of the sale of land north of Roosevelt Road to Del Monte, phase 2, this parcel shall return to be part of the parent parcel.
3. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Scheider seconded the motion, which passed unanimously by a roll call vote.

Correspondence/Updates

Mrdutt stated there are on-sites Friday, December 18, 2009 with the regular BOA meeting on Monday, December 21, 2009. The decision for the Modrzewski court case was upheld on Friday, December 11, 2009, which means the BOA decision for denying the variance stands. The Planton court case is today.

Adjournment

There being no further business to come before BOA, Potratz moved to adjourn, Bachhuber seconded, all in favor. Meeting adjourned 9:15 am.

Respectfully submitted,

Jamie J. Phillis, Recording Sec.

James Potratz, Board Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
Monday, December 21, 2009

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:00 p.m. in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider, and Marj Bachhuber. Staff included Tracy Pelky, Chris Mrdutt, and Patty Benedict, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noticed as a Class 2 notice in the local newspaper. Testimony and questions are to be addressed during the public hearing portion of the meeting. Anyone wanting to speak must sign in. The BOA will hear testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Tracy Bemowski & Joe Polarek (A09-38)

The Bemowski/Polarek special exception request from the Portage County Zoning Ordinance to allow used car sales as an accessory use to a repair shop in the C1 Neighborhood Commercial Zoning District, Town of Carson, was opened by Rutta, who read the public hearing notice.

Pelky explained the applicant wishes to sell used vehicles as an accessory to the vehicle repair shop. He referred to page three of the BOA packets, a letter from the Town of Carson, which states the Town Board's approval of the request with four conditions. Pelky said the BOA may want to include the four conditions should they approve the request. Rutta read the letter from the Town of Carson addressed to the Planning and Zoning Department dated November 16, 2009 into the record.

Rutta swore in Tracy Bemowski and Joe Polarek, and asked them to explain their request.

Polarek stated they are asking to be allowed to sell used vehicles. He has been in business since 1994 in Wisconsin Rapids, and his lease ended in June 2009. They have owned the property in the Town of Carson since 2003. The repair business is currently located on the property and they would like to transfer their dealer license.

Scheider noted there two buildings side by side on the property. Polarek said the 28 feet by 48 feet building is the taller building facing east, and further from the restaurant. Scheider asked if they plan to have rest room facilities. Polarek replied they are currently using portable sanitation. Scheider verified they will not use the restaurant building, and Polarek replied it is totally gutted and they plan to raze that building. Polarek said they eventually plan to construct a small addition containing an office and rest room facilities. He noted they will obtain the proper permits for the addition.

Bachhuber asked Polarek to describe his operation in Wisconsin Rapids. Polarek said he operated a vehicle repair shop out of a 38 feet by 64 feet building. He buys cars, repairs, and sells them. He purchases the cars at salvage and used car auctions. Bachhuber asked if he buys damaged cars. Polarek replied he does purchase some damaged cars and some that need cleaning up. Bachhuber is concerned with bringing vehicles leaking oil and gas on the property that can potentially contaminate groundwater. Polarek said wrecked vehicles are hauled in on a tow truck and brought inside the building. He added he buys and fixes one vehicle at a time. Usually vehicles are custom ordered and by the time the vehicle is fixed, it is sold. He mainly deals with 2007, 2008, 2009 vehicles. He works by himself and the largest number of cars he has had for sale at one time was four cars. He has an existing inner lighted sign for his business, "Polarek Auto Sales". Bachhuber asked if he salvages or sells parts. Polarek replied no. Bachhuber asked if he has taken vehicles to a

salvage yard. Polarek said he rarely accepts trade vehicles, but those he takes that he does not consider resalable he takes to a salvage yard.

Potratz asked if Polarek has a containment vessel for handling flammable fluids on site. Polarek replied flammable fluids are stored in a self sealed containment cabinet which holds 150% of the volume. Polarek said he does not do many oil changes and will not have bulk oil on site. Oil and anti freeze are purchased as needed. Potratz asked if the building has a floor drain. Polarek replied no. Potratz noted he feels the restaurant building should be demolished.

Casey asked about the size of the sign. Polarek said the sign is six feet by eight feet, noting he reported incorrectly to the Town of Carson Board that the sign was four feet by eight feet. It is a self illuminating marquis sign with a fluorescent bulb on an aluminum frame. The total sign height is approximately 12 feet on a steel post. Casey said the Town of Carson requested the restaurant building be removed by August 31, 2010. Polarek said he has contacted Dean Altmann Trucking and Excavating regarding the building removal. Altmann will tear down the building, excavate, haul the building away, and level the area with road base. Casey asked what Polarek plans to do with the other building and Polarek replied he will use it for storage. Casey verified there will be no more than 10 unlicensed vehicles on site, repaired and unrepaired. Polarek replied yes. Casey asked where junk parts are stored. Polarek said junk parts are put in a dumpster, which is picked up every two months. Casey asked if drain oil can be stored in the containment cabinet. Polarek said the cabinet is OSHA approved, insulated, and fireproof; however drain oil will be stored in a bin in a cement containment center. Casey verified the hours of operation will be 7:30 a.m. to 6:00 p.m., Monday through Friday and 7:30 a.m. to noon on Saturday. Polarek replied yes. Polarek said he and his wife, who does bookwork, are the only employees. He added he hires out most of the painting.

Rutta asked if Polarek has a salvage and recycling license. Polarek replied no. Rutta informed Polarek there may be unannounced visits from the Planning and Zoning Department. Rutta suggested that Sam Solberg, Department of Commerce, inspect the building. Mrdutt added a proper sanitary permit must be issued prior to issuance of a zoning permit. Rutta asked when Polarek plans to start work. Polarek replied as soon as possible. Rutta feels the removal of the former restaurant should be completed before the business opens. Polarek said he will contact Altmann to see if his schedule is open. Rutta said all exterior lighting must face inward. Rutta verified the six feet by eight feet sign is allowed in the C1 Neighborhood Commercial Zoning District. Mrdutt said the sign is allowed, but may not exceed a height of 15 feet and must be placed five feet from the right-of-way. Polarek pointed out the existing cement base on a map where the previous business had a sign.

Scheider clarified that Polarek will be doing oil changes and repair work. Polarek replied yes. Scheider asked how much activity Polarek anticipates. He estimated five to 10 customers a day, if that. The repair shop is a permitted use. Mrdutt asked whether the discussed 10 unlicensed/inoperable vehicles on the property includes vehicles inside the building. Rutta said the Town of Carson indicated they would like no more than 10 unlicensed vehicles on the entire property, i.e. seven on the lot and three inside the repair shop.

Polarek said in the future, he plans to make use of the existing well and septic system when he adds on the office and rest room. At this time, there is no running water in the shop. When the rest room is added, Mrdutt said on site waste staff will inspect the site prior to issuing a sanitary permit.

Pelky asked how large an addition Polarek is planning for the office and rest room. Polarek guessed the addition would go on the east side of the building and be approximately eight feet by 10 feet.

There being no further questions from staff or BOA, Rutta excused Polarek and Bemowski and opened the request to the public for testimony, comments, or questions. No one came forward. There being no further testimony or questions, Rutta closed the public hearing portion of the request.

Deliberation and Decision:

Rutta said he believes the former restaurant should be removed before a permit is issued to sell cars. Scheider agrees. A start date for selling cars can be effective as soon as permits are issued.

Potratz said it will be possible to add plumbing facilities with a septic tank and well in place.

Bachhuber said she wants to be certain that conditions of an approval will not allow sale of parts or operation of a salvage yard.

Rutta asked Polarek whether he uses a towing service. Polarek replied the auction service hauls the vehicles. There will be no towing services offered through his business.

Casey also feels the former restaurant should be demolished to ground level before beginning operation of the used car lot. Sam Solberg, Department of Commerce, should inspect the 28 feet by 48 feet building for safety before a permit is issued. A sanitary permit must be issued before the start of operation. All used parts are to be out of sight. All oil and antifreeze, etc. are to be stored in a 150% containment area. The hours of operation are 7:30 a.m. to 6:00 p.m. Monday through Friday, and 7:30 a.m. to noon on Saturday. The building to the west of the 28 feet by 48 feet building is to be used for storage only.

Rutta questioned whether a fence should be required. A cyclone fence is currently in place around the garbage area. There are no neighbors nearby. Based on the comments made by the BOA, Rutta concluded the project is an acceptable activity with conditions imposed.

There being no further discussion, Rutta stated he would entertain a motion for approval.

Casey moved to approve A09-38 for Tracy Bemowski and Joe Polarek with the following conditions:

1. Approval is for a used car lot and use of the 28 feet by 48 feet building on site.
2. Pages 3, 4, and 5 of the materials submitted by the appellants and the Town of Carson are made part of this decision.
3. Hours of operation are 7:30 a.m. to 6:00 p.m. Monday through Friday and 7:30 a.m. to noon on Saturday.
4. Sam Solberg (Department of Commerce, 345-5226) is to be contacted to determine if the 28 foot by 48 foot building is safe for the public.
5. A sanitary permit must be issued before operation begins.
6. A six feet by eight feet sign is allowed, no higher than 12 feet.
7. All lighting must face inward toward the building and away from Marsh Road and County Road HH.
8. The present supper club building is to be removed before a permit is issued and final cleanup must be completed in spring of 2010.
9. All oil and antifreeze must be stored in a 150% containment area.
10. A total of 10 unlicensed vehicles to be repaired and/or sold are allowed on site.
11. There may be unannounced visits by Planning and Zoning Department staff at any time.
12. The building to the west of the 28 feet by 48 feet building is to be used for storage only.
13. No salvage or sale of salvage is allowed.
14. If there will be a floor drain in the building, it must be connected to a proper holding tank.
15. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

The motion was seconded by Scheider and passed unanimously by a roll call vote.

Amy Kirmse (A09-39)

The Kirmse special exception request from the Portage County Zoning Ordinance to operate a hobby machine shop as a home occupation in the A4 General Agricultural Zoning District, Town of Alban, was opened by Rutta, who read the public hearing notice.

Pelky explained the special exception request is to operate a hobby machine shop out of an existing shed as a business.

Rutta asked if correspondence has been received from the municipality. Pelky replied no.

Rutta swore in Amy and Karl Kirmse, and asked them to explain their request.

Karl Kirmse said they would like to start a machine shop.

Bachhuber questioned the request for Sunday hours. Kirmse explained weekend hours may be necessary to complete a job on time. Bachhuber asked how many customers Kirmse expects. Kirmse estimated one or two customers a week. Bachhuber asked whether there is running water in the shed, and Kirmse replied no, adding he plans to bring in a metro for a restroom facility.

Potratz passed on questioning.

Casey asked whether scrap plastic and metal will be recycled, and Kirmse replied yes. Casey asked if Kirmse uses cutting oils. Kirmse replied the material he uses is water soluble. He added there will not be a large volume of cleaning solutions. Casey asked how many people Kirmse plans to employ. Kirmse is aware he is allowed two nonresident full time employees, but will most likely relocate to a larger building before adding employees.

Scheider stated the application requests a hobby machine shop. Kirmse said he was told by Steve (Brazzale) that would be changed to reflect his request is actually for a home business. At this time, he plans to work after his full time job and as soon as it is justified, he will leave his job and work at his home business full time.

Rutta said there may be unannounced visits by Planning and Zoning staff, and Kirmse said that is fine. Rutta asked when Kirmse plans to start. Kirmse replied he has jobs waiting and would like to start as soon as possible. Rutta mentioned the area behind the shop. Kirmse said they have been removing garbage since they bought the property a year ago and will continue to clean up the area. Rutta stated the area immediately behind the shop is a low area and he is concerned with liquids draining into the groundwater. Kirmse said there will be no floor drains in the building and although the area is damp, there is no standing water. He added there will be no more hazardous materials stored than in a normal garage. If the amounts increase, he will get a cabinet certified to hold hazardous materials and will provide a list to the Planning and Zoning Department.

There being no further questions from staff or BOA, Rutta excused the Kirmse's and opened the request to the public for testimony, comments, or questions. No one came forward. There being no further testimony, comments, or questions, Rutta closed the public hearing portion of the request

Deliberation and Decision:

Rutta stated the location is in a very rural area and he doesn't have a problem with the home occupation with the proper conditions. Casey agreed, but questioned semi trucks driving in and out of the driveway. Kirmse said any large supplies will be delivered to a friend's business in Amherst and he will transport with his pick up truck.

Potratz feels the business is acceptable at that location. Scheider and Bachhuber had nothing to add.

There being no further discussion, Rutta stated he would entertain a motion for approval.

Motion by Casey to approve Appeal A09-39 for Amy and Karl Kirmse with the following conditions:

1. Approval is for a home occupation in a 30 feet by 40 feet building.
2. No more than two non resident employees are allowed.
3. All scrap, aluminum and plastic, must be recycled properly.
4. Hours of operation are 5:00 a.m. to 5:00 p.m. Monday through Friday, and 6:00 a.m. to noon on Saturday and Sunday.
5. Page three of the materials submitted by the appellant are made part of this decision.
6. Unannounced visits by Planning and Zoning Department staff are allowed.
7. There will be no floor drains or water in the building.
8. If a sign is placed on the road, it must be no more than six square feet.
9. There will be no disposal of waste material on the site.
10. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

The motion was seconded by Bachhuber and passed unanimously by a roll call vote.

Motion by Casey and second by Potratz to take a five minute recess. Motion carried by voice vote. Meeting recessed at 5:00 p.m.

Rutta called the meeting back to order at 5:05 p.m.

Joe and Chris Okray, Owners/Jim Weinmann (CellCom), Agent (A09-40)

The Okray/Weinmann special exception request from the Portage County Wireless Telecommunication Facility Ordinance to erect a 250 foot self-support tower and support building in the C4 Highway Commercial Zoning District, Town of Plover, was opened by Rutta, who read the public hearing notice.

Pelky stated a BOA approval was given on the same property for a different company on November 2, 2005 for a 190 foot monopole tower. The tower was not built and the approval expired. This special exception request is for a 250 foot lattice tower in the C4 Highway Commercial Zoning District. Pelky presented a letter from the Town of Plover and distributed copies of the November 2, 2005 decision.

Rutta read the letter from the Town of Plover Board, dated December 21, 2009, addressed to the Planning and Zoning Department, recommending approval of the request.

Rutta swore in Michael Krein and Jim Weinmann, CellCom.

Weinmann stated the purpose of the tower and engineering explanation are included in the memo provided in the BOA packets. He explained the maps and CellCom's proposal. They look to provide cell phone coverage and broadband wireless internet services. One of their primary objectives is to provide solid in-building and car cell phone services to the businesses and growing residential areas on the west side of Plover, as well as west along Highway 54 to the point that meets their existing site, approximately six and one half miles. Weinmann stated this is a reason for requesting a tower height of 250 feet.

Weinmann stated there are capacity issues. Currently, the area is serviced by an existing CellCom installation on the water tower, which is not very tall and does not carry a signal a great distance. The site can only handle a limited amount of traffic at any given time. The number of subscribers is increasing, as well as data services usage, i.e. texting, sending and receiving emails, wireless internet, etc. The volume is far exceeding capacity at this time.

Weinmann said he has had inquiries from two other carriers regarding available collocation space. If approved for a 250 foot tower, it will allow ample space for collocators, as well as providing additional CellCom service coverage as far north and south of Highway 54 as possible.

Krein stated he is the engineer responsible for this market area. Rutta asked if it their intention to evacuate the installation on the water tower in Plover. Krein replied no. He investigated collocating on six existing towers and determined the desired coverage would not be met.

Potratz asked how far the tower will be from the power transmission line. Weinmann replied the site is designed to meet the required setbacks from power easements. He added the fall zone is within the leased area per the (Wireless Telecommunication Facility) Ordinance.

Bachhuber referred to a map showing proposed future Maple Drive and Grant Avenue, questioning whether the site is in the middle of the proposed roads. Weinmann explained surveyors often refer to county surveys and plats and include possible future roads on maps, but he does not believe those roads are proposed to be built. There was discussion whether possible extensions of Maple Drive and Grant Avenue are in the Town and Village of Plover Comprehensive Plans. Pelky said the property is currently irrigated farmland and if the road were to be extended, it would require a zoning change. Scheider stated Maple Drive is in the Village of Plover. Weinmann recalled a brief discussion at the Town of Plover's meeting where they indicated they do not intend to extend the road. Bachhuber said there are extraterritorial issues the Village of Plover should review. Weinmann said he contacted the Village of Plover and they declined review. He offered to check with the Town and Village of Plover to confirm there are no plans for a future road.

There was discussion regarding a coverage map depicting unusable signal areas. Krein and Weinmann explained where CellCom towers are located and the areas they hope to provide coverage. They also explained there inaccuracies between the coverage maps provided at the meeting and "drive out" maps, which show actual signal strength levels at various locations using GPS.

Referring to the coverage map, Scheider expressed concern that the proposed tower may still not provide the needed coverage. Weinmann said the area within a one and one half to two mile radius of the tower is expected to receive exceptional coverage. There will be benefits outside that area, however they will vary.

Casey asked if there is room on the race track tower. Krein replied there may be space available, but that location is too far away.

Pelky asked if aerial applicators have been contacted regarding lighting on the tower. Krein replied the FAA requires that all towers over 200 feet must have a beacon. There was discussion on requiring daytime strobe lights. Weinmann added the tower will have mid lights as well. He suggested BOA specify lighting requirements as a condition of approval. Krein said their towers normally have white strobe lights during the day and red strobes at night. Pelky added there is a private airfield in the area they need to be aware of.

Casey asked when they plan to start the project. Weinmann replied they will build in 2010.

Rutta asked about an FAA determination letter. Pelky stated a letter must be on file with the Planning and Zoning Department. Rutta asked about collocators. Weinmann said they plan to design the tower for a minimum of four tenants.

There being no further questions from staff or BOA, Rutta excused Weinmann and Krein and opened the request to the public for testimony, comments, or questions. Clarence Rekowski requested to speak. He lives across the road from the site on Nassau Boulevard. He asked what happened to the previous proposed tower approved on the site and if this is same company. Rutta explained the approval was for a different company. A permit was issued for the tower, but it was not built and the permit expired after one year.

Rutta asked Town of Plover Chair, Tim Karcheski, if Grant Avenue and Maple Drive are under the Town's jurisdiction. Karcheski replied Maple Drive is in the Village of Plover, and Grant Avenue is shared by both municipalities. He is not aware whether the road is dedicated. He believes if there are plans to develop a road, it would be noted in their Comprehensive Plan. Rutta asked Karcheski to provide a letter stating the Town of Plover does not intend to develop the road. Karcheski said he will consult with the Town Board. The BOA agreed the Village of Plover should also provide a letter regarding future plans for Grant Avenue and Maple Drive.

There being no further testimony, comments, or questions, Rutta closed the public hearing portion of the request.

Deliberation and Decision:

Rutta stated the site was previously approved for a 190 foot monopole tower with eight conditions. He said a 250 foot tower could present a problem in that the tower's fall line may be within an area delineated on the certified survey map as a proposed future road. He said letters are needed from the Village and Town of Plover indicating their future intentions for Maple Drive and Grant Avenue. He added the safety of aerial sprayers must be considered. Rutta insisted feedback is necessary from the Village of Plover concerning extraterritorial rights. He noted a permit will not be issued if conditions of an approval are not met.

Casey said strobe lights are an important issue. Rutta clarified the lights are to be mid level white flashing strobe lights during the daytime and red flashing lights at night. Weinmann stated they will follow all applicable FAA requirements and in the event the FAA does not require mid level strobe lights, they will be included, white during the day and red at night.

Rutta said there does not appear to be reluctance to approve the appeal; however there are major concerns regarding lighting and future roads. Those issues should be addressed as conditions of an approval, as well as start and finish dates and all plans should be on file. Rutta stated he will entertain a motion to approve the appeal.

Motion by Casey to approve Appeal A09-40 for Joe and Chris Okray, owners/Jim Weinmann (CellCom), agent, with the following conditions:

1. Approval is for a 250 feet lattice tower with a total of four collocators on the tower.
2. Start date is January 1, 2010, and completion by December 31, 2010.
3. A letter from the manufacturer is required stating the tower is designed to collapse at a 50% breakpoint.
4. Engineering specifications, applications, and drawings shall be placed on permanent file with the Planning and Zoning Department.
5. Lighting shall include beacons at 125 feet and at the top of the tower. Daytime strobe lights are to be used during crop spraying season, May 1 through September 30.

6. Letters must be received from the Town of Plover and Village of Plover regarding possible future development of Maple Drive and Grant Avenue.
7. All materials submitted by the appellant are made part of this decision.
8. Planning and Zoning Department staff must have a copy of the Federal Aviation Administration (FAA) determination letter prior to issuance of a permit.
9. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

The motion was seconded by Scheider and passed unanimously by a roll call vote.

Todd Domres (A09-42)

The Domres variance request from the Portage County Zoning Ordinance to allow a sign exceeding six square feet in the R2 Single Family Residence Zoning District, Town of Hull, was opened by Rutta, who read the public hearing notice.

Pelky stated this is a variance request. The Zoning Ordinance allows six square feet for a sign. The applicant is requesting a four feet by eight feet sign. Pelky presented Rutta with a letter from Chris Mrdutt, Zoning Technician. Mrdutt noted no correspondence has been received from the Town of Hull.

Rutta read Mrdutt's letter of December 21, 2009 into the record regarding allowing a four feet by eight feet sign for a taxidermy business on Highway 66. Mrdutt asked the BOA to consider the location is on a major highway where a lot of other home businesses are located. There are numerous other signs in the area, some greater than six square feet. The sign does not flash at night. The Planning and Zoning Department does not have any issues with the sign as long as it meets setbacks and does not have flashing lights.

Rutta swore in Todd Domres.

Domres stated he would like to use a sign larger than the ordinance allows. He bought a marquis sign and put it out before talking with the Planning and Zoning Department regarding size restrictions.

Rutta listed criteria for a variance. The request must not be contrary to the public interest. There must be unique property limitations. There must be an unnecessary hardship.

Domres stated he has been unemployed for a year and is trying to make a living running a business out of his home. He does not believe the sign is an obstruction and hopes to advertise his business.

Scheider suggested the possibility of swapping the sign for a smaller size. Domres said he could probably sell the current sign.

Bachhuber asked if Domres feels the larger sign will draw more customers. Domres replied the sign shows up better than neighbors' signs, and he is trying to drum up business. Bachhuber asked if Domres plans to put the sign on a permanent foundation, and Domres replied he would like to. Mrdutt said the Zoning Ordinance does not treat temporary or permanent signs differently; setbacks must still be met.

Potratz and Casey had no questions for the appellant.

There being no further questions from the BOA or staff, Rutta excused Domres and opened the request to the public for testimony, comments, or questions. No one came forward. There being no further testimony, comments, or questions, Rutta closed the public hearing portion of the request.

Deliberation and Decision:

Rutta read the standards for granting a variance. Granting of a variance allows the appellant to use the property in a manner that is not permitted by the Zoning Ordinance. The BOA may grant a variance if the appellant satisfies the three main conditions, which Rutta listed earlier. Additionally, the hardship cannot be self imposed, economic loss or financial hardship to the appellant does not justify a variance, the entire parcel must be considered when applying the hardship test, nearby violations are not a factor for a variance, a lack of objections from neighbors is not a basis for a variance, and the circumstances of the appellant are not a factor for variances. Rutta said the requirements for a use variance require all of the previously listed criteria, plus no reasonable use of the property without a variance.

Potratz said there are no other signs that are close to 32 square feet and does not feel a sign of that size belongs in the residential area. He believes the standard size of six square feet is adequate and does not want to set a precedent.

Casey said the sign is below the grade of the road and is not at eye level. He also believes the size is larger than necessary. If the sign is approved, Casey said he would not support a lit or flashing sign and if the business is discontinued, the sign must be removed.

Scheider said she is not in favor of a sign that size. She appreciates that the appellant is trying to make a living; however, a smaller sign could be used.

Bachhuber agreed that if the variance is granted, there may be many more requests for oversized signs. Also, she believes a smaller, more attractive sign is as likely to attract customers to the business.

Rutta summarized the variance criteria and the points brought up by BOA members. He added there are a lot of signs in the area and feels the signs should be measured to see which comply with the Zoning Ordinance.

Motion by Potratz to deny Appeal A09-42 for Todd Domres for the following reasons:

1. There are alternatives to the variance request.
2. The variance may be detrimental to nearby property owners.
3. The spirit of the ordinance will not be maintained by granting the variance.
4. Substantial justice will not be done by granting the variance.
5. The appeal is contrary to the public interest. A 32 square feet sign is not a desirable addition in a residential area.
6. The only unique property limitation is the narrow lot size.
7. The proposal does not meet the unnecessary hardship test.
8. The appeal does not meet the minimum variance needed for reasonable use.
9. The hardships are not self imposed.
10. Noncompliance with an ordinance on a multiple basis in the neighborhood does not constitute acceptance of another noncompliant sign.

The motion was seconded by Scheider and passed unanimously by a roll call vote.

Correspondence/Updates

Pelky stated the next BOA meeting is scheduled for the third Monday in January, with onsite the Friday before. Mrdutt said the deadline for submitting applications was today. At this time there are no hearings for January.

Pelky provided an update on the Planton court case. Oral arguments were heard by the judge, who is having the attorneys put together written arguments, which are to be back to the judge the middle of February. The judge will make a decision sometime after, but Pelky is unsure how long it will take.

Adjournment

Motion by Casey to adjourn. The motion was seconded by Bachhuber, and passed by voice vote. Meeting adjourned at 6:40 p.m.

Respectfully submitted,

Patty Benedict, Recording Secretary

James Potratz, Board Secretary

Date Approved