



Cass County  
Planning Commission/Board of Adjustment

March 9, 2015

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting March 9, 2015 in the meeting room of the Cass County Land Department in Backus. The field inspection for the meeting was conducted from 8:30 AM to 5:30 PM March 2, 2015 covering 285 miles with PC members Fitch, Kostial, LaPorte, Moore, Pehling and Sundberg along with ESD staff Berg and Fairbanks in attendance.

Sundberg called the meeting to order at 9:30 a.m.

Members present: Fitch, Kostial, LaPorte, Moore, Pehling and Sundberg.

Staff Present: Berg, Fairbanks and Ringle.

Citizens Present: Al Chacey, Kurt Dahlen, Nathan Doley, Dave Edwards, Joe Edwards, Ruth Edwards, Terry Freeman, Jeff Hagan, Todd Hines, Bill Hornung, Paul Kilgore, Dennis King, Keith Kinnen, Jay Manders, Lewis Martin, Jim Nagorski, Terry Nagorski, Jeff Peterson, Jay Riffle, Nancy Schaefer, Rick Schaefer, Joe Schroeder, Sherri Schroeder, Catherine Stypula, Jim Tuller, Brad Wenz.

MS/P Moore/Pehling to approve the minutes of the 02/09/15 PC/BOA meeting as presented.

Variance

Hagen, Jeffery, Turtle Lake Township on property described as E 422 feet of SE  $\frac{1}{4}$  of Govt Lot 4, Section 22-140-30, PID #45-122-3305 located at 8006 Hawthorne Trail NW. An application submitted to replace the existing residence located 45 feet from the lake with new construction to be located 50 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) are Section 800 which establishes the variance criteria and Section 1126.1 which requires structures to be setback 75 feet from a lake classified General Development (GD). The parcel contains 1.78 acres riparian to Leech Lake (GD).

Consideration of the application was tabled during the 02/09/15 meeting in order for the applicant and ESD staff to determine the OHWL at the property. The members were at the site 02/02/15 and 03/02/15. 48 notices of the application were mailed for the 02/09/15 meeting and the 03/09/15 meeting. Five responses all supporting approval of the application were received in response the 02/09/15 meeting mailing. The application was reviewed with Mr.

Hagan with discussion centering the OHWL setback on the parcel as well as the building envelope.

MS/P Moore/Fitch to deny the closer lake setback proposed for PID #45-122-3305 upon review of the criteria contained in Section 800 of the Land Use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7 with the following findings:

Findings:

1. Applicant proposes to remove completely the existing residence located 45 feet from the OHWL to the east and replace with new two story construction to be located less than the required lake setback on the north side of the proposed residence.
2. As allowed by statute and ordinance, the non-conforming residence could be replaced at current volume, height to peak and footprint.
3. As long as the current structure is proposed to be completely removed, a building envelope is available that would enable construction of a new residence in compliance with lake setback and allow for construction of up to 30 feet to peak by permit without the need for a variance..
4. A suitable building envelope in compliance with required setback will allow for construction that will not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare.
5. Because a suitable compliant building envelope is available, a residence can be constructed in compliance with land use standards by permit which does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.

Hornung, William, Woodrow Township on property described as Lot &, Blk 1, "Child Lake Homes", Section 16-140-29, PID #51-428-0135 located at 3960 14<sup>th</sup> Ave NW. An application submitted to expand the existing residence with a 4 feet x 18 feet addition and a 15 feet x 26 feet two story addition. The residence is non-conforming because it is located 72 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) are Section 800 which establishes the variance criteria, Section 1115.3 which establishes the non-conforming structure expansion criteria and Section 1126.1 which requires structures to be setback 100 feet from a lake classified Recreational Development (RD). The parcel contains .61 acre riparian to Child Lake (RD).

PC members were at the site 03/02/15. 24 notices of the application were mailed with one response of support for approval of the application received. The application was discussed and reviewed with Mr. Hornung.

MS/P LaPorte/Kostial to approve the application to expand the non-conforming residence located upon PID #51-428-0135 upon review of the criteria contained in Section 800 of the

Land Use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. The property was platted in 1988 from DNR lease lots.
2. The existing setback from the lake of the residence is less than 100 feet.
3. There is no record in the permit archive of the original construction although based on lake setback it was more than likely prior to the adoption of land use regulation in 1972.
4. The proposed expansion of the residence will not increase setback encroachment nor be higher than the current height to peak or dramatically change the view of the residence to the lake which seems reasonable when taking into account the current setback and configuration of the residence which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare.
5. The proposed structure expansion which will be offset from the current lake setback and modest of size to which there is no evidence or information to establish that it will contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
6. Because the surrounding area along Child Lake contains similar lots and structures, there is no reason or evidence to conclude that area land use will be negatively affected or altered by the proposed lot configuration.
7. There is no reason or evidence to conclude that financial consideration is the sole reason for the application.

NOTICE TO APPLICANT: If conditions are included no permit to implement shall be issued until:

1. ESD required and approved erosion control is installed.
2. If shoreline vegetative enhancement or restoration is required by ESD or the Planning Commission, a written plan for suitable vegetation shall be approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other conditions as set forth.

No site preparation or building construction shall be commenced until issuance of a land use permit. Commencement prior to issuance of a land use permit may result in withholding, withdrawal or revocation of a land use permit until inspection by ESD and correction of any circumstances in violation of laws, ordinances or the terms of this variance. Deposit of financial

assurance as determined by ESD to secure correction of violations and completion of other measures may be required by ESD.

Conditions:

1. The dimensions, location and configuration of the structure expansion shall not vary from that submitted with the application dated 01/22/15 unless approved by ESD or if necessary, the PC/BOA.
2. Approval does not allow or imply approval that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
3. Any material resulting from construction or demolition not reused or recycled must be disposed of in a permitted facility.
4. ESD shall determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
5. No run-off to the lake or adjoining properties is permitted. If determined necessary by ESD, run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.
6. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
7. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 03/09/17.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Nelson, Donald & Nancy, Thunder Lake Township on property described as Lot 1, Blk 1, "Bass Lake Highlands", Section 27-140-26, PID #42-446-0110 located at 2859 Rapala Drive NE. An application submitted to expand the existing residence with a 20 feet x 26 feet addition. The residence is non-conforming because it is located 92 feet from the lake and less than 30 feet from the top of a bluff. The relevant portions of the Land Use Ordinance (02/15/13) are Section 800 which establishes the variance criteria, Section 1115.3 which establishes the non-conforming structure expansion criteria and Section 1126.1 A. & B. which requires structures to be setback 100 feet from a lake classified Recreational Development (RD) and 30 feet from the top of a bluff. The parcel contains 1.66 acres riparian to Bass Lake (RD).

PC members were at the site 03/02/15. 31 notices of the application were mailed. Two responses both in support of approval of the application were received. The application was discussed and reviewed with the applicants' representative/contractor Jay Riffle which included discussion of the residence expansion as it relates to lake and bluff setback.

MS/P Kostial/Pehling to approve the application for expansion of the residence located upon PID #42-446-0110 upon review of the criteria contained in Section 800 of the Land Use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. The existing bluff and lake setback of the residence are less than that required.
2. The proposed addition will be 92 feet from the lake.
3. The residence was constructed in 1993, ZP93-140-26-5.
4. The bluff setback standard was not being enforced 1993.
5. The proposed location of the expansion slopes away from the lake.
6. The proposed addition will not increase the existing encroachment to the lake or the bluff and seems reasonable when taking into account the current setback and configuration of the residence which therefore does not necessarily contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare.
7. There is no evidence or information that the proposed expansion of the residence will contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
8. The surrounding area along Bass Lake contains similar lots and structures and there is no reason or evidence to conclude that area land use will be negatively affected or altered by the proposed lot configuration.
9. There is no reason or evidence to conclude that financial consideration is the sole reason for the application.

NOTICE TO APPLICANT: If conditions are included no permit to implement shall be issued until:

1. ESD required and approved erosion control is installed.
2. If shoreline vegetative enhancement or restoration is required by ESD or the Planning Commission, a written plan for suitable vegetation shall be approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other conditions as set forth.

No site preparation or building construction shall be commenced until issuance of a land use permit. Commencement prior to issuance of a land use permit may result in withholding, withdrawal or revocation of a land use permit until inspection by ESD and correction of any

circumstances in violation of laws, ordinances or the terms of this variance. Deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures may be required by ESD.

Conditions:

1. The dimensions, location and configuration of the structure expansion shall not vary from that submitted 02/03/15 unless authorized by ESD or if necessary the PC/BOA.
2. The height of the structure shall not exceed existing height to peak.
3. Approval does not allow or imply approval that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
4. Any material resulting from construction or demolition not reused or recycled must be disposed of in a permitted facility.
5. ESD shall determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
6. No run-off to the lake or adjoining properties is permitted. If determined necessary by ESD, run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.
7. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
8. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 03/09/17.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Peltier, George & Teresa, Wabedo Township on property described as E  $\frac{1}{2}$  Lot 4, "Winnie Chapman Beach", Section 28-140-28, PID #46-459-0041 located at 1121 Wild Pines Lane NE. An application submitted to expand the existing non-conforming residence with an 18 feet x 22 feet addition located at the east side of the residence. The residence is non-conforming because it is located within a bluff area. The relevant portions of the Land Use Ordinance (02/15/13) are Section 800 which establishes the variance criteria, Section 1115.3 which establishes the non-conforming structure expansion criteria and Section 1126.1 B. which requires structures to be setback 30 feet from the top or toe of a bluff. The parcel contains 2.89 acres riparian to Wabedo Lake (RD).

PC members were at the site 03/02/15. 32 notices of the application were mailed. One response, from the Wabedo Township Planning Commission recommending approval with conditions was received. The application was discussed and reviewed with the applicants' representative/contractor Jay Riffle with discussion centered on walk-out construction of the addition and its proximity to the top of the bluff.

MS/P Kostial/LaPorte to approve the application to expand the residence located upon PID#46-459-0041 upon review of the criteria contained in Section 800 of the Land Use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. The residence to be expanded is located within the bluff area and does not comply with the required bluff setback of 30 feet.
2. The proposed addition will not be any closer to the bluff.
3. The original construction occurred in 1976, ZP76-140-28-8, prior to the enforcement of the bluff standard.
4. The proposed addition will not increase the existing encroachment to the bluff and seems reasonable when taking into account the current setback and configuration of the residence which therefore does not necessarily contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare.
5. There is no evidence or information that the proposed expansion of the residence will contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
6. Because the surrounding area along Wabedo Lake contains similar lots and structures, there is no reason or evidence to conclude that area land use will be negatively affected or altered by the proposed lot configuration.
7. There is no reason or evidence to conclude that financial consideration is the sole reason for the application.

NOTICE TO APPLICANT: If conditions are included no permit to implement shall be issued until:

1. ESD required and approved erosion control is installed.
2. If shoreline vegetative enhancement or restoration is required by ESD or the Planning Commission, a written plan for suitable vegetation shall be approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other conditions as set forth.

No site preparation or building construction shall be commenced until issuance of a land use permit. Commencement prior to issuance of a land use permit may result in withholding, withdrawal or revocation of a land use permit until inspection by ESD and correction of any circumstances in violation of laws, ordinances or the terms of this variance. Deposit of financial

assurance as determined by ESD to secure correction of violations and completion of other measures may be required by ESD.

Conditions:

1. The dimensions, location and configuration of the structure expansion shall not vary from that submitted with the application dated 12/22/14 unless approved by ESD or if necessary the PC/BOA.
2. The height of the structure addition shall not exceed existing height to peak.
3. Approval does not allow or imply approval that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
4. The walk-out excavation must comply with the requirements in Sections 1106.2 and 1106.3 of the Land Use Ordinance.
5. ESD staff and Mr. Riffle must meet on site prior to the commencement of any construction in order to determine soil type along the bluff and to discuss and confirm methods of construction, temporary construction erosion control and permanent erosion control.
6. The recommendation for construction based upon the on-site pre-construction meeting shall not be altered or revised without the expressed written consent of ESD.
7. Any material resulting from construction or demolition not reused or recycled must be disposed of in a permitted facility.
8. Run-off shall be directed by gutters to natural water retention features located upon the property such as rain gardens.
9. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
10. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 03/09/17.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Schroeder, Joel & Sherri, Meadowbrook Township on property described as Lots 11 & 12, Blk 7, "Wilderness Park 2<sup>nd</sup> Addition, Section 12-135-31, PID #26-342- 0722 & 26-342-0724 Meadow Lake Road SW. An application, "after the fact", to be allowed to retain the location of a park model residential structure setback 69 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) are Section 800 which establishes the variance criteria and Section 1126.1 which requires structures to be setback 150 feet from a lake classified Natural Environment (NE). The parcel contains 1.5 acres riparian to Meadow Lake (NE).

PC members were at the site 03/02/15. 70 notices of the application were mailed. One response, claiming that if this application approved then any variance application along Meadow



Lake must be necessarily approved. The circumstances leading to the "after the fact" application were discussed and reviewed with the applicants.

MS/P LaPorte/Moore to approve the application "after the fact" to allow the residence located upon PID #26-342-0722 to remain located at its current setback from Meadow Lake (NE) located upon PID#46-459-0041 upon review of the criteria contained in Section 800 of the Land use Ordinance (02/15/13), in M.S. 394.27, Subdivision 7 and the "after the fact" review criteria contained in the Minnesota Supreme Court "Stadsvold" Decision with the following findings and conditions:

Findings:

1. The property was platted in 1972.
2. Lot 11, where the structure is located, varies in depth from the Meadow Lake to the platted road Meadow Lake Road from 186 feet to 205 feet.
3. The setback from Meadow Lake (NE) is 150 feet and the setback from the right-of-way of Meadow Lake Road is 20 feet which eliminates placement options at the required setback.
4. There is nothing to indicate that the existing structure at 69 feet has a significant visual impact to the surrounding area.
5. The current location of the structure seems a reasonable use of the property when taking into account lot depth and configuration from the lake to road which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and the general welfare.
6. The existing structure is not excessive of scale or obtrusive to neighboring property which therefore does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
7. The property has no closely located neighboring residences and the riparian lots are all similar of scale which raises no reason or evidence to conclude that area land use will be negatively affected or altered by the proposed addition expansions.
8. There is no reason or evidence to conclude that financial consideration is the sole reason for the application.
9. There is no evidence or indication to conclude that the applicant has acted in anything but good faith.
10. There is no evidence or indication that the applicant did not knowingly evade the requirements of the ordinance.
11. Substantial investment has been made by the purchase of the lot and structure.
12. The park model structure is in place and the SSTS holding tank is intended to be installed and inspected as soon as conditions allow.
13. There are similar structures throughout Wilderness Park and the County.
14. Based upon #s 8-13, denial would not serve the interests of justice and reasonableness.

NOTICE TO APPLICANT: If the following conditions are included no permit to implement shall be issued until:

1. ESD required and approved erosion control is installed.
2. If shoreline vegetative enhancement or restoration is required by ESD or the Planning Commission, a written plan for suitable vegetation shall be approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. No run-off to the lake or adjoining properties is permitted. If determined necessary by ESD, run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.
2. The existing storage structure must be moved to non-lakeside of the residence no later than 07/31/15.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Stypula, Catherine & Gary, Sylvan Township on property described as N  $\frac{1}{2}$  S  $\frac{1}{2}$  of Lot 21, "Carlyons Sylvan Park", Section 1-133-30, PID #41-456-0215 located at 12072 W Lake Ridge Drive SW. An application submitted to enclose an existing 10 feet x 28 feet deck located 25 feet from the lake. Such enclosure is considered an addition and the residence is non-conforming because it is located 25 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) are Section 800 which establishes the variance criteria, Section 1115.3 which establishes the non-conforming structure expansion criteria and Section 1126.1 which requires structures to be setback 75 feet from a lake classified General Development (GD). The parcel contains .72 acre riparian to Sylvan Lake (GD).

PC members were at the site 03/02/15. 34 notices of the application were mailed. Two responses, including that of the Sylvan Township Planning Commission, both recommending approval of the application with conditions were received. The application was discussed and reviewed with the applicants with discussion devoted to the enclosure/addition lakeside and the condition of the deck to be enclosed.

MS Kostial/Fitch - Fitch/Yes, Kostial/Yes, LaPorte/No, Moore/No, Pehling/Yes, Sundberg/No - Motion Fails to approve the application to expand the residence located upon PID #41-456-0215 upon review of the criteria contained in Section 800 of the Land Use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7.

MS Moore/LaPorte - Fitch/No, Kostial/No, LaPorte/Yes, Moore/Yes, Pehling/No, Sundberg/Yes - Motion Fails to deny the application to expand the residence located upon PID #41-456-0215 upon review of the criteria contained in Section 800 of the Land use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7.

MS/P Kostial/Fitch to rescind the motion to approve and the motion to deny and table consideration of the application until the 04/13/15 meeting.

Wiseman, Donald & Cheryl, Rogers Township on property described as Lot 3, "Rogers Beach, Section 22-142-27, PID #36-406-0030 located at 8395 38<sup>th</sup> Ave NE. An application submitted to expand a non-conforming residence with a 6 feet x 42 feet x 32 feet addition located on the west and south sides of the residence no closer than the existing lake setback. The residence is non-conforming because it is located 60 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) are Section 800 which establishes the variance criteria, Section 1115.3 which establishes the non-conforming structure expansion criteria and Section 1126.1 which requires structures to be setback 100 feet from a lake classified Recreational Development (RD). The parcel contains .56 acre riparian to Swift Lake (RD).

PC members were at the site 03/02/15. 23 notices of the application were mailed. No written responses were received. The application was discussed and reviewed with the applicants' representative/contractor Jay Riffle with discussion centered on the size of the current structure, the size of the proposed expansion, the height of the proposed lakeside façade of the residence and placement options on the parcel to locate a residence of the proposed size in compliance with setback requirement.

MS/P Fitch/Pehling to table, as requested by Mr. Riffle, consideration of the application until the 04/13/15 meeting.

#### Conditional Use Permit

Enbridge Energy, Bull Moose Township on property owned by Sheley & Breanna Tucker described as Part of NE NE & Part SE NE, Section 12-138-31, PID #09-012-1001 located at 547 48<sup>th</sup> Ave SW. An application submitted for a temporary pipe storage yard facility. The CUP will

establish and temporary C-2 district and land use. The relevant portion of the Land Use Ordinance (02/15/13) include Section 1000 which establishes lands use districts and Section 705 which establishes the conditional use permit review criteria. The parcel contains 39.38 acres (AF).

PC members were at the site 03/02/15. 17 notices of the application were mailed with no written responses received. The application was discussed and reviewed with Enbridge Energy representatives with discussion that included PUC route approval, pipe storage and the duration of use of the storage area.

MS/P LaPorte/Pehling to approve the CUP application as submitted for PID #09-012-1001 based upon review of the criteria contained in Sections 705 and 1101 of the Land Use Ordinance (02/15/13) and in M.S. 394.301 with the following findings and conditions:

Findings:

1. No wetland or critical habitats will be affected by the proposed land use activity.
2. No scenic or historic features will be affected by the proposed land use activity.
3. No evidence or information has been submitted to establish that the proposed land use will have a detrimental effect to public health, safety or welfare.
4. No evidence or information has been submitted to establish that the proposed temporary land use activity has the potential to alter or be detrimental to land use in the general area.
5. Approval will not increase the need or demand for governmental services because any road improvements or maintenance will be the responsibility of the applicant and that it does not require waste water treatment.
6. Approval will not contradict the purpose of the official controls, the Land Use Ordinance, which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and also to promote the health, safety, general welfare.
7. The proposed temporary land use will be short term and not permanently be obtrusive to the neighborhood which does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
8. Approval does not endorse or imply endorsement of any of the proposed pipeline routes.

Conditions:

1. The operation plans for the facility received with the application 02/17/15 are adopted for implementation and shall not be revised to increase use or activity without the approval of the Planning Commission.

2. If the route of the proposed pipeline is revised and this store yard is not required, the stored material must be removed and the site returned to its original state, with the exception of the security fence, within 12 months of the MN PUC decision and any subsequent appeals.
3. Upon completion of construction along this portion of the pipeline route, if approved, this store yard and the stored material must be removed and the site returned to its original state, with the exception of the security fence, within 12 months of the completion of this segment of pipeline construction.
4. Unless revoked or otherwise revised by the Planning Commission this approval shall be effective as long as the site is used for the approved land use.
5. Appropriate fencing and signage shall be constructed in accordance with similar industry standards and ESD staff review.
6. The applicant shall provide verification of their agreement to the Haul Road Agreement with the Cass County Highway Department.
7. The C-2 classification shall expire upon completion of the temporary land use as verified by ESD.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Martin Consulting LLC, Gould Township, CU09-143-28-1 on property owned by James Wake described as W  $\frac{1}{2}$  of SE Less RR ROW & SW Less .5 Acre to Twp & Less RR ROW & Less 416 Ft of E 520 Feet of SW SW, Section 11-143-28, PID #15-011-3400 located at 1804 County 63 NE. An application submitted to construct a 309 feet communication tower for cellular telephone service. The relevant portion of the Land Use Ordinance (02/15/13) include Section 1127 which establishes communication tower criteria and Section 705 which establishes the conditional use permit review criteria. A tower was approved, CU09-143-28-1, for this property in 2009 but not constructed. The parcel contains 228.53 acres (AF).

32 notices of the application were mailed with no written responses received. The application was discussed and reviewed with the applicants' representative Mr. Martin.

MS/P Pehling/Kostial to approve the CUP application as submitted for a communication tower to be located at PID #15-011-3400 based upon review of the criteria contained in Sections 705 and 1127.1 of the Land Use Ordinance (02/15/13) and in and in M.S. 394.301 with the following findings and conditions:

Findings:

1. The Comprehensive Plan recognizes the benefits of wireless communication to the residents of the County.
2. The Comprehensive Plan calls for the reasonable placement of communication towers to adequately service a geographic area.

3. There are no towers within the proposed service area where equipment could be located.
4. No wetland or critical habitat will be disturbed or harmed by the location of the tower.
5. No scenic or historic features will be disturbed or harmed by the location of the tower.
6. The tower will have no adverse material effect to public health, safety or welfare.
7. The tower will not change or impact land use in the area.
8. Existing access to the property will be utilized and require no additional public infrastructure.
9. The proposed tower does not reach the mandatory EAW threshold.
10. The applicant has provided verification of compliance with the requirements of Section 1127 of the Land Use Ordinance (02/15/13). (Application letter from Martin Consulting, LLC received by ESD dated 02/19/15).

Conditions:

1. The applicant and all service providers must comply with all requirements of Section 1127 of the Land Use Ordinance (02/15/13). (Application letter from Martin Consulting, LLC received by ESD dated 02/19/15).
2. The applicant must comply with applicable FAA and FCC requirements.
3. The tower must be available to other service providers at competitive rates.
4. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 03/09/17.
5. An agreement in accordance with Section 1127.5 D. of the Land Use Ordinance must be submitted to ESD prior to the commencement of site development and tower construction.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS CUP, REMOVAL OF VIOLATIONS AND MITIGATION.

DPAX Holdings LLC, Ottertail Peninsula Township on property described as Part of Govt Lot 1, Tract 2 & Easement, Section 22-143-30, PID #28-222-1103, Part of Govt Lot 3, Section 22-143-30, PID #28-222-1104, Lots 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 & 29, Blk 2, & Lots 1, 2, 3, 4, 5, 6, 7, 8 & 9, Blk 3, "Ni Gig Wah Noe Shores 1<sup>st</sup> Addition", Section 22 & 23- 143-30, PID #s 28-376-0222, 0224, 0226, 0228, 0230, 0232, 0234, 0236, 0238, 0240, 0242, 0244, 0246, 0248, 0250, 0252, 0254, 0256, 0258, 0302, 0304, 0306, 0308, 0310, 0312, 0314, 0316 & 0318 located at 10720 Ottertail Point Drive NW. An application submitted for excavation for a walk-out basement and harbor excavation within the shore impact zone. The relevant portions of the Land Use Ordinance (02/15/13) include Section 1006 which establishes earth moving criteria and Section 705 which establishes the conditional use permit review criteria. The parcel contains 40 acres riparian to Leech Lake (GD).

26 notices of the application were mailed with no written responses received. The application was discussed and reviewed with the applicant's representatives from Karvako Engineering.

MS/P Moore/Kostial to approve the CUP application as submitted for excavation and grading to be conducted upon PID#28-222-1104 upon review of the criteria contained in Sections 705 and 1106 of the Land Use Ordinance (02/15/13) and in M.S. 394.301 with the following findings and conditions:

Findings:

1. The application complies with Section 1106.5 of the Land Use Ordinance (02/15/13).
2. No objections have been received from any persons or governmental entities notified of the application.
3. There is no reason to expect that the proposed use will cause adverse effects to adjoining property.
4. The proposed use will have no impact to the demand for governmental services.
5. Existing infrastructure will be utilized with no need to expand existing public infrastructure.
6. No wetland or critical habitat will be disturbed by reduction of minimum lot size.
7. No scenic or historic features will be affected by the reduction of minimum lot size.
8. No threat to public health, safety and welfare can be expected from the proposed use.

NOTICE TO APPLICANT: If conditions are included no permit to implement shall be issued until and if:

1. ESD required and approved erosion control is installed.
2. A written plan for suitable vegetation is approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a Permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. No site preparation or construction of the harbor shall commence without verification of DNR Harbor Permit submitted to ESD along with financial assurance in an amount as dictated by the Land Use Ordinance (02/15/13).
2. The project shall be constructed as per plans submitted with the application 02/19/15.
3. ESD shall determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.

4. No run-off to the lake or adjoining properties is permitted. The applicants, if determined necessary by ESD, shall retain run-off through shoreline vegetation enhancement or no-mow and/or redirect run-off to water retention structures such as rain gardens to retain and prevent run-off.

5. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 03/09/17.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

### Final Plat

"Sportsman Quarters", RPNG Partners, Conklin Living Trust, Turtle Lake Township on property described as E  $\frac{1}{2}$  NW & NE SW, Section 32-142-30, PID #45-132-0002 located 1.5 miles north of MN #200 on the west side of CSAH #13. Final plat submitted which will contain 21 single family residential lots ranging in size from 2.5 to 4.5 acre. Article 7 of the Cass County Subdivision and Platting Ordinance (02/15/13) establish the final plat criteria and process. The property contains 77 acres. The preliminary plat was approved 11/12/13.

PC members were at the site 03/02/15. More than 50 notices of the final plat were mailed with no written responses was received. A representative from Turtle Lake Township did appear to discuss the status of the road construction and the township's intention to incorporate into their road system. The final plat was discussed and reviewed with the developer, Mr. Schafer, and the surveyor, Mr. Freeman.

MS/P Moore/Fitch to approve the final plat of "Sportsman Quarters" as submitted based upon compliance with the requires of Section 7 of Platting and Subdivision Ordinance (02/15/13) and in M.S. 505 with the following findings and conditions:

### Findings:

1. The lots comply or exceed the minimum size requirements.
2. The configuration of the plat complies with the criteria of Article 7 of the Subdivision Ordinance.
3. SSTS site evaluations have been submitted.
4. A wetland delineation report has been submitted.
5. A phase one archeological report has been submitted.
6. Road plans have been submitted.
7. The plat name has been approved.
8. The proposed street names have been approved.
9. No wetland or critical habitat will be affected.
10. No scenic or historic features will be affected.



11. The plat poses no likelihood to harm public health, safety or the common good.
12. The plat will not increase the need or demand for governmental services.

Conditions:

1. Verification of construction to road specifications or verification of road responsibility by Turtle Lake Township must be provided in order to record the plat.
2. If either verification cannot be provided, financial assurance, in an amount determined by ESD, for road completion to specification must be submitted to in order to record the plat.
3. All delineated wetland with the plat must be placed into a wetland easement in order to record the plat.
4. All the terms of declaration and the covenants must comply with Cass County ordinances.

Other Business

Septage application options were discussed along with concerns heard from persons living in the area of a land application site located in Trelipe Township near Lake Inguadona with agreement to visit some sites during the April field trip.

Request to renew and extend Quarterdeck Resort CUP.

MS/P Moore/Fitch to approve the extension of CU11-134-29-1, as amended 03/11/13, to 03/09/17.

MS/P Fitch/Pehling at 1:10 pm, to adjourn.

P. Fairbanks