



Cass County
Planning Commission/Board of Adjustment

November 8, 2010

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting November 8, 2010 in the meeting room of the Cass County Land Department in Backus. The field inspection was conducted November 1, 2010.

Sundberg called the meeting to order at 9:10 a.m.

Members present: Ballenthin, Fitch, Gardner, Gould, Kostial, Moore and Sundberg.

Staff Present: Berg, Fairbanks and Ringle.

Citizens Present: Craig Anderson, Hunt Gildner, Dianna Huss, Richard Huss, Dan Kell, Marie Kell, Dave Johnson, Howard Karon, Isabel Karon, Terry Kopren, Jack Likens, Nancy Loren, Troy Loren, Mary Em Lundgren, Kyle McCann, Rod McKinley, Glen Mechelke, Pat Melchelke, Roger Richters, Donald Sather, Renelda Sather, Bruce Skipton, Verdale Soukup, and Vic Stanchfield.

MS/P Ballenthin/Kostial to approve the minutes of the 10/11/10 PC/BOA meeting as presented.

The members discussed recent Minnesota Supreme Court decisions along with legal scholarship that has concluded that Minnesota Statute 394.27 establishes two types of variances, area variance and use variance and that each has distinctive review criteria.

"A use variance permits a use or development of land other than that prescribed by zoning regulations." Expansion of a non-conforming residence must be reviewed by the "undue hardship/reasonable use" test. To establish undue hardship the applicant must show that the property in question cannot put to a reasonable use.

"An area variance controls lot restrictions such as area, height, set back density and parking requirements." Area variance must be reviewed by the "practical difficulties" standards which are less restrictive than "undue hardship/reasonable use". The "practical difficulties" criteria are: 1. how substantial the variation is in the relation to the requirement; 2. the effect the variance would have on governmental services; 3. whether the variance will effect a substantial change in the character of the neighborhood or will be a substantial detriment to neighboring properties; 4. whether the practical difficulty occurred, including whether the owner created the need for the variance; and 5. whether in light of all the above factors , allowing the variance will serve the interests of justice.

Received from Aaron Jordan 10/27/10; "After participating in a continuing education class put on by the County Attorney's Association pertaining to *Krummenacher v. City of Minnetonka* decision, it is my opinion that the definition of undue hardship has likely become more restrictive as it pertains to Counties. If this is the case it would make it very difficult for our planning commission to grant a variance that increases the size of a non-conforming structure.

It appears that the solution for this may be to have the County Board look at amending our ordinance to specifically allow expansions of a structure in certain situations. Obviously a decision on whether to amend our ordinance in this manner will not come until this winter.

I am advising that ESD make landowners aware that it is a good possibility based on *Krummenacher* that their variance request would be denied. Also inform them that the County Board will likely be deciding on an amendment to our ordinance this winter that may increase their chances of a successful application. If they would like to delay the decision on their application they will need to waive the 60 day rule in writing".

The members concluded that based upon court decisions along with advice from the Office of the County Attorney that the first step in the review process should be to determine if an application is area variance or use variance.

Variance

Adams, Erin & Steve, Hiram Township on property described as Lot 5, "Long Pine", Section 16-140-31, PID # 16-433-0050 located at 3890 63rd Ave NW. An application submitted to remove the existing residence located 26 feet from the lake with a 60 feet x 44 feet with 12 feet x 18 feet screened porch to be located 40 feet from the lake. In addition the application requests approval to alter a historic ice ridge from current height of 12 feet to 6 feet. The property contains .46 acre riparian to Ten Mile Lake (GD). Section 1126.1 A. requires new structures to be located 75 feet from a lake classified General Development (GD). Section 1106.4 B. allows for one shoreland site per lot up to 14 feet wide.

Summary: Remove existing residence for construction of new structure at less than the required lake setback. Question as to location of wetland, wetland delineation information which will be presented at the hearing could determine setback and available area for placement of a residence structure. Application also requests approval to lower the ice ridge. This is an area variance.

PC Members were at the site 10/05/10. 41 notices of the application were mailed with no responses received. Fairbanks reported the receipt of an e-mail withdrawing the application from consideration.

Gildner, Scott & Annie/Gildner, Hunt & Barbara, Shingobee Township on property described as S $\frac{1}{2}$ Lot 9, Lot 10 & S75 Ft of Lots 11 & 12, All Blk 1 & Adj Vac Park Blvd Iroquis Ave, "Ojibway",

Section 11-142-31, PID # 38-504-0170 located at 8985 Cedar Point Road NW and Lots 1 & 2, Blk 2 & Adj Vac Park Blvd, "Ojibway", Section 11-142-31, PID # 38-504-0210 located at 8979 Cedar Point Road NW. An application submitted to be allowed to divide an existing guest house and retain one half on each lot. Parcel # 38-540-0170 contains 37,000 square feet and is 105 feet wide. PID # 38-540-0210 contains 30,000 square feet and is 100 feet wide. Section 1113.1 requires a lot that contains a guest house on a General Development (GD) to contain 60,000 square feet total area, 27,000 square feet buildable area and be at least 180 feet wide at the water and the structure setback which is 75 feet from the water.

Summary: Request to allow existing guest hose which serves both properties to be divided with one guest house placed upon each lot. The lots do not and will not comply with the guest quarter GD lot standards. Relates to use therefore hardship/reasonable use standards apply but on the other hand relates to lot size/area which is an area variance.

PC members were at the site 11/01/10. 15 notices of the application were mailed with one response from the Leech Lake Association recommending denial of the application received. The application was discussed and reviewed with Mr. Hunt Gildner.

MS/P Ballenthin/Gould - Ballenthin/Yes, Fitch/Yes, Gardner/No, Gould/Yes, Kostial/No, Moore/No, Sundberg/Yes that the Gildner application is a use variance.

Mr. Hunt Gildner withdrew the application from consideration.

Island Group LLC, Wabedo Township on property described as Pt of Gov Lot 1, Section 17-140-28, PID # 46-017-1209 and Rev Description 2 of Gov Lot 1, Section 17-140-28, PID # 46-017-1213 located along Pikie Point Lane NW. An application submitted "after the fact" to be allowed to retain spoil material excavated from the harbor that has been placed into a wetland area adjacent to the harbor. The combined lots contain 8.4 acres riparian to Woman Lake (GD). Section 1106.3.B. 5. of the Land Use Ordinance prohibits alteration of wetland located within the Shore Impact Zone 2 which on a GD Lake is the area located 37.5 feet to 75 feet from the ordinary high water level (OHWL).

Summary: Spoil from harbor project placed into a wetland abutting the northeast corner of the harbor along with additional spoil cast into a larger wetland south of the harbor. ESD/Bob Wright has been working on this for two years and would like to see it resolved but this is a use variance.

PC members were at the site 11/01/10. 36 notices of the application were mailed. One response from Wabedo Township which recommends denial of the application was received.

MS/P Ballenthin/Gould to deny the application to retain fill material PID # 46-017-1209 upon review with Section 800 of the Land Use Ordinance (01/10/10) with the following findings.

Findings:

1. Applicant undertook work consisting of excavating and maintaining an existing harbor including expansion of the harbor and deposited spoil into adjacent wetlands without notice to the County or other regulatory authorities having jurisdiction and in violation of Sections 1106.3 B.5., C.3., 1105.5 A. 6. of the Land Use Ordinance.
2. The application does not include plans, financial assurance or permits as required by Section 1106.5 A. and B. of the Land Use Ordinance.
3. The completed work alters wetlands and extends more than 200 feet landward in violation of Sections 1106.3 B. 5., C. 3. and 1106.5 A.6.
4. To the extent that the completed work requires a Conditional Use Permit, the applicant has failed to meet the requirements of Section 1106.5. of the Land Use Ordinance.
5. Applicant was using the property with the harbor in its condition before the work was undertaken and the applicant had reasonable use of the property in its pre-work condition.
6. Applicant has not demonstrated that the property cannot be out to reasonable use without a variance.
7. The plight of landowner is not due to circumstance unique to the property not created by the landowner.
8. The matter is referred to ESD and the Office of the County Attorney for appropriate enforcement action with the following recommendations.
 - a. All harbor spoil placed into any wetland area on or near the property shall be removed to a site approved by ESD.
 - b. The pilings and harbor wall at the east end of the harbor shall be removed and the harbor shall be restored to its configuration and depth that existed prior to the project that resulted in the harbor fill.

Kell, Daniel & Marie, Birch Lake Township on property described as Lot 4, Blk 1, "Thoma's 4-T's Addition", Section 9-140-30, PID # 05-376-0120 located at 4309 Tower View Lane NW. An application submitted to expand the existing non-conforming residence with a 24 feet x 24 feet addition, 12 feet x 6 feet porch and 4 feet x 12 feet stairway located on the side of the residence none of which will increase the encroachment to the lake. The residence is non-conforming because it is located less than 100 feet from the lake. The property contains .69 acres riparian to Stony Lake (RD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance.

Summary: Expand an existing non-conforming residence located at less than the required lake setback with an addition non-lakeside. As determined by legal opinion/advice expansion of a non-conforming residence is a use variance.

PC members were at the site 11/01/10. 30 notices of the application were mailed with one response supporting approval of the application received. The application was reviewed and discussed with the Kells who withdrew their application from consideration based upon the discussion of the use variance review criteria.

Kitzmann, Ronald, Ponto Lake Township on property described as Pt of Gov Lot 2, Section 33-139-29, PID # 32-033-1318 located at 1322 3rd St NW. An application submitted to replace the existing residence with a 30 feet x 32 feet residence and 4 feet x 24 feet x 12 feet deck located 51 feet from the lake. The application also requests an 18 feet x 22 feet garage located 14 feet from the right-of-way of an undesignated public roadway and 5 feet from a property boundary line. The property contains .95 acre riparian to Lake Ada (RD). Section 1126.1 A. requires structure to be located 100 feet from a lake classified Recreational Development (RD). Section 1126.1 B. of the Land Use Ordinance requires structures to be located 20 feet from the right-of-way of an undesignated public road and 10 feet from a property boundary line.

Summary: Remove exiting residence for construction of new structure at less than the required lake setback. This is an area variance.

PC members were at the site 11/01/10. 36 notices of the application were mailed. No responses were received. The application was reviewed and discussed with applicants' representative Verdale Soukup.

MS/P Moore/Gardner to review the application as an area variance.

MS/P Fitch/Ballenthin to approve the location of the residence to be located upon PID # 32-033-1318 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. The current dilapidated residence structure is less than 50 feet from the lake was obviously constructed prior to the adoption of land use regulation and could be replaced at current footprint as allowed by M.S. 394.36.
2. The portion of the property from lake to road is 135 feet which when allowing for lake setback of 100 feet and 20 feet from the driving leaves virtually no space for placement of a new structure.
3. The area adjacent to the south side of the road contains considerable wetland which restricts residence and SSTS placement options.
4. The new residence will not affect ground or surface water because run-off and erosion control best management construction and post construction practices must be implemented.
5. The new residence will not affect area land use because it will be similar in style and construction of neighboring property located along 3rd Street.
6. The location and size of the new residence is reasonable based upon the location, size and configuration of the property.
7. There is no evidence that financial consideration is the sole reason for the variance.
8. The residence will have no bearing to the need or demand for governmental services because the property already on a public road and will not it be connected to municipal or community waste water treatment system.

Conditions:

1. The residence shall not exceed 30 feet x 32 feet plus overhang/eave not to exceed 2 feet along with a 12 feet x 12 feet deck not less than 60 feet from the OHWL.
2. The attached garage shall not exceed 18 feet x 22 feet plus overhang/eave not to exceed 2 feet not less than 7 feet from the driving surface of 3rd Street SE.
3. As volunteered by the applicants' representative, the PID # 32-033-1318 structures located along the common boundary line with PID # 32-033-1315 shall be moved to comply with lake and property boundary line setback or be removed from the property no later than 06/01/11.
4. Any debris resulting from demolition and construction not recycled or reused must be disposed of in a permitted disposal facility.
5. ESD must 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 storm water run-off to the lake, to the access road from the approved structure(s), or to adjoining properties is permitted. The approved structure, and any structure to which the approved structure is attached, if necessary, shall be equipped with gutters to redirect storm water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.
5. Shore vegetation/re-vegetation shall be installed and maintained in a buffer area landward from the beach as follows: The applicant shall develop a written plan for vegetation, a schedule for implementation, and a good faith, reasonable estimate of the cost to implement the vegetation plan, all of which shall be approved by ESD. No Land Use Permit for the residence or the detached garage shall be approved prior to submittal and approval of the written plan for vegetation along with submittal of financial assurance in the amount determined by ESD.
6. Deposit of financial assurance with ESD in the amount of \$1 per square foot of the buffer area for no-mow plus \$3 per square foot for all other vegetative buffers or if less, 125% of the cost estimate. Any financial assurance shall be returned to the applicant upon a schedule approved by ESD, and in all events upon substantial implementation of the plan, as determined by ESD. Requirements of the approved plan for vegetation not completed in accordance with the schedule will be installed at the direction of ESD and charged against the financial assurance.
7. Applicant consents to inspection of the property from time to time by ESD to verify compliance with all conditions.
8. The existing fire pit shall be relocated to be no closer than 50 feet from the OHWL by 05/31/11.

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.

Kopren, Marnee & Terry, Sylvan Township on property described as Pt of Gov Lot 1, Section 33-133-29, PID # 41-133-1108 located at 956 Camp Jim Road SW. An application submitted to construct a 28 feet x 40 feet storage structure one foot from the parcel's east property line.

The property contains .98 acres riparian to Hardy Lake (RD). Section 1126.1.B. of the Land Use Ordinance requires structures to be located 10 from a property boundary line. Consideration of the location of this structure was tabled during the 10/11/10 meeting in order for the applicants to submit a revised site plan.

Summary: Construction of accessory structure at less than the required property boundary line setback. This is an area variance.

PC members were at the site 10/05/10. 32 notices of the application were mailed with no responses received. The request for variance for the proposed accessory structure was tabled during the 10/11/10 meeting in order to notify Crow Wing State Park as the request to be less than 10 feet from the common boundary of the Kopren property and the state park. The application was reviewed with the Mr. Kopren with considerable discussion as to if the request area or use variance.

MS/P Moore/Ballenthin to consider the application as an area variance.

MS Ballenthin/Kostial - Ballenthin/Yes, Fitch/No, Gardner/No, Gould/No, Kostial/Yes, Moore/Yes, Sundberg/Abstain to approve the application to locate an accessory structure at less than the required property boundary setback upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions. Motion failed 3 yes and 3 no.

MS/F Ballenthin/Moore - Ballenthin/Yes, Fitch/No, Gardner/No, Gould/No, Kostial/Yes, Moore/Yes, Sundberg/No to reconsider the Kopren application

Liesmann, Eileen & George, Birch Lake Township on property described as E 300 Ft of Gov Lot 4, Section 21-140-30, PID # 05-021-1402 located at 3607 Pleasant Point Lane NW. An application submitted to expand the existing non-conforming residence with an 18 feet x 22 feet x 20 feet addition to the side of the residence which will not increase the setback encroachment toward the lake. The residence is non-conforming because it is located less than 75 feet from the lake. The property contains 4.42 acres riparian to Pleasant Lake (GD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance.

Summary: Expand an existing non-conforming residence located at less than the required lake setback with an addition non-lakeside. As determined by legal opinion/advice expansion of a non-conforming residence is a use variance.

PC members were at the site 11/01/10. 18 notices of the application were mailed with no responses received. The application was discussed and reviewed with the applicants' representative Jim Bedell.

MS/P Moore/Ballenthin to consider the Liesmann application as a use variance.

Mr. Bedell withdrew the Liesmann application from consideration.

McCann, Kelly & Kyle, Smokey Hollow Township on property described as Lot 4, Blk 1, "Little Thunder Hills", Section 5-140-25, PID # 40-352-0140 located at 7886 S Little Thunder Drive NE. An application submitted to expand the existing non-conforming residence with a 14 feet x 32 feet addition to be located at the top of a bluff. The residence is non-conforming because it is located less than 30 feet from the top of a bluff. The property contains 1.08 acres riparian to Little Thunder Lake (RD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance.

Summary: Expand an existing non-conforming residence located at less than the required bluff setback. As determined by legal opinion/advice expansion of a non-conforming residence is a use variance.

PC members were at the site 11/01/10. 33 notices of the application were mailed with no responses received. The application was discussed and reviewed with Mr. McCann who withdrew his application from consideration.

Mogren, Scott, Crooked Lake Township on property described as Lot 16, Blk 1, "Birch Bay on Washburn Lake", Section 17-139-26, PID # 12-438-0180 located at 1362 Birch Bay Drive NE. An application submitted to expand the existing non-conforming residence with a 16 feet x 16 feet addition to be located to the side of the residence which will not increase the setback encroachment to the lake and a 12 feet x 16 feet addition located at the non-lakeside of the residence. The residence is non-conforming because it is located less than 75 feet from the lake. The property contains 1.6 acres riparian to Lake Washburn (GD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance.

Summary: Expand an existing non-conforming residence located at less than the required lake setback. As determined by legal opinion/advice expansion of a non-conforming residence is a use variance.

PC members were at the site 11/01/10. 53 notices of the application were mailed. One response supporting approval of the application along with one response recommending that it be denied were received. The application was discussed and reviewed with Mr. Mogren with discussion of location of new construction and proposed area of additional expansion along with area as opposed to use variance question.

MS/P Moore/Ballenthin to consider the Mogren application as a use variance.

Mr. Mogren withdrew his application from consideration.

Veld, Arlen & Valarie, Powers Township on property described as Lot 1, Blk 1, "Stellotto", Section 10-139-30, PID # 34-379-0410 located along W Oxyoke Road NW. An application submitted to construct 24 feet x 32 feet residence to be located 100 feet from the lake. The

property contains 3 acres riparian to Crooked Lake (NE). Section 1126.1 A. of the Land Use Ordinance requires structures to 150 feet from a lake classified natural Environment (NE).

Summary: Construction of a residence at less than the required lake setback. This is an area variance.

PC members were at the site 11/01/10. 37 notices of the application were mailed with no responses received. The application was discussed and reviewed with the applicant's representative Ms. Oliver.

MS/P Ballenthin/Gardner to approve the setback of the residence to be located upon PID # 34-379--0410 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. The property was platted in 1976 prior to the adoption of land use regulations.
2. The depth of the property from the lake to the township road varies from 183 feet to 237 feet. Required setback from the lake is 150 feet and 20 feet from the right-of-way of the township road.
3. The location of the residence will not affect ground or surface water because run-off and erosion control best management construction and post construction practices must be implemented.
4. The residence will not affect area land use because it will be similar to other lakeshore style and construction utilized throughout the Crooked Lake/Oxyoke Lake neighborhood.
5. The location and size of the residence is reasonable based upon the location, size and configuration of the residence.
6. There is no indication that financial consideration is the sole reason for the variance.
7. The expansion will have no bearing to the need or demand for governmental services because the property already has access to a public road and is not nor will it be connected to municipal or community waste water treatment system.

Conditions:

1. The residence shall not exceed 24 feet x 32 feet plus overhang/eave not to exceed two feet not less than 136 feet from the OHWL.
2. Any debris resulting from construction not recycled or reused must be disposed of in a permitted disposal facility.
3. ESD must 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 storm water run-off to the lake, to the access road from the approved structure(s), or to adjoining properties is permitted. The approved structure, and any structure to which the approved structure is attached, if necessary, shall be equipped with gutters to redirect storm

water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.

5. The existing shore vegetation shall be maintained and not altered except as allowed by a Shoreland Alteration Permit

6. Applicant consents to inspection of the property from time to time by ESD to verify compliance with all conditions.

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.

Conditional Use Permit

Likens, Jack, Kego Township on property described as Part of SW SE, Section 22-141-28, PID # 19-022-4305 & Rev Descr 1 of SE SE, Section 22-141-28, PID # 19-022-4400 located at 5646 County 126 NE. An application submitted "after the fact" to be allowed to retain 5,200 cubic yards of fill material from the TH # 84 project. The property contains 55.26 non-riparian acres. Section 705 of the Land Use Ordinance establishes Conditional Use Permit (CUP) review criteria. Section 1106.1 of the Land Use Ordinance requires a CUP for the movement of more than 1,000 cubic yards of earthen material within the non-shoreland area.

PC members were at the site 11/01/10. 70 notices of the application were mailed. One response of support for approval of the application was received. Several concerns with the "after the fact" fill work was discussed and reviewed with a representative of the contractor Gladden Construction and the property owner Mr. Likens.

MS/P Kostial/Gould MS/P Ballenthin/Moore to approve the earth work project for PID # 45-135-1405 upon review of Sections 705 and 1106.2 of the Land Use Ordinance (01/10/10) with the following findings and conditions.

Findings:

1. The fill areas are designated Area A located near storage structures and Area B to the east in the business "bone yard".
2. The business where the fill is located has not been disruptive to the neighborhood with no record of concerns or complaints made to ESD.
3. No wetland area or critical habitat is affected by Area A.
4. Wetland area is affected by Area B with corrective mitigation measures required.
5. No scenic or historic features are affected.
6. Area A of the fill project poses no likelihood to harm to public health, safety or welfare.

7. Area B of the fill project could pose the potential to harm to public health, safety or welfare due to the evidence of asphalt, concrete and other debris within the fill area and because the fill has a steep slope that extends into a wetland area.
8. Area A of the fill project will not increase the need or demand for governmental services because no road improvements are required and it is not served by municipal or community waste water treatment.
9. Area B of the fill project has the potential to increase the need or demand for governmental services due to the evidence of asphalt, concrete and other debris within the fill area and because the fill has a steep slope that extends into a wetland area.

Conditions:

1. All fill from Area B shall be removed and inspected for solid waste, scrap, demolition debris, asphalt, concrete and if present be transported to the appropriate permitted disposal site/facility by 11/30/10 along with verification.
2. The applicant shall submit a plan to re-deposit fill with amount of fill material, depth of fill material and slope of fill material including cross sections by 11/15/10.
3. The applicant shall submit a plan for the stabilization of the fill material, vegetation of the fill area along erosion control.
4. Conditions # 1. - 3. must be reviewed and approved by ESD prior to or in conjunction with implementation.
5. Deposit of financial assurance with ESD in the amount of \$5,000. Any financial assurance shall be returned to the applicant upon a schedule approved by ESD, and in all events upon substantial implementation of the plan, as determined by ESD. Requirements of the approved plans not completed in accordance with the schedule will be installed at the direction of ESD and charged against the financial assurance.
6. Applicant consents to inspection of the property from time to time by ESD to verify compliance with all conditions.

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.

Loren, Nancy & Troy/Little Boy Resort, Wabedo Township on property described as Pt of Gov Lots 1 & 2, Section 22-140-28, PID # 46-022-2406 located at 3600 County 54 NE. An application submitted to expand the resort with 10 RV sites. The property contains 10.5 acres riparian to Little Boy Lake (RD) classified Water Oriented Commercial (WOC). Section 705 of the Land Use Ordinance establishes Conditional Use Permit (CUP) review criteria. Section 1104.9 of the Land Use Ordinance requires a CUP for resort expansion that exceeds six units.

PC members were at the site 11/01/10. 95 notices of the application were mailed. 8 responses opposed to approval of the application along 4 responses including Wabedo Township supporting approval of the application were received. The application was discussed and reviewed with the

Lorens with discussion that included among others, occupancy, lake use of guests, RV site location, shoreline buffer/vegetation and location of shore recreation access/mooring.

MS/P Kostial/Ballenthin to approve 10 recreational vehicle sites for Little Boy Resort, PID # 46-022-2406 as submitted upon review of Sections 705 and 1104.9 of the Land Use Ordinance (01/10/10) with the following findings and conditions.

Findings:

1. The property has historically been occupied and configured as a resort.
2. The existing activity seems not to be disruptive to the neighborhood based on no record of concerns or complaints made to ESD.
3. No wetland or critical habitat is affected.
4. No scenic or historic features are affected.
5. The existing use has no record of harm to public health, safety or welfare.
6. The current use has not altered area land use.
7. The additional RV sites will not increase the need or demand for governmental services because no road improvements are required and it is not served by municipal or community waste water treatment.
8. The resort has available density as determined by tier calculation for the RV sites.

Conditions:

1. No storm water run-off to the lake, to the access road from the approved structure(s), or to adjoining properties is permitted. The approved sites if necessary shall redirect storm water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.
2. The structure located upon sites 3 - 6 shall be located at least 105 feet from the centerline of CSAH #54.
3. Applicant consents to inspection of the property from time to time by ESD to verify compliance with all conditions.
4. Wabedo Township recommendations A - F are adopted by reference as reviewed and required by ESD.
5. All applicable permits and/or licenses must be obtained.

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.

Preliminary Plat

"Isle Harbor on Leech Lake Fourth Addition", Unorganized on property described as Outlot A, "Isle Harbor on Leech Lake First Addition", Section 32-144-28, PID # 71-349-0001. The

preliminary plat consists of one single family residential lot. The property contains 80 non-riparian acres within the shoreland zone (1,320 feet) of Leech Lake (GD). Section 5.01.04 of the Subdivision and Platting Ordinance requires that an Outlot to be re-platted in order to be developed.

More than 50 notices of the plat were mailed. Two responses of no objection to the plat were received. The plat was reviewed with the applicant Mr. Bertsch and the surveyor Mr. Skipton.

MS/P Kostial/Gardner to approve the preliminary plat of "Isle Harbor on Leech Fourth Addition" upon review of Article 4 of the Subdivision and Platting Ordinance (03/01/09) with the following findings.

Findings:

1. The County Surveyor has reviewed and approved the preliminary plat.
2. Wetland delineation has been submitted.
3. SSTS site evaluation has been submitted.
4. The lot complies with the minimum non-riparian GD size criteria.
5. The phase one archeological report has been submitted.
6. The plat does not reach the mandatory EAW/EIS review standards.
7. The plat complies with the road access criteria.
8. No comments have been received from the Cass County Board or other agencies notified.

Other Business

1. Request to be heard received from David Kane who requests extension of the expiration of VP09-140-29-3 which was approved 06/08/09 due to unexpected financial considerations.

MS/P Fitch/Gardner to extend the expiration of VP09-140-29-3 to 07/01/13 as requested.

MS/P Gardner/Kostial at 2:35 p.m. to adjourn.

P. Fairbanks