



Cass County  
Planning Commission/Board of Adjustment

December 13, 2010

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting December 13, 2010 in the meeting room of the Cass County Land Department in Backus. The field inspection was conducted December 6, 2010.

Sundberg called the meeting to order at 9:05 a.m.

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

Staff Present: Fairbanks and Ringle.

Citizens Present: George Arts, Jim Bedell, Duane Bertsch, Joanne Bertsch, Jan Bowman, Jim Bowman, Bill DeVries, Jane Ekholm, Dick Evenson, Terry Freeman, Russ Goudge, Dan Helbling, Bob Higdem, Bill Harris, Sue Jaeger, Dan Kennedy, Bill Koch, Marge Koch, Sandi Krueger, Kris Lyytinen, Sue Maske, Grant Oppegaard, Mary Oppegaard, Will Pehling, Brett Short, Bruce Skipton, Ron Wickham, and Paul Widmar.

MS/P Fitch/Moore to approve the minutes of the 11/08/10 PC/BOA meeting as presented.

Variance

Becker, William, Ponto Lake Township on property described as Part of Gov Lot 9, Section 4-139-29, PID # 32-004-3304 located at 1558 20<sup>th</sup> St NW. An application submitted to remove an existing 18 feet x 22 feet residence and replace with new construction of a 30 feet x 38 feet residence 31 feet from the lake along with an 8 feet x 22 feet patio 23 feet from the lake. The application also calls for approval to construct a driveway with no setback for property boundary line. Section 1126.1 A. of the Land Use Ordinance requires structures to be located 100 feet from lakes classified Recreational Development (RD). Section 1126.1 B. allows for new driveways to be located 10 feet from property line. The property contains .53 acre riparian to Long Lake (RD).

The applicants propose to remove the exiting residence located 23 feet from the deck to the lake for construction of a new structure 31 feet and patio 23 feet from the lake. The area at the required lake setback of 100 feet is located within the wetland that occupies a large portion of the property. PC Members were at the site 12/06/10. 35 notices of the application were mailed. One response of no objection along with one opposing approval of the application were

received. In addition ESD staff member Bob Wright submitted information that reconfiguration/fill of the wetland area is not an option. The application was reviewed with the applicants' contractor Dan Kennedy of Lands End Development with discussion centering on locating the residence between the south end of the wetland area and 20<sup>th</sup> Street.

MS/P Ballenthin/Moore to table consideration of the application to the 1/10/11 meeting in order for the applicant to consider placement of the residence between the wetland area and 20<sup>th</sup> Street.

Oppegaard Irrevocable Real Estate Trust, Shingobee Township on property described as Pt of Gov Lots 3 & 4, Section 9-142-31, PID # 38-109-3101 located at 6140 Morriss Point Road NW. An application submitted to be allowed to divide the property into three lots containing more than one residence per lot. Parcel A is proposed to contain 42,454 square feet total area, 14,367 square feet buildable, be 180 feet wide at the water and 180 feet wide at the structure setback. Parcel B is proposed to contain 42,211 square feet total area, 17,528 square feet buildable area, be 153 feet wide at the water and 112 feet wide at the structure setback. Parcels C & D will be combined with 38-109-3110 to contain 58,088 square feet total area, 40,000 square feet buildable area, be 540 feet wide at the water and 182 feet wide at the structure setback. Section 1113.1 of the Land Use Ordinance 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. Parcel 38-109-3101 contains 2.6 acres riparian to Leech Lake (GD).

PC members were at the site 12/6/10. 30 notices of the application were mailed. One response from the Leech lake Association which recommended denial of the application was received. The application was reviewed and discussed with Mr. Oppegaard.

MS/P Ballenthin/Gould to deny the application to divide PID # 38-1093110 upon review with Section 800 of the Land Use Ordinance (01/10/10) with the following findings.

Findings:

1. Applicant has not demonstrated that the property cannot be put to a reasonable use without a variance.
2. The application is based upon circumstances created by the landowner.
3. The application is primarily based upon financial consideration.

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 notice for reconsideration is to expand a master bedroom for handicap accessibility. 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. This application was withdrawn from consideration by the applicants' representative during the 11/8/10 meeting and has been placed on this agenda at his request.

The application was withdrawn by the applicants' representative Jim Bedell during the 11/08/10 meeting after discussion of the non-conforming expansion use issues discussion. Mr. Bedell placed the application on this agenda based upon his contention that the expansion is to address physical disability needs of the applicants and therefore meets the reasonable use test. 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 with the discussion primarily centered upon the physical needs of one of the applicants.

MS/P Gould/Gardner to approve the expansion of the residence located upon PID # 05-021-1402 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. There is no indication or evidence that the existing location and configuration of the structures have affected ground or surface water.
2. There is no indication or evidence that the existing location and configuration of the structure have affected area land use because it is mostly unobservable from neighbors.
3. The existing location and configuration of the structures have had no bearing to the need or demand for governmental services because the property already has direct access to CSAH # 45 and is not nor will it be connected to municipal or community waste water treatment system.
4. The expansion will not be visible from the lake.
5. The expansion is required to accommodate the needs of one of the resident physical disability.
6. In light of the findings and the physical needs of the residents, allowing the variance will serve the interests of justice.

#### Conditions:

1. The expansion shall not exceed the dimensions shown on the application site plan submitted 10/08/10 plus overhang/eave not to exceed two feet.
2. Any debris resulting from demolition and/or 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. Shore vegetation shall be installed and maintained in a buffer area, subject to a 14 feet wide lake access area. The applicant shall submit a written plan for a native vegetation buffer to reduce/eliminate nutrient run-off to the lake which shall have written approval by ESD. The plan shall include a schedule for implementation and an estimate of the cost to implement. The plan shall include:

- a. A buffer within an area defined in the plan and approved by ESD.
- b. A buffer meeting the following conditions and approved by ESD.
- c. Restoration or installation of a berm approved by ESD.

Financial assurance shall be returned to the applicant upon a schedule approved by ESD and in all events upon substantial implementation of the vegetation plan as determined by ESD. Portions of the approved plan for vegetation not completed in accordance with the implementation schedule will be installed at the direction of ESD and charged against the financial assurance.

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

7. The applicant must provide to ESD verification per architect or engineer that the expansion is in compliance with physical disability size standards which must be submitted prior to permit issuance.

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

Stromquist, Lorraine Real Estate Trust/Goudge, Russell, Hiram Township on property described as Part of Gov Lot 2, Section: 8-140-31, PID # 16-008-1406 located at 4175 County 71 NW. Conditional Use application submitted for the removal of 70 cubic yards of earthen material, an existing culvert and constructing an open cut drainage ditch which will be seeded and mulched along with rip rap placement. Property is located within the shoreland area of Ten Mile Lake (GD). The property contains 24.88 acres riparian to Ten Mile Lake (GD). Section 705 of the Land Use Ordinance establishes Conditional Use Permit (CUP) review criteria. Section 1106.2 of the Land Use Ordinance requires a CUP for the movement of more than 50 cubic yards of earthen material within the setback area.

PC members were at the site 12/06/10. 51 notices of the application were mailed. One response objecting to approval of the application was received. The application was reviewed and discussed with Mr. Goudge.

MS/P Fitch/Gould to approve the earth work project for PID # 16-008-1406 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 drainage to be modified has been in place for many years
2. The drainage is ditch until a point about 50 feet from the lake where it becomes culvert.
3. The drainage has not been disruptive to the neighborhood with no record of concerns or complaints made to ESD.
4. The modification of the drainage will not adversely affect the existing status of the wetland.
5. The modification of the drainage will not increase or change the current flow to the lake.
6. No scenic or historic features are affected.
5. The project poses no likelihood to harm to public health, safety or welfare.
6. The project will not increase the need or demand for governmental services because no road improvements are required and the property it is not served by municipal or community waste water treatment.

## Conditions:

1. The amount of excavated material shall not exceed 75 cubic yards.
2. The area for deposit of the excavated material must be approved by ESD prior to the commencement of construction.
3. The inflow and outflow elevations shall be those determined by the Joint Technical Evaluation Panel (TEP) and shall be established on site by ESD along with the applicant or his representative.
4. A cross section of the area to be excavated must be submitted with bottom dimension, side slope ratio, side slope dimensions along with a description of how the excavated area will be stabilized prior to the commencement of construction.
5. Structures shall be established on the west side of the vacated road and the west end of the current location of the culvert that will allow the flow to slow and deposit sediment.
6. Applicable permits shall be obtained from DNR for any work to be conducted below the OHWL prior to the commencement of construction.
7. 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/Preliminary Plat

"Lodges of Blue Water 1<sup>st</sup> Addition", Shingobee Township on property described as Outlot F "Lodges of Blue Water", Section 2-141-31, PID # 38-343-0006. An application submitted to reconfigure the current resort unit lot configuration to 24 resort unit lots along with a revision

of the current resort conditional use permit (CUP) to reflect revised number and configuration resort unit lots. The property contains 5.2 acres riparian to Leech Lake (GD) 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 establishes resort CUP criteria. Section 705 of the Land Use Ordinance establishes CUP review criteria. Section 901 of the Land Use Ordinance establishes and describes land use districts. Section 1104.9 of the land Use District establishes resort criteria. Consideration of this application was tabled during the 09/13/10 meeting.

PC members were at the site 12/06/10. 56 notices of the application were mailed. Three responses including that of the Leech Lake Association all opposed to approval of the application. In addition several persons in attendance voiced their disapproval of the application. The application was discussed and reviewed with Mr. Helbling and Mr. Freeman with discussion that included among others, density, parking, traffic, ownership, owner occupancy waste water treatment, storm water management, shore vegetation and boat mooring.

### Final 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. The preliminary plat was approved 11/08/10.

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

MS/P Kostial/Gardner to approve the final plat of "Isle Harbor on Leech Fourth Addition" upon review of Article 7 of the Subdivision and Platting Ordinance (03/01/09) with the following findings.

### Findings:

1. There are no revisions from the preliminary plat which was approved 11/08/10.
2. The County Surveyor has reviewed and approved the preliminary plat.
3. Wetland delineation has been submitted.
4. SSTS site evaluation has been submitted.
5. The lot complies with the minimum non-riparian GD size criteria.
6. The phase one archeological report has been submitted.
7. The plat does not reach the mandatory EAW/EIS review standards.
8. The plat complies with the road access criteria.
9. No comments have been received from the Cass County Board or other agencies notified.

## Other Business

Request to amend VP10-139-30-5 which was approved 11/8/10. Applicants Arlen and Valerie Veld request that the approved setback of 136 feet be revised to 110 feet. The property contains 3 acres riparian to Crooked Lake (NE).

MS/P Moore/Fitch to re-consider VP10-139-30-5.

MS/P Ballenthin/Gardner - Ballenthin/Yes, Bliss/Yes, Fitch/Yes, Gardner/No, Gould/No, Moore/Yes to deny the request to revise VP10-139-30-5.

The members heard concerns in regard to existing extractive use operations in Shingobee Township with resultant truck traffic along CSAH # 50 for the purpose of considering ordinance revisions for the 2011 construction season.

MS/P Fitch/Gardner at 1:10 p.m. to adjourn.

P. Fairbanks