



Cass County
Planning Commission/Board of Adjustment

March 14, 2011

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting March 14, 2011 in the meeting room of the Cass County Land Department in Backus. The field inspection was conducted March 7, 2011.

Sundberg called the meeting to order at 9:11 a.m.

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

Staff Present: Berg, Fairbanks and Ringle.

Citizens Present: Stefanie Brown, John Eaton, Terry Freeman, Dan Helbling, Barbara Melville, Bill Kranz, Steve Larson and Anne Lillehei.

MS/P Moore/Gardner to approve the minutes of the 02/14/11 PC/BOA meeting as presented.

Variance

Lillehei, Anne & Kevin, Fairview Township on property described as Lot 6, Blk 1, "Hunters Point Estates 1st Addition", Section 13-134-29, PID # 14-387-0130 located at 2096 Bluebill Lane SW. An application submitted to expand a non-conforming residence with a 12 feet x 15 feet two level addition and a 15 feet x 17 attached garage with a 10 feet wide access ramp all to be located on the non-lakeside of the residence. The expansion is intended to provide for family members with physical disabilities. The residence is non-conforming because it is located 38 feet from the water. 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 .6 acre riparian to Gull Lake (GD).

Consideration of this application was tabled during the 02/14/11 meeting in order for the applicants to verify the needs of physically disabled family members. The garage/access ramp portion of the application has been withdrawn by the applicants. PC members were at the site 02/07/11. 65 notices of the application were mailed for the 02/14/11 and 03/14/11 meetings. One response from Fairview Township and one from neighboring property owners both recommending approval of the application were received in response to the 02/14/11 meeting

mailing. No additional responses were received from the mailing for the 03/13/11 meeting. The application was discussed and reviewed with Ms. Lillehei and the contractor Mr. Kranz.

MS/P Moore/Bliss to approve the expansion of the residence located upon PID # 14-387-0130 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 affect ground or surface water.
2. There is no indication or evidence that the existing location and configuration of the structure affect area land use because similar residential uses are located along Bluebill Lane and the expansion will be mostly not visible from neighboring property.
3. The existing location and configuration of the structures have no bearing to the need or demand for governmental services because the property already has direct access to Bluebill Lane 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 residents' physical disability.
6. In light of the findings and the physical needs of the residents, allowing the variance will serve the interests of justice.

NOTICE TO APPLICANT: If the following 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 native 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 \$1.00 per square foot of the buffer area for no-mow or \$3.00 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. The expansion shall not exceed the dimensions shown on the site plan submitted 02/25/11.
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 preceding 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.

Melville, Barbara, Ponto Lake Township on property described as part Of Gov Lot 3, Section 15-139-29, PID # 32-015-2205 located at 1607 State 84 NW. An application submitted to remove the existing residence and replace with a 28 feet x 50 feet residence, 8 feet x 50 feet lakeside deck, and 24 feet x 28 feet attached garage setback 92 feet from Ponto Lake and 31 feet from the right-of-way of TH #84. Section 1126.1 A. of the Land Use Ordinance requires new structures to be located 100 feet from lakes classified Recreational Development (RD) and

Section 1126 B. which requires structures to be located 50 feet from the right-of-way of a state highway. The property contains .57 acre riparian to Ponto Lake (RD).

PC members were at the site 03/07/11. 45 notices of the application were mailed with one response favoring approval of the application received. The application was discussed and reviewed with Ms. Mellville.

MS/P Ballenthin/Gould to approve the location of the residence for PID # 32-015-2205 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 residence was expanded by permit in 1971 with a 12 feet x 14 feet porch to the side of the residence which is identified as 60 feet from Ponto Lake.
2. No permit activity has been located prior to the porch in 1971 therefore it is assumed that the residence was constructed prior to 1971 prior to permit and setback requirements.
3. The property became a lot of record prior to 1971 and is from 127 feet to 137 feet from lake to TH # 84.
4. The lake setback of 100 feet and right-of-way setback of 50 feet overlap.
5. 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.
6. The residence will not affect area land use because similar style and construction is utilized by adjacent property along TH # 84 and because shoreline vegetation required by the variance will reduce the visual exposure of the new construction from the lake.
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 has access to TH # 84 and is not nor will it be connected to municipal or community waste water treatment system.

NOTICE TO APPLICANT: If the following 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 native 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 \$1.00 per square foot of the buffer area for no-mow or \$3.00 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. The residence shall not exceed the dimensions and setbacks of the structure/deck shown on the site plan submitted 02/18/11.
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 preceding 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 conditions.
7. ESD must verify lake and right-of-way setbacks prior to the commencement of 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 VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Styvoky, Thomas, Fairview Township on property described as Lot 10, 15 & Part of Lot 16, "Birch Forest", Section 24-134-30, PID # 14-437-0150 located at 2511 Birch Forest Road SW. An application submitted to remove the existing residential structure and replace with 26 feet x 38 feet new construction in the approximate site of the current residence which will not

comply with the required bluff or lake setback. The current residence is located less than 75 feet from the lake and within the bluff area. Section 1126.1 A. of the Land Use Ordinance requires new structures to be located 75 feet from lakes classified General Development and Section 1126 B. which requires new structures to be located 30 feet from the toe or top of a bluff. A bluff is a topographic feature located either part or fully within the shoreland area and having the following characteristics; the slope rises at least 25 feet vertically above the toe of the bluff, the grade of the slope from toe of the bluff to a point 25 feet or more above the toe of the bluff averages 30% or greater and the slope drains toward public waters. The property contains .6 acre riparian to Gull Lake (GD).

This application was tabled during the 02/14/11 meeting in order for the applicants' representatives to consider placing the non-lakeside of the proposed structure at the retaining wall. PC members were at the site 02/07/11. 33 notices of the application were mailed of the 02/14/11 and 03/14/11 meetings. One response from Fairview Township recommending approval along with one response from within the notification area urging disapproval were received. The application was discussed and reviewed with the applicants' representatives Mr. Freeman and Mr. Larson. Discussion centered on the question of gaining setback from the lake by moving structure back to the retaining wall.

MS/P Gould/Gardner to approve the location of the residence, fence and railing for PID # 14-437-0150 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. No permit activity for the parcel prior to 1993 can be confirmed therefore it is reasonable to assume the original residence was constructed prior to the enforcement of the bluff setback requirements.
2. The garage was constructed with permit in 1997 prior to the enforcement of the bluff setback requirements.
3. The property was platted in 1951 far prior to the adoption of the buildable lot area requirements and setback requirements.
4. The garage and retaining wall along with the small size of the lot restricts placement at the required bluff setback.
5. 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.
6. The residence will not affect area land use because similar style and construction is utilized by adjacent property along Birch Forest Road and because shoreline vegetation required by the variance will reduce the visual exposure of the new construction from the lake.
7. Using the existing excavated area for the new construction will result in less disruption and impact to the property.
8. There is no evidence that financial consideration is the sole reason for the variance.

9. The residence 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.

NOTICE TO APPLICANT: If the following 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 native 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 \$1.00 per square foot of the buffer area for no-mow or \$3.00 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. The residence and fence shall not exceed the dimensions and setbacks shown on the site plan submitted 02/16/11.
2. The residence shall not exceed 26 feet from walk-out to peak with non-reflective glass in the lake side exposure.
3. The rail location shall be that indicated on the landscape plan submitted 03/14/11.
4. Any debris resulting from demolition and/or 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.
7. 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 preceding 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.

8. Applicants consent to inspection of the property from time to time by ESD to verify compliance with 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/Final Plat

"Lodges of Blue Water 1st 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 12/13/10 meeting.

PC members were at the site 12/06/10. 56 notices of the application were mailed for the 12/13/10, 02/14/11, and 03/14/11 meetings. Ten responses were received from the mailings with all raising some level of concerns based upon proposed density, storm water run-off, and near shore conditions. In addition two persons in attendance spoke to the application one of urging disapproval and one approval. The application was discussed and reviewed with Mr. Helbling and Mr. Freeman with discussion that included among others, density, parking, traffic, revised declarations, storm water management, shore vegetation and boat mooring.

MS/P Ballenthin/Gardner - Ballenthin/Yes, Bliss/Yes, Fitch/Yes, Gardner/Yes, Gould/No, Moore/Yes to approve the resort configuration for PID # 38-343-0006 with the findings and conditions based upon review of Sections 705 and 1104.9 of the Land Use Ordinance (01/10/10) with the following findings and conditions.

Findings:

1. Lodges of Bluewater LLC, the applicant, has submitted an application for a conditional use permit for a resort/plot to be known as "Lodges of Bluewater First Addition" to be operated upon property described in the plat as Outlot F, "Lodges of Bluewater" consisting of twenty-three unit/lots and one common lot.
2. The record includes written documentation submitted by the applicant hereinafter referred to as Plans and Documentation and more particularly described in Attachment A hereto, oral testimony and written comments from interested persons. The Plans and Documentation include without limitation; certified drawings prepared by professionally licensed engineer, surveyor, and landscape architect, the declarations, covenants, rental management and lease agreements governing the resort: scaled master site plan drawings and submissions and road design elements as recommended by the Association of Civil Engineers, along with a storm water run-off plan, grading plan, and landscape plan.
3. The property is classified Water Oriented Commercial (WOC) which is designated intended for water related commercial activity in which a resort requires a conditional use permit.
4. The resort as described in the Plans and Documentation and subject to Conditions hereinafter set forth is consistent with the Cass County Comprehensive Plan and the requirements of County ordinances in particular Section 1104.9 of the Land Use Ordinance (01/10/10).
5. The applicant's compliance with the Plans and Documentation and the Conditions will ensure that soil erosion and other possible pollution of public waters will be prevented, the visibility of structures and other facilities from public waters will be limited, and that there will be a compliant waste water treatment system.
6. The criteria set forth in Sec 705.2 and section 1104.9 have been met and in some cases exceeded, authenticated with definitive statements of fact as evidenced by the certified drawings prepared by professional licensed engineers and surveyors, as well as the submission of the declarations, covenants, rental management and lease agreements as revised at the request of this commission.
7. Concerns related to traffic, emergency response, parking and trailer/ boat storage have been answered and substantiated with written documentation, scaled master site plan drawings and submission of road design elements as recommended by the American Association of Civil Engineers. In addition the land use ordinance has no prescriptive standards for the number of parking spaces per resort unit or their location relative to the resort unit. This proposed project has no through streets and all roads within the resort dead end within the resort confines and that the entire resort area is bordered by Leech Lake on the west and north, TH #371 on the south and resort property to the east.
8. Concerns relating to storm water management, shoreline vegetative plans, lakescape views and resort density have been addressed with submission of engineered storm water and erosion control plans, landscaping plans, photographic documentation of the lakescape and adherence to the density requirements as stipulated in section 1104.9.B of the ordinance.
9. No comments or objections to the resort project have been received from the County Engineer, MN DOT, Leech Lake Band, local fire department, COE, or Shingobee Township.

10. Comments received from the DNR in regard to impervious coverage and dockage have been noted and determined to be in compliance with ordinance standards.
11. The application has in excess of 1,150 feet of shoreline with two proposed shore recreation areas. Based upon the proposed vegetative and screening plan, the applicant is proposing to either leave in place or to enhance the remaining portion of the shoreline which complies with the requirement to limit visibility of structures.
12. The use of this property has historically been as a resort in an area containing several other resorts therefore not inconsistent with the normal and orderly development and improvement of property and therefore there is no basis to expect that it will cause adverse effects to adjacent or area properties.
13. The resort proposal complies with the density requirements.
14. The resort development will be occupied by unit owners, their guests and members of the public on a limited term basis and not be permanent basis and therefore the resort development will meet the definition of a resort and the requirements regarding resorts as contained in the applicable ordinances of Cass County. The occupants of the resort even at maximum occupancy will not create an excessive burden on parks, schools, streets and other public facilities and utilities because neither the county or the township operate parks, there will be no resident children to utilize schools, the property has access to existing township road and a state highway, and because public water and waste water treatment systems are not available or planned to be available and therefore poses no unusual threat to public health, safety, or welfare.
15. The project does not reach mandatory EAW/EIS criteria.
16. Waste water treatment design will be reviewed by and comply with all applicable county and state requirements.
17. The resort activity will not increase erosion to or pollute public waters because all units will comply with the required lake setback and shoreline buffer will be restored with vegetation and no-mow areas along with the establishment of numerous rain gardens.
18. No wetland or critical habitat will be disturbed by the resort.
19. No scenic or historic features will be negatively affected by the resort.
20. The applicant consents to amendment of Conditional Use CU08-141-31-2 approved 06/24/08 recorded 07/23/08, Document A000540465, as it relates to Outlot F, "Lodges of Bluewater".

NOTICE TO APPLICANT: No permit to implement shall be issued until and if:

1. ESD required and approved erosion control is installed.
2. A written plan for native 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 \$1.00 per square foot of the buffer area for no-mow or \$3.00 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. The resort shall be constructed, implemented, maintained, managed and operated in compliance with the Plans and Documentation, Attachment A hereto, and all applicable provisions of Cass County ordinances and the laws of the State of Minnesota. The following additional Conditions shall not limit but be in addition to the Plans and Documentation, and in the event of any inconsistency, these conditions shall apply.
2. The conditional use permit CU08-141-31-2 approved 06/24/08 recorded as Document A000540465 as it relates to "Lodges of Bluewater First Addition", the resort herein approved, is amended so as to remove "Lodges of Bluewater First Addition" from the scope and provisions of CU08-141-31-2 effective upon the recording of this conditional use permit and the plat of "Lodges of Bluewater First Addition".
3. The resort shall consist of not more than 23 resort units, with each unit not to exceed dimensions of 26 x 32 feet, plus a 12 foot covered entrance, plus an 8 x 26 foot deck, not to exceed 30 feet to peak located as described on the Preliminary Plat, page 2, as approved 02/14/11. No additional structures of any kind shall be located on the resort property except for portable sanitary toilets for the two swimming areas.
4. The two swimming areas and one docking area shall be located and configured as described on the Preliminary Plat, page 2, as approved 02/14/11. No other area shall be used for swimming, docking, beaching of watercraft or other recreation activity.
5. Except as may be altered by the landscape/vegetation plan or otherwise required or approved by ESD, the storm water management plan, as described on Preliminary Plat, page 3, and supporting documents is adopted and shall be implemented prior to occupancy of any of the resort units.
6. A detailed grading plan that includes construction phase erosion control measures must be submitted, approved by ESD, and, except as otherwise approved by ESD, implemented with respect to each resort unit during construction.
7. The Landscape Plan dated 03/08/11 consisting of 4 pages is adopted and except as otherwise approved by ESD shall be implemented on a schedule approved by ESD and shall be continuously maintained. Prior to the issuance of a permit, the applicant shall submit to ESD financial assurance in the amount of \$3/square foot for 11,957 square feet of area included in the Landscape Plan. 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. Portions of the plan for vegetation not completed in accordance with the implementation schedule shall be installed at the direction of ESD and charged against the financial assurance.
8. Prior to commencement of any construction, and for the duration of construction, ESD shall be provided with verification of issuance and effectiveness of an MPCA NDPEs permit.

9. Prior to the occupancy of any resort unit, ESD shall be provided with evidence of the issuance and effectiveness of the required MN DOH Resort License; and, for so long as the resort shall be operated a valid and effective Resort License shall be continuously maintained.
10. As proposed by the applicant, each resort unit shall be single party ownership only with no fractional ownership.
11. As proposed by the applicant and as set forth in the Declaration: a) resort unit owners shall not occupy their unit for more than 28 days from May 1 - October 31; and b) resort unit owners shall not occupy their unit for more than 28 days from November 1 - April 30.
12. The maximum width of the access corridor to the docking area and to each of the two swimming areas is not to exceed 8 feet in width.
13. All shore areas that are not used for permitted access corridors or otherwise approved by ESD shall be re-vegetated 25 feet landward from the OHWL. All plants shall be from Cass County Plant List with the area maintained annually by such activities as replacement, weed removal, mowing, and/or controlled burning. Access to Leech Lake is not permitted through or across re-vegetated areas except through the access corridors.
14. Fuel storage shall comply with MPCA standards and be located within the 8 foot access corridor.
15. The existing asphalt surface of the pathway to the dock area shall be removed.
16. Portable toilets shall be located no closer than 75 feet from OHWL.
17. Each rain garden site must have a soil boring to assure proper function.
18. Plants for rain garden need not be of native origin but shall not be listed as invasive or problem species by DNR.
19. Rain Garden dimensions must be appropriate for impervious area to be drained Square Feet of Impervious Surface = Square Feet of Rain Garden.
20. All roof structures must be designed to direct run-off to rain gardens.
21. All rain gardens must have over flows that directed away from structures.
22. All rain gardens shall be serviced not less often than annually to maintain their function and performance and to remove trash, leaves, and sediment.
23. All trees removed during construction phase shall be replaced at a ratio to be determined by ESD/SWCD.
24. Replacement tree species shall be of the same species that being removed.
25. Replacement trees shall be at least 5 feet in height unless authorized by Cass ESD/SWCD.
26. Driveways and parking areas shall be constructed of pervious materials or shall have rain gardens approved by ESD and located along their boundaries which may be bridged for access to resort dwelling units.
27. Pathways surfaces and base shall be of pervious material not to include mulch.
28. As determined by ESD, beach areas may be required to have a berm along the landward boundary.
29. The landward boundary of the property, except for boundary fronting on a public roadway, shall be densely vegetated to screen the resort from adjoining property owners. This boundary shall be signed instructing that no access to the adjoining property is permitted. The boundary screening and signing shall be installed before any resort unit may be occupied and used for its intended purpose.

30. No fire pits are allowed in the vegetated buffer/no mow areas. Community fire pits are permitted only in the Shoreland Impact Zone II access areas to Leech Lake and portions of the property located more than 75 feet from the OHWL of Leech Lake.

31. Parking of vehicles, trailers, etc. is only permitted in designated sites as shown on the Preliminary Plat approved 02/14/11 and in no case shall parking obstruct the movement of emergency or other vehicles on any roadway within the resort property.

32. The Declaration in the form provided to the Planning Commission on 03/14/11 (created 01/25/11 & printed 02/21/11), together with amendments to the Declaration agreed to by applicant at the hearing before the Planning Commission 03/14/11 as shown by the record of the hearing shall not be further amended in Sections 1, 2, 3, 5, 7, 12, 15, or 17.7 without the prior consent of the Cass County Planning Commission or any successor.

33. The resort at all times shall be owned, operated and maintained in compliance with this Conditional Use Permit and these Conditions and applicable Cass County Ordinances. Without limiting the foregoing, the resort and any conveyance of an interest in the resort or any unit is subject to the provisions of the Land Use Ordinance for Cass County, Minnesota, Sections 1104.9.F and G, Ordinance #2009-07 effective 01/10/10, and as the same may be recodified, restated, or amended, provided that any such recodification, restatement or amendments which is more restrictive than the Ordinance in effect on the date of this CUP shall be effective to govern the resort only as provided by law.

34. All applicable township, county, and state permits/licenses shall be maintained.

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.

SUBJECT TO THE FOREGOING FINDINGS AND CONDITIONS, LODGES OF BLUEWATER LLC IS HEREBY GRANTED A CONDITIONAL USE PERMIT FOR A RESORT TO BE OPERATED UPON PROPERTY DESCRIBED IN THE PLAT OF "LODGES OF BLUEWATER FIRST ADDITION", CASS COUNTY, MINNESOTA. THE RESORT SHALL CONSIST OF NOT MORE THAN 23 RESORT LOT/UNITS AND ONE COMMON LOT AS SHOWN ON THE PLAT.

Attachment A: Plans and Documentation

A. Final Plat of "Lodges of Bluewater First Addition" approved 03/14/11.

B. Preliminary Plat of "Lodges of Bluewater First Addition" dated 09/29/10 and Supporting Documents (4 pages).

C. Preliminary Plat of "Lodges of Bluewater First Addition" approved 02/14/11.

D. Declaration of "Lodges of Bluewater First Addition" Homeowners Association Inc Common Interest Community in the form provided to the Planning Commission 03/14/11. (Created 01/25/11, printed 02/21/11).

E. Landscape Plan, Tree Removal Plan and Landscape Details dated 03/08/11.

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.

MS/P Moore/Bliss - Ballenthin/Yes, Bliss/Yes, Gardner/Yes, Gould/No, Fitch/Yes, Moore/Yes to approve the final plat of "Lodges of Blue Water 1st Addition" upon review of Article 7 of the Subdivision and Platting Ordinance (03/01/09) with the following findings.

Findings:

1. There are no significant revisions from the preliminary plat which approved 02/14/11.
2. The lots comply with the resort GD standards.
3. The County Surveyor has reviewed and approved the final plat.
4. Wetland delineation requirements have been fulfilled.
5. Waste treatment location has been determined with design to be submitted and approved in order to receive land use permits.
6. The archeological requirements have been fulfilled.
7. The plat does not reach the mandatory EAW/EIS review standards.
8. The plat complies with the road access criteria.
9. No comments in regard to the final plat have been received from agencies notified.

MS/P Moore/Gardner at 11:05 am, to adjourn.

P. Fairbanks