



Cass County  
Planning Commission/Board of Adjustment

October 13, 2014

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting October 13, 2014 in the meeting room of the Cass County Land Department in Backus. The field inspection for the meeting was conducted October 6, 2014 with PC members Anderson, Ballenthin, Fitch, Kostial, LaPorte, Moore and Sundberg along with ESD staff Berg and Fairbanks in attendance.

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

Members present: Anderson, Ballenthin, Fitch, Kostial, LaPorte, Moore and Sundberg.

Staff Present: Berg, Fairbanks, and Ringle.

Citizens Present: John Babinski, Bill Belford, Brandon Bentley, Joyce Bentley, Mike Bieniek, Ben Brueshoff, Dave Brueshoff, Al Chacey, Mark Croteau, Tom Dechmann, Timothy DePrey, Cindy Derfler, Dan Derfler, Sandra Diemer, Gerald Ficke, John Ficke, Linda Ficke, Robert Ficke, Shirley Ficke, Jackie Frana, John Hall, Lynn Hall, Bobbi Hoppman, Heather Landreville, Jack Likens, Jim Lucachick, Bonnie Muzik, Scott Mork, Tim Paulson, Jeff Peterson, Mike Phillips, Tanya Phillips, Douglas Pietsch, Sara Plowman, Clarence Reuter, Brandon Rothwell, Cara Ruff, David Schmitt, Verdale Soukup, Mary Synder, Sabrina Thatcher, Tom Theisen, Betty Thomas, Jennifer Belford Yerhot, Peggy Wills, Richard Wozniak and Cindy Ziton.

MS/P Kostial/LaPorte to approve the minutes of the 09/08/14 PC/BOA meeting as presented.

MS/P Ballenthin/Anderson to approve the revised agenda, Loren application withdrawn and Reuter request to be heard, as presented by Fairbanks.

Variance

Belford, William, Shingobee Township on property described as Lots 4 & 5, "Belford 1<sup>st</sup> Addition to the Plat of Shingobee Island", Section 2-141-31, PID #38-348-0040 located at 7179 Dewdrop Trail NW. An application submitted to replace the current residence with new construction to be located 20 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) include Section 1126.1 A. which requires structures to be at least 75 feet from a lake classified General Development (GD) and Section 800 which establishes variance review criteria. The parcel contains .26 acre riparian to Leech Lake (GD).

25 notices of the application were mailed. No responses were received. The application was discussed and reviewed with one of the applicants and their architect Mr. Lucachick with discussion centered upon the proposed setback from the lake.

MS/P Fitch/Ballenthin to table consideration of the application until the 11/10/14 meeting in order for the applicants to consider residence configuration and setback options and for the PC to visit the site again.

Brueshoff, David, Woodrow Township on property described as Lot 2, "Maewood", Section 15-140-29, PID #51-420-0020 located at 939 Maple Crest Drive NW. An application submitted to construct a 34 feet x 36 feet residence to be located 45 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) include Section 1126.1 A. which requires structures to be at least 75 feet from a lake classified General Development (GD) and Section 800 which establishes variance review criteria. The parcel contains .42 acre riparian to Woman Lake (GD).

This application was tabled during the 09/08/14 meeting in order for the applicant to consider setback location alternatives and for the members to visit the site again. 53 notices of the application were mailed to which 5 responses from neighboring property owners all supporting approval of the application were received. The application was discussed and reviewed with the applicant with discussion centered upon the proposed setback from the lake and how that would affect or not the proposed residence alignment with adjacent and neighboring residences.

MS/P Fitch/Kostial to approve the application for construction of a residential structure upon PID #51-420-0020 at 60 feet from the ordinary high water level (OHWL) 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 became a lot of record in 1946 prior to the adoption of land use regulation.
2. The permit archive contains no record of the original construction but it can be assumed that it occurred prior to the adoption of land use regulation.
3. The non-conforming residence, 45 feet from the lake, could be replaced as allowed by statute and ordinance at existing footprint and volume by permit.
5. The application calls for new construction at 60 feet from the lake therefore reducing the current setback encroachment.
6. The proposed location of the residence seems a reasonable use of the property when taking into account the size and configuration of the lot along with the location of the SSTS and garage which limits placement area available 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. The proposed residence location will be further from the lake, will comply with the side yard setback to neighboring property and will be comparable to lake setbacks of residences in the neighborhood area 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.

8. Because the surrounding area is made up of similarly sized lots with structures similar in size and scale, 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 and configuration of the residence shall not vary from that submitted with the application dated 08/20/14.
2. The residence shall not be less than 60 feet from the OHWL.
3. The height to peak shall not exceed 30 feet.
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 10/13/16.

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.

DePrey, Timothy, Powers Township on property described as Part of Govt Lot 10 & Easements, Section 3-139-30, PID #34-003-1301 located at 2288 E Pickerel Drive NW. An application submitted to create two lots that would be riparian to Pickerel Lake (NE) which would not comply with the minimum lot standards in terms of width and bulk for a new NE lot. The relevant portions of the Land Use Ordinance (02/15/13) include Section 1113.1 which establishes the minimum size requirements for a new lot on a Natural Environment (NE) lake and Section 800 which establishes variance review criteria. The parcel contains 2.45 acres non-riparian within the shoreland (1,320 feet) area of Pickerel Lake (NE).

23 notices of the application were mailed. Two responses both supporting approval of the application were received. The application was discussed and reviewed with Mr. DePrey and Ms. Hoppman which centered upon lake access, minimum lot size and lot configuration if approved.

MS/P Moore/Fitch to approve the application for lot configuration as presented for PID #34-51-003-1301 upon review of the criteria contained in Sections 800 and 1126.1 of the Land Use Ordinance (02/15/13).

#### Findings:

1. The property became a lot of record in 1960 prior to the adoption of land use regulation.
2. The applicant currently has access by 20 feet easement granted prior to the adoption of the prohibition to such access.
3. The proposed lot configuration will be 25% of the minimum lot width and 107% of the minimum lot size.
4. The proposed lot configuration which will not result in additional riparian access seems a reasonable use of the property when taking into account the current access and property configuration and will not result in an increase in the number of lots or lake access 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. The proposed lot configuration will not increase lake access 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.
6. Because the surrounding area is made up of similarly sized lots with structures similar in size and scale, 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.

Conditions:

1. The new lot configuration shall not vary from that submitted with the application dated 09/11/14.
2. Any shoreland modification shall be only that allowed by the Shoreland Alteration Permit.
3. The existing 20 feet easement shall be vacated and a certified copy of the document filed with the Cass County Recorder vacating the easement which shall also be submitted to Cass County ESD not later than 12/14/14.
4. Any remainder of PID #34-003-1302 shall be attached to PID #34-003-1200 and shall not be eligible for development unless configured to comply with the minimum riparian NE lot standards and shall be confirmed by the property owner Mr. Croteau to ESD not later than 12/14/14.
5. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 10/13/16.

Ficke, Linda, Birch Lake Township on property described as Part of Govt Lot 4 & Easement, Section 34-140-30, PID #05-034-3311 located at 2519 Eagle Pines Pass. An application re-submitted, "after the fact", to be allowed to retain a partially constructed residential structure that measures 34 feet 2 inches from grade to peak. The relevant portions of the Land Use Ordinance (02/15/13) are Section 1126.2 which establishes that height to peak from grade shall not exceed 30 feet and Section 800 which establishes the variance review criteria. The parcel contains .7 acre riparian to Pleasant Lake (GD). This application is being re-considered per an agreement between Cass County and the applicant.

The matter is before the Cass County Planning Commission/Board of Adjustment (PC/BOA) for a rehearing to address additional variance factors not considered at the initial hearing held May 12, 2014. Before the PC/BOA is the same height variance that was considered May 12, 2014. Following the PC/BOA's decision denying the "after the fact" variance, the Fickes appealed the denial of the height variance. After the appeal was taken the parties agreed there was a likelihood that the court would remand the matter to the PC/BOA to consider additional "after the fact" variance factors. The factors that were considered at the October 13, 2014 rehearing were: 1) whether the applicants acted in good faith; 2) whether the applicants attempted to comply with the ordinance; 3) whether the applicants made a substantial

investment; 4) whether the construction was completed; 5) whether there are similar structures in the area; and 6) whether the county's benefits are outweighed by the applicants' burden if the applicants are required to comply with the ordinance.

Findings on "After the Fact" Variance Factors:

1. Whether the applicants acted in good faith.

MS/P Ballenthin/Moore - Anderson/Yes, Ballenthin/Yes, Fitch/No, Kostial/Yes, LaPorte/No, Moore/Yes that the applicants did not attempt to comply with the ordinance, instead, they built a structure in disregard of the height requirement of the ordinance.

A. On September 5, 2012, John Ficke applied for and was granted a permit to build a residential structure 28 feet height to peak and 1,856 square feet. Applicant John Ficke knew the height was not to exceed 28 feet.

B. At the hearing for the height variance application May 12, 2014, the contractor Tim Paulson appeared to represent the applicants. Mr. Paulson testified at the hearing that he knew the permit authorized a height to 28 feet. He testified that during construction changes were made in the roof line which resulted in a height exceeding 30 feet.

C. Mr. Paulson testified during the 05/12/14 hearing that no effort was made to determine the effect of those changes on the resulting height of the structure.

D. A person does not attempt to comply by doing nothing. Rather an attempt to comply is an affirmative act. That affirmative act would require at a minimum that some effort be made to discover whether the roof line changes would result in a height greater than that approved by permit or allowed by ordinance. No such effort was made. Not having made that effort the result was a 6 feet two inches increase in height to 34 feet 2 inches, a height not only exceeding the 28 feet approved by the permit, +22%, but also a height exceeding the 30 feet allowed by ordinance, +13.6%.

2. Whether the applicants attempted to comply with the ordinance.

MS/P Ballenthin/Moore - Anderson/Yes, Ballenthin/Yes, Fitch/Yes, Kostial/Yes, LaPorte/No, Moore/Yes that the applicants did knowingly evade compliance with the ordinance, instead, they built a structure in disregard of the height requirement of the ordinance.

A. On September 5, 2012, John Ficke applied for and was granted a permit to build a residential structure 28 feet height to peak and 1,856 square feet. Applicant John Ficke knew the height was not to exceed 28 feet.

B. At the hearing for the height variance application May 12, 2014, the contractor Tim Paulson appeared to represent the applicants. Mr. Paulson testified at the hearing that he knew the permit authorized on a height to 28 feet. He testified that during construction changes were made in the roof line which resulted in a height exceeding 30 feet.

C. Mr. Paulson testified during the 05/12/14 hearing that no effort was made to determine the effect of those changes on the resulting height of the structure.

D. A person does not attempt to comply by doing nothing. Rather an attempt to comply is an affirmative act. That affirmative act would require at a minimum that some effort be made to discover whether the roof line changes would result in a height greater than that approved by permit or allowed by ordinance. No such effort was made. Not having made that effort the result was a 6 feet two inches increase in height to 34 feet 2 inches, a height not only exceeding the 28 feet approved by the permit, +22%, but also a height exceeding the 30 feet allowed by ordinance, +13.6%.

3. Whether the applicants made a substantial investment.

MS/F Ballenthin/Fitch - Anderson/No, Ballenthin/Yes, Fitch/No, Kostial/No, LaPorte/No, Moore/No that the applicants have failed to show that they have made a substantial investment.

The applicants submitted evidence that the cost of complying with the height requirement would be \$153,644.23. This constituted a substantial investment.

4. Whether the construction was completed.

MS/P Ballenthin/Moore - Anderson/Yes, Ballenthin/Yes, Fitch/Yes, Kostial/Yes, LaPorte/Yes, Moore/Yes the construction of the home was not completed, but the exterior construction establishing the height of the structure was completed at the time the height violation was documented.

5. Whether there are similar structures in the area. The question is divided into two parts: similar in overall appearance and similar as to non-conformity?

Question #1. Is this structure similar as to non-conformity that exceeds 30 feet?

MS/P Ballenthin/Moore - Anderson/Yes, Ballenthin/Yes, Fitch/No, Kostial/Yes, LaPorte/No, Moore/Yes that there are no similar structures in the area that exceed 30 feet height to peak.

A. Section 1126.2 of the Land Use Ordinance establishes that the maximum height to peak of structures shall not exceed 30 feet.

B. Structures "similar" to the applicants' structure would be structures more than 30 feet in height.

C. Structures less than 30 feet in height to peak would not be similar because they would be structures in compliance with the Land Use Ordinance.

D. No evidence came before the PC/BOA showing that the height of any structures in the area of the applicants' structure exceeded the 30 feet height to peak limit for structures provided by the Land Use Ordinance.

E. There is evidence in the form of pictures, Attachment B, K-L, which purport to show structures of similar height, but there is no evidence that the height to peak of any of these structures is greater than 30 feet.

F. Attachment B is a picture of a single structure, Hemming, on an adjacent lot which appears to be a height similar to applicants' structure.

1. There is no evidence that the Hemming structure is greater than 30 feet height to peak.

2. The picture shows that the grade of the lot upon which the Hemming structure is built is higher than the grade of the applicants' lot. Therefore that structure may appear "similar" in height but it is not because it is constructed on a higher grade. It would be irrational to accept the Hemming structure as "similar" in height because to do so would also classify as "similar".

a. A structure 20 feet in height if it was constructed on a lot with a grade 14 feet higher than the grade of the applicants' lot; and

b. A structure 55 feet in height if constructed on a lot adjacent to a lot with a grade 25 feet higher upon which a structure was built to a height of 30 feet.

Question #2. Is the structure similar to other structures in regard to overall appearance?

MS/P Kostial/Fitch - Anderson/Yes, Ballenthin/Yes, Fitch/Yes, Kostial/Yes, LaPorte/Yes, Moore/No that there are structures that are generally similar in appearance in the area.

6. Whether the county's benefits are outweighed by the applicants' burden if the applicants are required to comply with the ordinance.

MS/P Ballenthin/Moore - Anderson/Yes, Ballenthin/Yes, Fitch/No, Kostial/Yes, LaPorte/No, Moore/Yes that the county's benefits are not outweighed by the applicants' burden if the applicants are required to comply with the ordinance.

A. The county's benefits are related to the purpose of the Land Use Ordinance and the goals of the Comprehensive Plan.

B. Purpose of the land Use Ordinance, Section 201; "This ordinance is intended to protect, preserve and enhance the quality of natural land forms and open spaces of Cass County for future generations. Further, it is the goal of the ordinance to promote the health, safety, general welfare and orderly development of Cass County by regulating the height of structures and providing adequate access to air, direct sunlight and convenience of access to property.

Excess height obstructs natural land forms and fills open space to the detriment of the enjoyment of future generations. Excess height limits access to air and direct sunlight which both express purposes of the ordinance.

C. Purpose of the Comprehensive Plan, Private Land Use Plan; Scope and Purpose. It is the purpose of these policies to; 2. "Eliminate the conflicts caused by unplanned development", 4. Protect the County's natural resources from degradation."

The excess height of the applicants' structure has caused conflicts with a neighbor which the Comprehensive Plan seeks to eliminate. The excess height of the applicants' structure also



degrades the County's natural resources of scenic and aesthetic natural beauty by screening the natural environment for enjoyment by the public.

D. The county's benefits also are related to encouraging voluntary compliance with the Land Use Ordinance by fair and reasonable application of the Land Use Ordinance and by the granting of variances according to the requirements of Minnesota Statute 394.27, Subd. 7. Allowing by variance the height violation in this case sets an example that not with-standing willful indifference to the requirements of the ordinance, the ordinance can be ignored and thereby the goal of achieving a high level of voluntary compliance is frustrated. Scarce public resources for enforcement require a high level of voluntary compliance to the goals and purposes of the Comprehensive Plan and Land Use Ordinance to be realized.

E. The county's benefits also are related to discouraging variance applications by persons purposefully violating and ordinance.

Applicant's knowledge of a height requirement, making a decision to change the roof line and then failing to determine the effect of that change on the building height properly may be considered willful indifference to the violation of the law by choosing ignorance. This is the kind of purposeful action which the county seeks to avoid.

F. Applicants' burden shown by the evidence is the additional expense of compliance which they could have avoided had the applicants given simple attention to the height impact of their decision to change the roof line. They knew what their permit allowed and they chose to ignore those requirements. The fact that the applicants spent money does not justify their action.

Good Faith Clarifications:

MS/F Ballenthin/Anderson - Anderson/No, Ballenthin/No, Fitch/No, Kostial/No, LaPorte/No, Moore/Abstain that the applicants did knowingly and intentionally violate the ordinance.

MS/P Ballenthin/Moore - Anderson/Yes, Ballenthin/Yes, Fitch/Yes, Kostial/Yes, LaPorte/Abstain, Moore/Yes that the applicants displayed willful indifference to compliance with the ordinance.

7. Conclusion as to the interest of justice based upon items 1 - 6.

MS/F Ballenthin/Anderson - Anderson/Yes, Ballenthin/Yes, Fitch/No, Kostial/No, LaPorte/No, Moore/Yes, Sundberg/No to deny the application for an "after the fact" variance to allow the residential height of the residence to be retained.

MS/P LaPorte/Fitch - Anderson/No, Ballenthin/No, Fitch/Yes, Kostial/Yes, LaPorte/Yes, Moore/No, Sundberg/ Yes to approve the application for an "after the fact" variance to allow the residential height of the residence to be retained.

Hall, John & Lynda, Sylvan Township on property described as Lot 7, Block 3, "Sylvan Shady Shores", Section 2-133-30, PID #41-562-0325 located at 12184 W Sylvan Drive SW. An application submitted to replace the existing residence with 30 feet x 50 feet new construction to be located 34 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) are Section 1126.1 A. which requires structures to be at least 75 feet from a lake classified General Development (GD) and Section 800 which establishes the variance review criteria. The parcel contains .185 acre riparian to Sylvan Lake (GD).

63 notices of the application were mailed with one response questioning the accuracy of property line boundaries shown on the application and one from Sylvan Township recommending approval of the application received. The proposal was discussed and reviewed with the Halls.

MS/Withdrawn/Fitch/Moore to deny the application as submitted for PID #41-562-0325.

MS/P Kostial/Ballenthin to approve the application for residential construction located upon PID #41-562-0325 based upon review of the criteria contained in Sections 800 and 1115.3 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 became a lot of record in 1946 prior to the adoption of land use regulation.
2. The permit archive contains no record of the original construction but it can be assumed that it occurred prior to the adoption of land use regulation.
3. The non-conforming residence, 34 feet from the lake, could be replaced as allowed by statute and ordinance at existing footprint and volume by permit.
4. The application as amended during the public hearing calls for new construction at 40 feet from the lake therefore reducing the current setback encroachment.
5. The proposed location of the residence seems a reasonable use of the property when taking into account the size and configuration of the lot along with the need to site a SSTS limits placement area available 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.
6. The proposed residence location and will be further from the lake, will comply with the side yard setback to neighboring property and will be comparable of setback from the lake to residences in the neighborhood area 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. Because the surrounding area is made up of similarly sized lots with structures similar in size and scale, there is no reason or evidence to conclude that area land use will be negatively affected or altered by the proposed lot configuration.

8. 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 and configuration of the residence shall not vary from that submitted with the application dated 09/11/14.
2. The new construction shall be not less than 40 feet from the OHWL as verified by ESD staff.
3. The height to peak shall not exceed 27 feet.
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 10/13/16.

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,  
REVOCAION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Philips, Mike & Tanya, Turtle Lake Township on property described as Lot 3, Block 1, "Heathman Estates", Section 29-142-30, PID #45-527-0115 located at 7927 44<sup>th</sup> Ave NW. An application submitted to construct an accessory structure/garage 15 feet from the right-of-way of 44<sup>th</sup> Avenue. The relevant portions of the Land Use Ordinance (02/15/13) are Section 1126.1 B. which requires structures to be at least 20 feet from a platted right-of-way and Section 800 which establishes the variance review criteria. The parcel contains .56 acre non-riparian within the shoreland (1,320 feet) area of Leech Lake (GD).

79 notices of the application were mailed. No responses received. The application was discussed and reviewed with the Phillips.

MS/P Kostial/LaPorte to approve the application for a closer right-of-way setback for an accessory structure/garage for PID #45-527-0115 based upon review of the criteria contained in Sections 800 and 1115.3 of the Land Use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. There is no record in the permit archive as to when the residence was constructed.
2. The location of the residence along with the location of an SSTS constructed 2011 eliminates the rear yard as a garage site.
3. 44<sup>th</sup> Avenue is not a through street.
4. The proposed use and location seems taking into account the size of the structure and location of the residence and SSTS which prohibits construction at the prescribed right-of-way setback 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 garage location will comply with the side yard setback to neighboring property and will be comparable to residences in the neighboring area 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.
6. Because the surrounding area is made up of similarly sized lots with structures similar in size and scale, 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.
8. The location of the garage does not seem to pose safety or maintenance issues to the users of 44<sup>th</sup> Avenue NW.

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 accessory structure/garage shall not vary from that submitted with the application dated 09/23/14.
2. The height to peak shall not exceed 18 feet.
3. Any material resulting from construction 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 adjoining properties or the 44<sup>th</sup> Avenue shall be allowed. 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. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 10/13/16.

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.

Pietsch, Douglas. Birch Lake Township on property described as Lot 6, Block 1, "Mascot North Shore", Section 1-140-30, PID #05-337-0125 located at 4463 Bluebird Trail NW. An application submitted to be allowed to retain a "after the fact" a platform constructed without permit that exceeds the maximum square feet allowed, 150, by 75 square feet. In addition that

applicant requests to be allowed to enclose the platform which is located 85 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) include Section 1126.1 A. which requires structures to be at least 100 feet from a lake classified Recreational Development (RD), Section 1126.7 which establishes the platform criteria and Section 800 which establishes the variance review criteria. The parcel contains 1.7 acres riparian to Webb Lake (GD).

20 notices of the application were mailed. No responses were received. The application was discussed and reviewed with Mr. Pietsch.

MS/P Ballenthin/Kostial to approve to allow the platform size located upon PID #05-337-0125 based upon review of the criteria contained in Section 800 of the Land Use Ordinance (02/15/13), 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 applicant has acknowledged that the hot tub platform was constructed sans permit and does exceed the maximum square footage allowed, 150 square feet, by 75 square feet.
2. The platform aligns with the two adjacent residential structures and mostly unobservable from the lake and corresponds to an existing concrete foundation.
3. The size encroachment is inadvertent, insignificant and poses no harm to anyone or anything.
4. The platform would have been permitted within 10 feet of the lake at 150 square feet but seems not unreasonable when taking into account the size of the lot and the ownership of the applicant of the directly adjacent residences on each side 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. Although the platform exceeds the maximum square footage, it 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.
6. There is no reason or evidence to conclude that area land use has been negatively affected or altered by the platform at current size.
7. There is no reason or evidence to conclude that financial consideration is the sole reason for the application.
8. There is no evidence or indication that the applicant constructed the platform at 225 square feet in a surreptitious or devious manner or acted in anything other than in good faith.
9. There is no evidence or indication that the applicant did not attempt to comply with the ordinance.
10. Investment has been made to construct the platform.
11. The platform structure construction is complete.
12. There are similar structures throughout the County.

13. Based upon #s 8-12 it seems that denial would not serve the interests of justice and reasonableness.

MS/P LaPorte/Fitch to deny the enclosure of the platform located upon PID #05-337-0125 based upon review of the criteria contained in Section 800 of the Land Use Ordinance (02/15/13) and M.S. 394.27, Subdivision 7 with the following findings:

Findings:

1. Ample space exists for the applicant to have located and enclosed a hot tub/platform at the required 100 feet lake setback.
2. The applicant created the setback issue by constructing without permit or consultation with ESD.
3. No compelling evidence or reasoning has been presented to demonstrate why required setback cannot be complied with.
4. The proposed variance request seems not to be reasonable use of the property when taking into account the useable area of the lot and the proposed size of the structure which therefore is not in harmony with 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 platform can be utilized without enclosure and could have been located at the required setback which therefore conflicts with 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. An enclosure could be located apart from the tub platform at the required lake setback.

Schmitt, David, Ponto Lake Township on property described as Lot 11 "Kinne Camp" Section: 16-139-29, PID # 32-412-0110 located at 1264 15<sup>th</sup> St NW. An application submitted to replace the existing cabin with a new 2 story residence at the existing lake setback of 38 feet. The relevant portions of the Land Use Ordinance (02/15/13) include Section 1126.1 A. which requires structures to be at least 100 feet from a lake classified Recreational Development (RD) and Section 800 which establishes variance review criteria. The parcel contains .25 acre riparian to Ponto Lake (RD).

51 notices of the application were mailed. No responses were received. The application was discussed and reviewed with the applicants.

MS/P Ballenthin/LaPorte to approve the application for a closer lake setback for a residential structure to be located at PID #32-412-0110 based upon review of the criteria contained in Sections 800 and 115.3 of the Land Use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

## Findings:

1. "Kinne Camp" was platted in 1920.
2. The permit archive contains no record of the original construction but it can be assumed that it occurred prior to the adoption of land use regulation.
3. The lot is 150 from lake to rear property and when taking into account lake setback 100 feet and platted right-of-way setback, 20 feet, leaves 30 feet for compliant setback options.
4. Setback further from the lake is not an option due to the location of the SSTS installed in 2010.
5. The non-conforming residence, 38 feet from the lake, could be replaced as allowed by statute and ordinance at existing footprint and volume by permit.
6. The proposed location of the residence seems a reasonable use of the property when taking into account the size and configuration of the lot along with the location of the SSTS and garage which limits placement area available 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. The proposed residence location and will comply with the side yard setback to neighboring property and will be comparable of setback from the lake to residences along that neighborhood area 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.
8. Because the surrounding area is made up of similarly sized lots with structures similar in size and scale, 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 residence shall not vary from that submitted with the application dated 08/20/14.
2. The height to peak shall not exceed 29 feet.
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 10/13/16.
8. The current shoreline vegetation shall not be disturbed except for that allowed by a shoreland Alteration Permit.

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.

Thatcher, Gilbert, Wilkinson Township on property described as Part of Govt Lot 3, Section 14-144-31, PID #49-014-2100 located at 13531 Lupine Road NW. An application submitted to expand a 24 feet x 26 feet non-conforming residence with a 12 feet x 20 feet addition. The residence is non-conforming because it is located 71 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) include Section 1126.1 A. which requires structures to be at least 150 feet from a lake classified Natural Environment (NE), Section 1115.3 which establishes the non-conforming structure expansion criteria and Section 800 which establishes variance review criteria. The parcel contains 13.23 acres riparian to Little Moss Lake (NE).

11 notices of the application were mailed. No responses were received. The application was discussed and reviewed with the applicant's representative Ms. Thatcher.

MS/P Fitch/Moore to approve the application to expand the non-conforming residence located upon PID #49-014-2100 upon review of the criteria contained in Sections 800 and 1115.3 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 became a lot of record in 1955.
2. The permit archive contains no record of the original construction, 70 feet from the lake, but it can be assumed that it occurred prior to the adoption of land use regulation.
3. The proposed expansion will be no closer to the lake than the existing residence.
4. The proposed residence expansion location seems a reasonable use of the property when taking into account the size 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. The proposed residence expansion location will be no closer to the lake and comply with the side yard setback 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.
6. Because the surrounding area is made up of similarly sized lots with structures similar in size and scale, 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 residence expansion shall not vary from that submitted 09/10/14.
2. Any material resulting from construction or demolition not reused or recycled must be disposed of in a permitted facility.
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, the brook 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.
5. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
6. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 09/08/16.

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.

Wozniak, Richard, Wabedo Township on property described as Part of Govt Lot 2, Section: 32-140-28, PID # 46-032-1301 located at 697 Wabedo Pass Rd NE. An application submitted to install a new septic system in the bluff setback area. The relevant portions of the Land Use Ordinance (02-15-13) include Section 1126.1B requires a setback of 30 feet from the top or toe of a bluff and Section 800 which establishes the variance review criteria. The parcel contains .64 acres riparian to Wabedo Lake (RD).

34 notices of the application were mailed. One response from Wabedo Township recommending approval of the application was received. The application was discussed and reviewed with Mr. Wozniak.

MS/P Moore/Anderson to approve the application to allow placement of a SSTS treatment system within a bluff setback area upon PID #46-032-1301 upon review of the criteria contained in Sections 800 and 1116.1 A. 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 lot became of record in 1969 and varies in depth from lake to road from 60 feet to 154 feet.
2. A large portion of the plat contains a bluff as confirmed by ESD staff.

3. A licensed SSTS professional has determined that the proposed treatment area location is the prime location based on soil profile.
4. There is no evidence that the stability of the slope would be compromised by the SSTS location.
4. Toe location is not practicable because of lake setback and top location is not practicable because of the location of Wabedo Pass Road.
5. The proposed treatment area seems a reasonable use of the property when taking into account the lot topography along with the professional SSTS design 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.
6. The proposed SSTS treatment area location will provide for public health and safety along with protection of water quality 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. 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.

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 permit until inspection by ESD and correction of 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 SSTS treatment area shall not vary from that submitted with the application dated 09/23/14.
2. 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.
3. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 10/13/16.

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

Babinski Foundation, Home Brook Township on property described as NW & S  $\frac{1}{2}$  of NE & NE NE & W  $\frac{1}{2}$  of SW, Section 11-135-30, PID #17-011-0001 located along County 29. An application submitted to reclassify a portion of the property to C-2 in order to establish an animal shelter for cats and dogs. The relevant portions of the Land Use Ordinance (02/15/13) are Section 903 which establishes the various land use districts, Section 1001 which requires a conditional use permit (CUP) for reclassification and for the land use activity to be conducted with the C-2 area and Section 705 which establishes the CUP review criteria. The property contains 358.25 acres non-riparian (AF) of which less than 10 acres will be occupied by the proposed animal shelter site.

28 notices of the application were mailed. No written responses were received although there were several persons in attendance to voice their unhappiness in regard to the proposal. The application was discussed and reviewed with Mr. Babinski along with several foundation representatives.

MS/P LaPorte/Fitch to approve the CUP application as submitted to approve the reclassification of 40 acres of PID #17-011-0001 from AF to C-2 based upon review of the criteria contained in the applicable portions of Sections 705, 903 and 1001 of the Land Use Ordinance (02/15/13) with the following findings and conditions:

Findings:

1. It has been established that animal shelter services are important and needed in the Cass & Crow Wing Counties and surrounding area.
2. The 40 acres proposed for reclassification represents an insignificant portion of the total acreage of the township.
3. No responses or objections have been received from any governmental entities notified of the application.
4. There is no reason to expect that a C-2 parcel will cause adverse effects to adjoining property.
5. The reclassification will have no impact to the demand for governmental services.
6. No wetland or critical habitats will be affected by the proposed land use activity.
7. No scenic or historic features will be affected by the proposed land use activity.
8. 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.
9. No evidence or information has been submitted to establish that the proposed land use activity has the potential to alter or be detrimental to land use in the general area.
10. Approval will not increase the need or demand for governmental services because no road improvements are required and it does not require waste water treatment.
11. 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.
12. The proposed use will not be obtrusive to the neighborhood and 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.

Condition:

1. The lot configuration for C-2 shall not vary from that submitted with the application.

MS/P Moore/Ballenthin to table consideration of proposed land use CUP application until the 11/10/14 meeting in order for the applicant to submit supplemental information in regard to SSTS/fecal matter plan, operation/staffing plan, deceased animal handling and compliance with state standards.

Bentley, Brandon & Joyce, Fairview Township on property described as Registered Land Survey #29, Section 5-134-29, PID #14-005-3204 located at 9794 County 77 SW. An application submitted to establish a boat storage home business. The relevant portion of the Environmental Definitions Ordinance (05/25/07) Land Use Ordinance, Home Business - A use of a residential property for a commercial use by the inhabitants thereof which may be conducted inside as well as outside the primary residence. The relevant portions of the Land Use Ordinance (02/15/13) are Section 1001 which requires a conditional use permit (CUP) for a Home Business, Section 1110 which establishes Home Business criteria and Section 705 which establishes the CUP

review criteria. The property contains 2.8 acres non-riparian within the shoreland area (1,320 feet) of Agate Lake (RD) (SR).

More than 100 notices of the application were mailed. One response recommending denial of the application and three responses including that of Fairview Township recommending approval were received. The application was discussed and reviewed with the Bentleys.

MS/P LaPorte/Kostial to approve the CUP for a home business located at 14-005-3204 based upon review of the criteria contained in the applicable portions of Sections 705 and 1110 of the Land Use Ordinance (02/15/13) with the following findings and conditions:

Findings:

1. The applicants have an already established recreational boat repair and service commercial activity which is well screened from County # 77.
2. There is a large amount of recreational boating activity within the neighboring area of the applicants' premises which requires service and storage.
3. There is no indication that the already established land use has caused any adverse effect to adjoining property.
4. The land use activity has no impact to the demand for governmental services.
5. Existing public infrastructure will be utilized.
6. No wetland or critical habitat has been disturbed by the land use activity.
7. No scenic or historic features have been affected by the land use activity.
8. No threat to public health, safety and welfare has occurred or can be expected from the land use activity.
9. Some of the current outdoor boat storage will be incorporated in the proposed structure.

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. The project structure shall be constructed at the location and size as submitted with the application 09/25/14.
2. Indoor watercraft storage capacity shall not exceed 12.
3. Outdoor watercraft storage shall not exceed 14 and shall be screened from County # 77.
4. Any increase of outdoor storage shall require prior approval of the PC.

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.

Harvey, Adeline, May Township on property described as NE NW, SE NW, NE SW, E  $\frac{1}{2}$  NW SW, Section 36-134-31, PID #24-136-0002 located at 4749 116<sup>th</sup> Street SW. An application submitted to reclassify 10 acres of the parcel containing 141.76 acres from Agriculture/Forestry (AF) to Rural Residential - 10 (RR-10) which will reduce the minimum lot size from 40 acres to 10 acres. The relevant portions of the Land Use Ordinance (02/15/13) are Section 903 which establishes land use district, 1000 which requires a conditional use permit (CUP) for reclassification and Section 705 which establishes the CUP review criteria. The property contains 141.76 acres (AF).

20 notices of the application were mailed. No responses were received. The application was discussed and reviewed with the applicant's representative.

MS/P Kostial/LaPorte to approve the CUP application as submitted to approve the reclassification of 10 acres of PID #24-136-0002 from AF to RR-10 based upon review of the criteria contained in the applicable portions of Sections 705, 903 and 1000 of the Land Use Ordinance (02/15/13) with the following findings and conditions:

Findings:

1. The proposed parcel will contain the existing residence.
2. The property is within .25 mile of an (RR-5) zone in which the minimum lot size is 5 acres.
3. The 10 acres proposed for reclassification represents an insignificant portion of the total acreage of the township.
4. No responses or objections have been received from any persons or governmental entities notified of the application.
5. There is no reason to expect that one 10 acre parcel will cause adverse effects to adjoining property.
6. One 10 acre lot will have no impact to the demand for governmental services.
7. Existing roadways will be utilized with no need to expand exiting public infrastructure.
8. No wetland or critical habitat will disturbed by one 10 acre lot.



9. No scenic or historic features will be affected by one 10 acre lot.
10. No threat to public health, safety and welfare can be expected from one 10 acre lot.
11. The total acres to be reclassified do not reach the mandatory EAW threshold.
12. There is no reason to expect that the reduced lot size will have any effect to surface water or ground water quality.

Conditions:

1. The lot configuration shall not vary from submitted with the application 09/13/14.
2. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 10/13/16.

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.

Independent Lifestyles Inc, Shingobee Township on property described as Part of Govt Lot 5, PID #38-004-2100, PID # 38-004-2101, PID # 38-004-2102 & PID #38-004-2103 all in Section 4-141-31 located at 6150 Camp Fish Road NW. An application submitted to provide services to persons with disabilities within the existing structures and grounds. The relevant portions of the Land Use Ordinance (02/15/13) are Section 1001 which requires a conditional use permit (CUP) for commercial land uses with the Water Oriented Commercial (WOC) district and Section 705 which establishes the CUP review criteria. The combined parcels contain 8.2 acres riparian to Long Lake (RD) and Third Lake (NE) (WOC).

More than 50 notices of the application were mailed. No written responses were received. One person appeared at the meeting in order to oppose the application along with one person who was in attendance to support approval of the application. The application was discussed and reviewed with Independent Lifestyles Inc representatives.

MS/P Moore/LaPorte to approve the CUP for the land use as submitted for PID #38-004-2100 based upon review of the criteria contained in the applicable portions of Sections 705, 903 and 1000 of the Land Use Ordinance (02/15/13) with the following findings and conditions:

Findings:

1. The services offered by the applicant are needed in the county and state.
2. The services provided by the applicant will utilize the existing structures.
3. No wetland or critical habitats will be affected by the proposed land use activity.
4. No scenic or historic features will be affected by the proposed land use activity.
5. 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.

6. No evidence or information has been submitted to establish that the proposed land use activity has the potential to alter or be detrimental to land use in the general area.
7. Approval will not increase the need or demand for governmental services because no road improvements are required.
8. 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.
9. The proposed use will not be obtrusive to the neighborhood and 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.

Conditions:

1. 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.
2. Signage, fences or other visible barriers to mark the extent of the property boundaries shall be placed in compliance with the Land Use Ordinance. The applicant shall employ such measures as necessary to ensure that persons using the services to be provided by the applicant do not trespass on the properties of nearby property owners.
3. Existing shoreland vegetation shall be maintained in its current state and shall not be modified except only as allowed by the criteria of a Shoreland Alteration Permit.

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.

Pine Point Estates Harbor Association Inc, Turtle Lake Township on property described as Common Area 1 & Part of Common Area 2 & All of Outlots A & B, Pine Point Estates & Part of Gov Lot 1, Section 31-143-30, PID #45-566-0020 located at 4441 Point Landing Drive NW. An application submitted for harbor maintenance/improvement that will include the movement of more than 50 cubic yards of earthen material within the shore impact zone 1 (SIZ-1) which is the area landward 37.5 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) are Section 1106.2 which requires a conditional use permit (CUP) for the more than 50 cubic yards fill or excavation within SIZ-1 and Section 705 which establishes the CUP review criteria. The property is riparian to Leech Lake (GD).

Consideration of this application was tabled during the 09/08/14 meeting in order for a representative of the applicant to be present. 81 notices of the application were mailed. One response of support for the application along with verification of the issuance of the DNR permit was received.

MS/P Anderson/Fitch to approve the application for the harbor improvements for PID #45-566-0020 based upon Sections 705 and 1106.2 of the Land Use Ordinance 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 public infrastructure will be utilized.
6. No wetland or critical habitat will be disturbed.
7. No scenic or historic features will be affected.
8. No threat to public health, safety and welfare can be expected from the project.

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. The project shall be constructed as per plans submitted with the application 08/11/14.
2. 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.
3. 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.

4. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 10/13/16.

5. Applicant shall be in compliance with all terms and conditions of the MN DNR Harbor Permit.

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.

SBA Communication/Verizon Wireless on property owned by Huddles South Shore Resort Inc, Pine Lake Township on property described as Part of Govt Lot 2, Section 8-141-29, parts of Govt Lot 4, Section 5-141-29 & Lot 11 Less E 75 Feet, "Auditors Plat 11", PID #30-008-1201 located at 1696 Whipholt Beach Road NW. An application submitted to locate a 300 feet communication tower which requires a conditional use permit (CUP). The relevant portions of the Land Use Ordinance (02/15/13) are Section 1127.1 which establishes the communication tower criteria and Section 705 which establishes the CUP review criteria. The property contains 28.92 acres riparian to Leech Lake (GD).

More than 50 notices of the application were mailed. Two responses offering no objection to the application were received. Four responses including a petition of 15 persons opposed to approval of the application were received.

MS/P LaPorte/Ballenthin because the tower falls within the criteria MR 4410.4300 Subpart 33 consideration of the application shall be tabled until an EAW is prepared or the circumstances of the site or the tower are revised.

Weldon, James, Pine Lake Township on property described as Part of Gov Lot 3, Section 2-141-29, PID #30-002-1308 located at 550 Buffalohead Lane NW. An application submitted for run-off improvements that will include the movement of more than 200 cubic yards of earthen material within the shoreland area of the property. The relevant portions of the Land Use Ordinance (02/15/13) are Section 1106.2 which requires a conditional use permit (CUP) for the more than 200 cubic yards fill or excavation within the shoreland area and Section 705 which establishes the conditional use permit review criteria. The parcel contains 1.23 acres riparian to Leech Lake (RD).

Consideration of this application was tabled during the 09/08/14 meeting in order for the applicant or a representative of the applicant to be present. 30 notices of the application were mailed. No responses were received.

MS/P LaPorte/Anderson to approve the application as submitted for PID #30-002-1308 based upon Sections 705 and 1106.2 of the Land Use Ordinance 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 public infrastructure will be utilized.
6. No wetland or critical habitat will be disturbed.
7. No scenic or historic features will be affected.
8. No threat to public health, safety and welfare can be expected from the project.

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. The project shall be constructed as per plans submitted with the application 08/11/14.
2. 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.
3. 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.
4. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 10/13/16.

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.

Other Business

Reuter, Clarence, Woodrow Township on property described as part of SE NE, Section 18-140-29, PID #51-018-1402 located at 3789 Lost Lake Road NW. Request to allow placement of SSTS treatment area at less than 150 feet from the OHWL of Lost Lake.

MS/P LaPorte/Kostial to allow SSTS setback for the Reuter property located on Lost Lake at the minimum as determined by a SSTS licensed designer.

MS/P Fitch/LaPorte at 4:38 pm, to adjourn.

P. Fairbanks