

SAUK COUNTY BOARD OF ADJUSTMENT
November 18, 2010 Session of the Board

PRESENT: Richard Vogt, Chair
David Allen
Henry Netzinger
Ron Lestikow

ABSENT: Robert Roloff

STAFF PRESENT: Gina Templin
Dave Lorenz
Mark Steward

OTHERS PRESENT: See individual appeal files for registration appearance slips.

Chair Vogt called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:05 A.M. The Chair introduced the members of the Board, explained the procedures and the order of business for the day. The staff certified that the legally required notices had been provided for the scheduled public hearing. Certification accepted on a motion by Allen, seconded by Lestkow. **Motion carried 4-0.**

Motion by Lestikow, seconded by Allen to adopt the agenda. **Motion carried 4-0.**

Motion by Netzinger, seconded by Allen to adopt the minutes from the October meeting. **Motion carried 4-0.**

COMMUNICATIONS:

Alene Kleczek, Sauk County Corporation Counsel Department, appearing and provided a handout to assist the board in providing more detail to be used in the decision letters relating to why or why not something was approved.

Vogt stated that as the Board moves through the deliberation on a request, he will be requesting each board member to give their reason/logic for each one for each one of the cases prior to calling for a formal vote on a motion, and feels the form could become part of the record. Kleczek explained.

Netzinger stated it would help in keeping to the letter of law. Lestikow feels it would be a good idea.

Kleczek will provide additional forms for all type of appeals.

No other communications.

PROPOSED SCHEDULE FOR 2011.

Motion by Vogt, seconded by Netzinger, to adopt the proposed schedule for 2011. **Motion carried 4-0.**

APPEALS:

- A. Timothy Deppe, Ron Zeman (agent) (SP-25-10), requesting a special exception permit to authorize filling and grading on slopes of more than 20% to repair and replace boulder retaining walls.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request and reviewed the staff report provided to the Board and Applicant, as well as photos and a video of site. He then concluded with the recommendations if the Board chooses to approve the request.

Allen asked about the timbers for the steps. Lorenz stated they are about at the end of their useful life.

Lestikow asked if any additions will be made or is it just a repair. Lorenz stated it looks like on the plans a wall may be removed and then replaced.

Craig Meister, agent, appearing in favor of the request, stated that the walls are failing and the shoreline will be rebuilt per DNR specifications. He stated that 25% of the boulders that are there will be reused and currently no fabric is in place and they will make sure that is there and the walls will be about 4.5 to 5 feet at the highest, including what will be buried. He then spoke of the timber steps to be removed and replaced by stone steps. He then addressed erosion control and silt fence will be put up if they will not be on site or if there is a chance of precipitation, as well as sediment logs, minimal stock piles, as all material will be trucked out and brought back if necessary. The wall will be built in portions to not open up the entire site at once.

Vogt asked about a time limit on the permit. Meister stated there are two walls on the plans that will not be rebuilt at this time.

Vogt asked about the removal of two piers being reset to one pier. Meister stated he is unsure why it is drawn different, as he believes he wants two.

Vogt asked about the stones to be removed. Meister stated they will slope as much as they can and then leave the walls to under a 5 foot height. He also spoke of the walls possibly being built incorrectly.

Vogt asked about the flow patterns of the water runoff and in looking at Exhibit II,7, the contours has everything coming off the surrounding lots and asked if any water will be shifted. Meister stated the water flow will remain the same and water will not be diverted to neighboring properties.

Lorenz reappearing. Vogt asked if there is a time limit that the applicant has to get things done. Lorenz stated the county land use permit is good for 2 years and can renew the permit.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 9:35 a.m.

The Board reviewed the ordinance.

Vogt stated he doesn't see a problem with what is being proposed and asked what the thought is on an extension of time. Netzinger stated that the 2 years should be adequate and the project should be done within 2 years. Vogts concern is that the owner would have to come back to the board and suggests giving him 3 years to complete versus 2.

Motion by Vogt, seconded by Lestikow, to grant the special exception permit for filling and grading on slopes greater than 20%, with the conditions recommended by Planning and Zoning with the change of 3 years to complete the project versus 2 years without the option to renew. **Motion carried 4-0.**

- B. Gregory Anderson & Sandra Snow (SP-26-10) requesting two variances for a detached garage as built within the minimum setbacks.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request as well as photos and a video of site.

Lestikow asked what the setback distances are in the ordinance. Lorenz explained.

Lestikow asked if they are 2.7 feet from the setback line and about 1.5 feet from the street and how long was the garage there. Lorenz stated he does not know because there was no permit for the garage, but assume it was built when the house was built.

Lestikow asked how this was brought to the departments attention. Lorenz stated that when the property was purchased it was surveyed and disclosed to be noncompliant.

Jerome Mercer, agent, appearing in favor, stated that the garage was built in 1996 and a permit was received from the Town. He provided a copy of the permit from the town as Exhibit VIII,1. Mercer stated that setbacks are minimal and doesn't cause a problem with the neighbors or the environment and to bring the property into compliance would be an expense. He spoke of the property being nonconforming could be a real estate issue or present an issue with a mortgage.

Vogt advised the agent that 3 questions need to be addressed for the variance and stated he needs to address hardship, unique property limitations and public interest and asked to have them addressed one by one.

Mercer stated the unnecessary hardship would be the expense and affects the marketability of this property if the variance is not granted. Public interest, no one is adversely affected as it has been there for years and it would create a significant expense to the applicant to correct this.

Vogt asked about the unique property limitations. Mercer stated this is in a residential area, so there are no unique property limitations and is not affecting any neighbors.

Netzinger asked about the front setback and was the lot on the other side investigated to add to this property. Mercer stated it has not been investigated.

Allen asked if they purchased property to bring into compliance on the land side, the road side would still be out of compliance. Mercer stated that is correct. He also stated that the Town of Baraboo is in favor of granting the variance.

Vogt stated this would still remain a nonconforming structure if it is denied.

Mark Steward, Director Planning and Zoning, spoke of an area variance for setbacks and stated that the garage was built without permits from the County and is currently a violation, however no enforcement has been taken on the property. He then spoke of the 3 points of a variance and the applicant must prove out on all 3 points for the variance to be granted. He spoke of the purpose of the zoning district and the zoning on the property when looking at a hardship. He reviewed the ordinance and felt that the ordinance and the restrictions are not an unnecessary burden on the applicant. He stated that the only possible hardship is that the owner did not build the garage, they came into it. He then reviewed the variance and hardship details and the fact that all other options have not been researched. He reviewed unique property limitations and that there are none and the garage can be moved or altered to meet the ordinance. He then stated there could be a harm to public interest. The structure was built illegally. He again provided all of the options currently available to the land owner without having to get a variance and suggested that the Board deny the variance due to not meeting the requirements or postpone the request until all other options have been researched.

Allen asked if the building permit should have been provided to the County from the Town. Steward explained the permitting process.

Netzinger asked how the averaging of structures could be looked at in this case. Steward explained.

Vogt stated the Town issued the permit and did not go through the County at all and as part of the permit itself, it talks about the setbacks written on the permit and someone didn't either measure or know where the lines were.

Netzinger asked if it is within 63 feet of the centerline. Steward stated that is an unknown and should be looked at.

Lorenz reappearing, continued with the review of the staff report and provided the recommendation of the Planning & Zoning Department.

Vogt asked for Steward to return. Steward, reappearing. Vogt asked if the variance is denied what would be the next step. Steward stated they would work with the applicant to come to a solution, site visit, provide all options to find a solution.

Lestikow asked about the neighboring property owner giving up about 3 feet, how do you address the road and can the neighbor do that without putting them in violation. Steward stated no one has talked to the neighbor about that option, but it could be done to make sure each property remains compliant.

Lestikow asked about the hardship and the marketability of the property is not a hardship. Steward stated the hardship has to go with the property, and not a financial aspect.

Jerome Mercer, reappearing, stated that he is at a loss if the variance is not granted how the highway setback issue can be resolved. He also stated that as far as public interest, in this circumstance, common sense would show this is not an issue and other municipalities have lesser setbacks and if it is not 10 feet how is public interest not protected. He suggested the variance be approved, as this would cause significant financial burden to the applicant.

Lestikow asked if the offer was made subject to the property being closed on. Mercer stated he did not know about this when the offer was made and the survey was being done in conjunction with the closing.

Lestikow stated that typically the offer is made subject the survey and the problem is corrected prior to closing. Mercer stated he is unaware of that information.

Vogt asked if the property owner was aware of the problem prior to closing. Mercer stated that they knew the property was not in compliance, but because it had been there or years, they felt it would not be a problem.

Greg Anderson, applicant, appearing in favor of the request, stated he did find out about the problem 2 days prior to the closing.

Vogt asked if any options have been researched to rectify the situation. Anderson stated he did not.

Vogt asked about the hardship. Anderson stated his hardship will be a financial burden, as he thinks he will either have to demolish the garage and rebuild it or alter it.

Vogt asked if there is a unique situation. Anderson stated it is not unique in any way.

Vogt asked about public interest. Anderson stated he isn't aware of any complaints thus far.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 10:15 a.m.

Vogt reviewed the request and the ordinance in relation to this case and reminded the Board that this is an area variance. He asked each member to address their reasons in relation to each part of a variance request.

Netzinger stated he would like to move to postpone action to send the owner to work with the Planning and Zoning Department to find other solution.

Allen agreed and the fact that the owner new it was out of compliance prior to it closing is an issue.

Lestikow stated that postponing would be something to do, and the variance to this hardship is with the property and not the home owner, and feels he has a hardship with selling the property or refinancing and the fact that he knew prior to closing, whoever he was dealing with should have got it solved. The first thing should be checking the center line of the road and it may be in compliance.

Vogt stated that if it is denied then he has to fix it anyhow and he agrees that it is troublesome that the property was still purchased after knowing it was an issue and it was brushed aside as being inconsequential and all parties involved from the beginning were negligent.

Motion by Netzinger, seconded by Lestikow, to postpone the decision to allow the applicant to work with the County to find an alternate solution and research all avenues and options available to them to bring the structure into compliance without a variance. **Motion carried 4-0.**

- C. Jonathan & Susan Lipp, Olson Wills Landscaping (SP-27-10) requesting a special exception permit to authorize filling and grading within 300 feet of Lake Wisconsin.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request as well as photos and a video of site. He then provided recommendations by staff if the request is approved.

Vogt asked about Exhibit II,5 and asked if this is how the Department wants it to be or if this is the plan on how the structures were built. Lorenz explained this is the plan that was submitted however Planning and Zoning believes there needs to be added vegetation. Vogt confirmed there are changes to this plan per the conditions listed by the Department. He also asked if there was a plan for work they were doing. Lorenz stated he is unsure.

Vogt asked when the violation was discovered. Lorenz stated late summer.

Vogt asked about building an addition and if there is a permit required and if anything has been submitted. Lorenz stated it would need a permit and nothing has been submitted.

Lestikow asked if they were in violation of the condominium rules as well. Lorenz stated he is unaware of the condo requirements.

Steve Olson, Olson Wills Landscaping, agent, appearing in favor of the request, apologized for not having a permit and stated that they did not do the original boulder walls that were around the house, and reviewed Exhibit II,5. Vogt asked which walls were in place prior to their work. Olson stated the wing walls facing the lake near the home. The rest of the walls on the site, they built or in the process of building and is when they were notified of violation and a stop work order.

Vogt confirmed no permit for doing the work was obtained from neither the County or the Town. Olson stated they had no permits from either. Vogt asked what the Town's take it is. Olson stated the town is fine with the project.

Vogt asked about the County requirements and conditions associated with the staff report and if he has worked with County in working those conditions out. Olson stated that they did. He then confirmed that the pavers are filled in with sand and not mortar.

Brad Freigen, Olson Wills Landscaping, appearing in favor, stated that he developed the plan presented today.

Vogt asked about the conditions provided by the County. Freigen stated they did meet with the county and understand the conditions and the plan was developed along the guidelines that the county wanted. He spoke of the area to be new vegetation that will not be mowed to satisfy the 50%.

Vogt confirmed that Exhibit II,5 is the plan that will be followed to comply with the conditions. Freigen stated that is correct and also spoke of the permit that is filled out.

Allen asked about the plan and that the County was looking for additional information that is not provided in the exhibit. Freigen is unsure, but the exhibit is the plan they would like to proceed with.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 10:48 a.m.

Vogt reviewed the request and the project and he stated that the plan that was submitted is the one that they intend to implement and whether it does meet the county requirements.

Allen spoke of the pavers having sand versus concrete.

Freigen asked for clarification on what is being removed. Steward appeared and state he has been on site and the pavers have been cemented in place. He reviewed exhibit II,5, and stated that anything being cemented in place can not be left.

Allen asked rather than debating, can the Board just state that anything that is cemented in they have to be removed, if they are not cemented in then they can remain.

Vogt reviewed the conditions and that is in there as part of the recommendations.

Motion by Vogt, seconded by Lestikow, to approve the special exception permit with the conditions recommended by Planning and Zoning, with the Department and the Landscaper researching the sand/mortar on the paver walkway and verifying that no mortar is to be used in the shoreland setback. **Motion carried 4-0.**

The board recessed for 10 minutes.

- D. Sauk County Land Conservation (SP-28-10) requesting special exception permits for filing and grading and clearing along the shore of Otter Creek as part of a stream bank restoration project in the Towns of Sumpter and Prairie du Sac.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request as well as photos and a video of site. He then provided recommendations by staff if the request is approved.

Vogt asked if DNR is going to be involved in this for trout or fish structures. Lorenz stated that is a question for Land Conservation.

Vogt asked if there will be one presenter or all the owners. Lorenz stated Brent, the designer of the project is here to present for all owners.

Brent Bergstrom, Sauk County Land Conservation, agent, representing all land owners, appearing in favor, provided a history of the issues around Otter Creek and the County being involved in with NRCS and the Planning and Zoning Department to come up with a plan to fix some of the issues and a grant written and approved by the DNR for the restoration of Otter Creek. He advised that this is a plan to restore the creek, not develop it. He explained the trees that need to be removed and how the banks will be reestablished. He confirmed that all DNR permits have been received for the project.

Vogt asked when the work will be done. Bergstrom stated that tree removal will begin this fall and then construction on the stream bank work will happen next summer when time permits. He also spoke of the instability of the banks.

Vogt asked about trout habitat improvement. Bergstrom stated not here, as DNR stated they don't feel there is any trout in this area. He also stated he has additional land owners that want to be a part of this program and they have trout habitat and potentially it could be done there in a future project.

Netzinger stated he is familiar with the stream and asked if there is thinking going more downstream. Bergstrom stated they do, but what is here are the people written into the grant.

Allen asked if this was not a contiguous ownership. Bergstrom stated it is contiguous minus one land owner, which is now interested, and missing one other land owner and are working with them now.

Allen asked if this creek comes out of the bluffs. Bergstrom stated the bluffs do feed it and spoke a little more about the trout restoration possibilities on other parts of the creek at a future date.

Bergstrom then asked if the conditions are more than what are in the erosion control plans (condition G) and stated that is not in the plans for the bid that has gone out to the contractors at this time.

Ellen Henning, appearing in favor, stated she is enthusiastic about the project and she has lived her all her life and she has seen drastic change on otter creek and would like to see it restored.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 11:35 a.m.

Motion by Vogt, seconded by Netzinger, to approve the special exception permit with recommended by Planning and Zoning. **Motion carried 4-0.**

- E. Bradley Palmer, James Nero, Joseph Hasler, Agent, (SP-29-10) requesting variances to authorize the creation of two nonconforming parcels as the result of a proposed land transfer.

Mark Steward, Planning and Zoning Director, appeared and provided the history and background of the request, and reviewing staff report.

Lorenz appeared and provided detail about the photos and video.

Vogt declared the variance as an area variance.

Netzinger recused himself due to conflict.

Brad Palmer, applicant, appearing in favor of the request, provided a history of the property and the situation was created by a previous owner and a less than scrupulous realtor and has created a hardship for the Nero's. He spoke of the property line between the two properties and the repairs that need to be made on both. He spoke of

the situation being out there for 25 years and are attempting to fix this problem. He then presented Exhibit VIII, 1 a finding of fact, Exhibit IX, 1,2 and 3, contour map, air photo and proposed plat of survey of the property. He continued with the history of the property and the farm consolidation, existing drainage ditch and attempts to solve the run off problem with additional riprap. He spoke of the washout in 2006 and work together to put material back in place, then in 2008 another flood event washed out the material again and washed over the road. In 2009 it was washed out again and at that time he contacted the DNR about the issue and there was no previous permit, DNR had never been onsite and the owners would have to remedy the situation. He stated Konny from DNR gave him several solutions, had a watershed study which is what he referred to in Exhibit IX,1. He did say the DNR suggested removing the dam or come up with an alternate solution. He stated their solution was the pipe out of the dam and push water as far away from the shed as possible. He stated the pipe was to the standard of engineering and the DNR and Konny from the DNR agreed with the drawn down and the 36" culvert was approved by Konny with the DNR. He then spoke of a drainage solution with contractors and feels it satisfies the DNR requirements but also everyone involved.

Vogt asked about the photos in the green binder, Exhibit II, 28. Palmer confirmed.

Palmer stated their drainage solution is a way to fix it properly. He spoke of the pipe being submitted and approved by the DNR. Referring to Exhibit II, 28, page 1 of 3 on a google map, Area 1 will have a berm around the pole shed to the north, which would channel water away from the building, as a precautionary measure. Area 2 is the pipe, 250', inlet that is set by elevation and will run through the dam and will exit adjacent to the end of the pole shed, which will pull the water away from the pole shed. The pipe will be upsized to a 42" pipe to ensure that the solution is permanent. In addition the inlet there will be rebar to prevent debris into the pipe and it will be ran along the edge of the bank and on the downside, a minimum of 2 boulders at least 3x3x3 to help slow the water down as it heads towards the creek. The headwall will be placed so that the dam will be a dry condition and will only be wet when it temporary detain water during heavy rains. Area 3 is up in the pasture and runs towards the access road where the erosion was located, which is a v-ditch/swale ditch which will cut the water off and deter the water towards and into the pond. Area 4 is the access road which will drain the water off the road and into the pond. Area 5, because of the proximity of the pipe, material may have to come off and channel water over to the west. Area 6 is where the existing spill way is and will gather up the riprap and fix to prevent any erosion and protect the inlet, will be cleaned up and regarded to match the slope and will leave a small riprap spillway there.

Palmer then spoke of 1/2 the pipe being on one property and the other 1/2 is on the other property and because of the situation that has occurred the water issues have been bisected and no one person has control over the drainage area. He feels this is a unique situation because of the buildings, ponds and lot lines.

Vogt confirmed the applicant is saying dual ownership of the pipe is what the unnecessary hardship and unique property is. Palmer stated that is correct. He stated access would be a problem for them to maintain their part of the pipe.

Vogt asked about a letter from the DNR, Exhibit II,25, after the Westbrook analysis and approval of that and it states that the pipe is sufficient for a culvert crossing and is Konny saying this is no longer a dam when this pipe is put in. Palmer stated that is correct.

Vogt stated that under dam safety standards, it had an order to repair or remove and after the study has taken place, a culvert has been put in and once the culvert is put in, that would constitute that the dam no longer exists. Palmer stated that is correct.

Vogt asked about bringing the embankment down incase the pipe got plugged. Palmer stated once the pipe was in, it didn't matter, per Konny/DNR.

Vogt asked about public interest. Palmer stated that they will enhance their property by giving them additional area to pasture their horses. He then referred to Exhibit IX, 1, and this part of the watershed has an impact that goes through the pipe, and the entire watershed is 70 acres on the west side of his property. He also believes that there could be 200+ acres in this watershed and feels by them attempting to maintain control of the flows, they have the ability to control the flow to a certain extent prior to it going into the roadway. In addition to that they are improving the Nero's property for horse riding.

James Nero, co-applicant, appearing in favor, stated that he is working with the Palmers and are in agreement with the resolution and it's been 6 years of one bad thing after another. He stated the proposed new plat of survey does have flags staked and the drainage from the new line that has gone into the west, is giving his property control of the runoff water coming down. He stated the plan was put together by a board of engineers and feels it is sufficient to handle the water issue. He also stated that they are intending to sell the property once split and move out east.

Vogt spoke of the variance and the requirements. He detailed the requirements for Nero. He asked if the hardship is that he is flooded and the pipe is going to resolve the situation of the flooding, the dam goes away. Nero stated the hardship is financial. He stated they tried to work with the neighbors to resolve it, invested in it, called the DNR, the Zoning Department, and they never learned that it was an illegal transaction. Feels that the people he relied on to get a satisfactory resolution is his hardship, that it was consealed for the length of time so that they couldn't legally do something. He agrees with the Palmers solution and as far as a hardship, it exists and he just wants to have control of the damages.

Vogt asked if he built the shed. Nero stated it was there and they were told when they bought the property there was no water damage there.

Buck Sweeney, Attorney, appearing in favor, representing the Nero's, stated that the statutes of limitations to go after the previous owner, there was no recourse. He feels they have a hardship. He stated there are not a lot of farm dams and dual ownership and for either property to sell the property or to get financing they will have to go through a difficult situation and will be easier to sell if the owner controls the entire watershed and can control that property. He stated that due to it being a culvert it will still create an impoundment. He stated the unnecessary hardship and the 35 acre rule is to prevent development and feels that both properties will still remain as it is. He stated it is unique as it is very hill, steep terrain, pasture and the dam structure are unique. He stated public interest, no more homes will be put in, and are looking to improve the water situation and the public interest will be enhanced by the ownership. He stated Exhibit VIII, 1 addresses the 3 requirements for a variance. He stated dual ownership is a hardship and the property having a dam on it is very unique.

Linda Borleske, Reedsburg Plan Commission, appearing in favor of the request, stated that the owners explained their purchase, water problems, tried to fix the problem and voted to accept the variance request and do not have problem with the proposed lot sizes which makes the farmland consolidation null and void and then the lots nonconforming. She criticized why the Planning and Zoning department did not know about the dam when the farm consolidation took place or when they were on site 2 years ago. She stated that she also spoke to the DNR and Konny Mogovski stated he had no problem with what was proposed and he had no problem with the variance request. She stated it is a hardship due to the two owners sharing the dam and feels it could be an issue if the variance is not granted if ownership changes. She feels that the way the dam is divided and removing the barn could be a safety hazard. She addressed the comprehensive plan and feels this is an enhancement of controlling the water. She also stated she was disturbed with Planning and Zoning's staff report and feels that they are not using common sense and not cooperative or trying to work with the property owner at all. She stated that removing the barn is not practical for farming purposes, although now used for horses. If the culvert plugs the dam would overflow. She spoke of the pole shed being removed and compared to the City of Reedsburg sewer treatment plant. She concluded that the Town of Reedsburg also approved the variance request at their meeting.

Ed Brooks, Chair Town of Reedsburg, appearing in favor of the request, stated he visited the site and was impressed with the solution brought forward by the Palmers and Nero's and the Town has not done any spot zoning and one of the solutions is to rezone, but would be contrary to the development plan. He feels the request by the applicants would follow their development plan. He stated that the issue is a nonconforming lot and the Town is ok with that. He concluded that the variance be granted and feels it's the best solution to the problem they have been dealt with.

Vogt asked if there was any discussion at the Town level for looking at flooding problems with Herritz Road the problems with the culverts there. Brooks stated they are looking at it, but has nothing to do with this request. He explained some of the things they are looking for addressing the water issue.

Mark Steward, Director Planning and Zoning, appearing as interest may appear, reviewed the finding of fact from the staff report and a power point.

Buck Sweeney, reappearing, provided Exhibit X, a video of the flooding. He also stated that they clearly meet the standards of a variance and what happened to property rights and feel that the division of land addresses the issue and feels this solves the problem. The other solutions are not financially feasible. The pole shed has been in existence and to tear is down is a financial burden. He also stated that it was brought to Planning and Zoning 2 years ago and they did nothing.

Steward, reappearing, asked the Board to strike any conversation with Konny Margovski is hear-say. He also stated that he had conversation with Mr. Margovski about this request and his comments are directly related to the drainage and culvert and the DNR being supportive of fixing the water problem, not the land division or the variance due to the lot lines.

Lestikow asked if there was a meeting about the land division would this be avoided. Steward explained that they are asking for a variance on the size of the lots, not a permit for the culvert. He stated they have options rather than changing the lot size. He stated the applicants should meet with Land Conservation or NRCS to come up with a water solution, rather than a change in lot lines, hence avoiding the variance process.

Vogt stated the issue before them is the variance to the 35 acre rule and the applicant saying there is a hardship and unique conditions, whether they go through the handling of the water issue or not, does not relate to the variance.

Lestikow stated if they get together with Land Conservation on the water issue and get with Planning and Zoning on a change in lines, there could be a solution for both sides. Steward agrees and feels that the reconfiguration could work.

Allen asked why Land Conservation did not attend that day. Steward stated that at that time it wasn't their issue because a variance was requested on it to change the lot lines. The request to the Board is not to address the water issue.

Borleske, reappearing, stated that she is offended by striking conversations with Margovski and she verified that the specific question to him was if the variance would affect the water in anyway and his answer was no, that he did not have a problem with it. She is also concerned with the slides that were showed for the new shoreline map and feels the building was existing before then. She stated the owners know how they want to divide their land and don't care how Planning and Zoning wants them to divide their land. She feels that they have addressed the water and feels that one ownership is in the best interest of the Town.

Brooks reappearing, stated that the entire watershed will be controlled and he stated that the intent is not to control the entire watershed, but have the ownership in one owner and have access to take care of the water issue.

He stated he wasn't aware of ponds in the area, and feels this is still a unique situation. He feels the Attorney handled the questions properly and feels a variance is the best solution.

Allen asked if the variance is granted, do they still have to get permits to do the project.

Palmer, reappearing, stated based on the letter from the DNR, they have permission to move forward with the project and do not require any additional permits.

Vogt asked if this is considered a navigable body of water. Palmer stated it is not considered navigable and would not need a permit and if they approve the variance they will start the project immediately and would not need permits.

Steward, reappearing, stated because it is a shoreland area, they would need a permit from the county and depending on slope it would have to be looked at. Vogt referred to Exhibit VII,9, the yellow area is shoreland zoning.

Vogt confirmed the building was built around 1990 and there is a 10 year statutory of limitations.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 1:20 p.m.

Vogt reviewed that each board member shall give information.

Vogt stated that he feels the unique property limitations do not exist due to dams above the farmstead and they were most likely built in the 70's if not earlier and they were designed properly and they handle the flow right through the farmstead without a problem. This property/dam was not built properly, does not have an outlet and probably does not hold as much water as it used to. Unnecessary hardship – the issue is the damage caused to the farmstead below the dam and it appears that the applicants have worked together with the DNR in getting it resolve and come up with a solution to have the dam designated as a non-dam, a field road with the culvert through it and taking some measures to handle the runoff, so why this should be part of a variance for the lot lines, seems to be disconnected. A solution to this problem could be arrived at from a physical, engineering standpoint that can be agreed to by both owners, have co-ownership of the project and have a legal agreement drawn up to deal with the maintenance, such as similar easements for roads or driveways. He stated there are other solutions for single ownership of the problem, but unsure why a division from 3 acres to almost 20 acres as a variance is necessary. He also stated that removing the shed is not an option, but readjusting property lines, and now that the dam has gone away and there is a field road, there should be no issue with the dam. He then addressed no harm to public interest and respectfully disagree that this will decrease the flow and feels it will increase the flow. There may be some retention but very little due to the size of the pipe, but questions whether it will make a difference in a significant flood event. Downstream road culverts and ditches is an issue that that Township has to deal with.

Allen stated that one thing the board is missing is that the Town is in favor and the hardship for this request is that they can not use their property for the purpose that they purchased it for. He feels the culvert solution works. He stated he feels this is a unique property, even though others have the same unique property currently in the area and feels this is a mess there and these people have worked hard and bared a lot of expense and he is in favor of approving the variance.

Lestikow stated he agrees with both Vogt and Allen. He respects the Town's opinion. He feels that compromising the parcel size for the county is not worthy of a variance. He spoke of postponing this request and give the applicants time to meet with Planning and Zoning and Land Conservation to deal with the lot line issues and also receive help on the water issue. If the lot lines can be adjusted to end up with the same amount of

property such that there is still 35 acres remaining and can still be within the legal requirements of the ordinance that is what should be looked at first.

Vogt confirmed that they could adjust the lot lines to make sure there is 35 acres, they still have to follow what was required by DNR to fix or remove the dam. They intend to remove the dam and now the issue becomes an issue of the culvert and resolving the erosion problem that needs to be addressed and they are asking for a variance so that there is not dual ownership of the solution but one owner.

Motion by Vogt, to deny the variance based on the applicant not meeting the hardship requirements. Motion fails due to lack of a second.

Motion by Allen to grant the variance. Motion fails due to lack of a second.

Motion by Lestikow, seconded by Vogt, to postpone the decision to allow the property owner to meet with Planning and Zoning and Land Conservation to discuss a lot line configuration that will not require a variance and address the water issue. **Motion carried 3-0.**

Vogt explained to the owners what is to take place next.

Motion by Netzinger, seconded by Allen to adjourn.

Respectfully submitted,

Richard Vogt, Chair, for Robert Roloff