

**Zoning Ordinance Review Committee
February 23, 2011**

Present: Jerome Flottemesch, Harry Johnston, Jerry Schutz, Brad Grant, Dave Barsness, John Postovit, Roy Smith, Don Lefebvre, Ray Vlasak, Barry Nelson, Larry Knutson, Debi Moltzan and Joni Pace.

Chairman Flottemesch called the meeting to order.

Schutz made a motion to approve the minutes from the January 27, 2011 meeting. Barsness seconded. All in favor. Motion carried.

First Point of Discussion - Point of Sale Septic Inspections

Vlasak reported the revisions made at the recent subcommittee meeting. The point of sale wording was modified to incorporate the discussion from the previous meeting. A decision was made to only address shoreline riparian lots (see handout for wording).

Postovit commented that they understood the concern about systems that *were* and *were not* being addressed with the point of sale inspections. The first paragraph of the handout outlines the systems that would require inspections.

Chairman Flottemesch opened for comments. Knutson inquired as to why 400 feet was selected as the distance. Postovit explained that the minimum depth for a standard lot ranges from 200 – 400 feet depending on the lake classification. They selected the greater standard. Knutson inquired about properties within that distance but across the road from the lake. Postovit stated this was addressed by using the word riparian in the wording rather than shoreland. Johnston inquired who would do the compliance inspections. Postovit stated it would be the property owner's responsibility to hire a qualified professional and have the compliance submitted to the zoning office.

Flottemesch brought up the concern that anyone can sell and record property. Postovit affirmed this as true and stated that the enforcement and follow-up would fall to zoning and the County Attorney. The proposed wording is currently out of state law.

Barsness asked if paragraph "B" was necessary. Postovit explained it was included to recognize the winter season and to emphasize the deadline for the inspection. Nelson asked how life estates would be affected and Flottemesch inquired about contracts for deed. The planned wording would reflect the need for an inspection with a *legal transfer* of ownership. Lefebvre felt a contract for deed would trigger an inspection whereas a life estate may not. Knutson stated he would want point of sale to apply to contracts for deed. General agreement was that a point of sale would not be triggered with a life estate. Vlasak pointed out that the difference between the two may be catching 98 percent compared to 100 percent – we will still get the majority. Smith agreed. Flottemesch stated that if we make it too all-inclusive we may inadvertently create more loopholes. Postovit stated that he hadn't considered those kind of transfers of ownership.

Lefebvre stated that he does not feel that point of sales inspections are fair and fail to address many of the non-compliant systems in the County. There must be another way to correct these on a countywide basis. Postovit stated the committee was still working on the Shoreland Compliance Program. Lefebvre shared that he was concerned with more than the lakes and was still against the point of sale inspections.

Nelson asked Moltzan for clarification on a current certificate of compliance – they are valid for 5 years on a newly installed system and 3 years on an existing system.

Nelson suggested adjusting the wording on the dates between paragraphs “A” and “B,” on the portion that refers to being ‘between May 1 and October 1’ and then later states ‘no later than June 1.’ Clarify. Postovit said it can easily be corrected.

Smith suggested clarifying the point of sale wording to reflect transfer of ownership *interest*, as this would incorporate contracts for deed. Flottesmesch stated this would trigger inspections anytime a mortgage was sold, etc. Smith withdrew the idea.

Postovit stated that we do not want to overwhelm the zoning office and the program must be workable. Flottesmesch stated we also do not want to overwhelm our area septic professionals. Nelson talked about the possibility of extending the length of the validity of the compliance on existing systems from 3 to 5 years.

Flottesmesch called for a motion to approve, deny or table the recommendation presented by Postovit. Nelson suggested waiting until the whole septic plan was complete. Postovit stated that the Shoreland Compliance Program is not currently in the ordinance and they are not recommending it become part of the ordinance but be left as a policy. Flottesmesch stated policies are easier to modify. Knutson affirmed we do not want to set ourselves up to violate our own ordinance. Postovit stated there was a reason we left it as a policy before rather than incorporate it into the ordinance. Vlasak reminded everyone that there was previous discussion about waiting on this portion until the whole septic system process was developed. Knutson suggested tabling while Flottesmesch recommended postponing the topic. Postovit stated that we are waiting for information from RMB on the possibility of a different lake selection criteria and process (other than TSI). The committee was also taking a second look at the time frame for compliances (currently 10 years). These are the only modifications to the existing program still under consideration. Vlasak recommended postponing the revisiting the topic at the next meeting. Schutz second. All in favor. Motion carried.

Second Point of Discussion – Setback Averaging and Impervious Surface Coverage

Flottesmesch opened for discussion and comments. Knutson requested a synopsis of the setback-averaging proposal.

Smith affirmed that the setback must be determined before impervious surface calculations. Smith clarified with Moltzan that the current starting point for averaging is the shore impact zone but that the committee’s proposal does not use this as a start point.

Smith felt the proposed plan (average of the location of adjoining property structures plus twenty feet) will get the structures out of the shore impact zone. Nelson asked if the wording included that the new structure could not be in the shore impact or bluff impact zones. Smith stated the wording does address this issue. Smith offered examples. Discussion was held.

Smith asked if the setback averaging could be placed into Chapter 3 of the Ordinance rather than Chapter 5, so that it is attached to the portion on non-conforming lots.

Postovit mentioned that this averaging system is not a new idea – Aitkin County has used this method (average plus 20 ft) for at least six years. Smith felt it would work well. Smith wanted it included in the wording that the structures used for setback averaging must be within one lot of the property.

Vlasak did not see the need for string line on NE or RD lakes. With 150 ft lots, there should not be a need for string line. Flottesmesch clarified that the averaging is for non-conforming lots (not the 150 ft lots). Moltzan stated that string line can currently be used on any lot – standard or substandard. Smith did not see the need for string line on standard lots. Flottesmesch questioned if we should revise the language so string line was only utilized on non-conforming lots. Nelson thought RD lakes should be included and Flottesmesch felt NE lakes should also be included. Smith affirmed that he believed standard size lots should meet the setbacks without string line. Nelson questioned what happens if a conforming lot has a substandard size lot on each side of it. The setback would be much greater for the standard lot than for the two substandard lots. Smith stated this is a possibility, but placing it at the setback would force the others to move back in the future. Nelson stated he would prefer if the string line plus 20 ft applied to all lots, conforming and non-conforming. Smith would agree with that, as it would still require new construction to move further from the lake. More discussion was held.

Smith stated he would still like the setback averaging to be placed in Chapter 3 of the Zoning Ordinance along with the information on non-conforming properties. Vlasak reminded everyone that our goal is to protect the lakes. Nelson agreed but stated we need a balance. The penalty (without string line) would be too great for a conforming lot with a non-conforming lot on each side of it. Schulz stated that if you have a conforming lot you should have to meet the setback. Smith agreed with moving all the ways back but that the result would be extreme in the instance Nelson shared. Smith felt the average plus 20 feet seemed reasonable. Vlasak asked if a conforming lot could get a variance to build ahead of the standard setback if we did not allow string line. Flottesmesch stated there would have to be a hardship of the property. Schutz stated he would not grant a variance in this instance as wanting to build closer would not be a hardship. Nelson agreed.

Smith suggested placing this in Chapter 3 and also Chapter 5 – with some revisions to the wording in Chapter 5. Postovit agreed. Nelson asked for clarification. Smith stated we would keep string line on conforming lots if the two adjacent lots are non-conforming. Nelson questioned if we would eliminate string line on other conforming lots. Smith

stated yes, if adjoining lots were also conforming they would not be able to use a string line. Smith clarified that prior to 1973 (enactment of the Ordinance), not many lots were conforming. These are the lots where we have issues. Nelson thinks we should keep the language of the average plus 20 ft for all lots and include it in both chapters 3 and 5. Smith still wanted non-conforming to be broken out into Chapter 3 and Flottesmesch agreed. Knutson affirmed Nelson's point of the average plus 20 for all lots. Nelson stated it would be more consistent for the zoning office to apply. More discussion was held. Flottesmesch asked for a recommendation. Lefebvre clarified that we need to include bluff impact zone as well as shore impact zone in the wording.

Flottesmesch questioned the Committee:

1) Do you agree with the concept of averaging the setback of the like structures within one lot of the proposed structure and adding 20 feet to come up with the new setback?

Shultz made a motion to approve the concept with the final wording to be done in accordance with the County Attorney's office. Vlasak second. All in favor. Motion carried.

2) Do we want to address conforming lots located in a non-conforming neighborhood differently from the present ordinance?

Discussion was held. Nelson stated he would like to see the averaging remain but add the plus 20 feet. Shultz agreed and thought this should be included in Chapter 5 as well. Nelson continued that it should apply to all properties – conforming and non-conforming. Johnston clarified that the property owner will never be required to go further back than the standard setback. Smith suggested taking some time to look at examples of properties that would be affected. Flottesmesch stated it could go back to committee. Smith felt the recommendation already seemed clear. Lefebvre asked if the committee should meet before making a recommendation? Smith would like to clarify with the zoning office. Flottesmesch asked for a motion. Flottesmesch assigned the topic back to the committee to make a recommendation. Knutson reminded the committee to consider the greater good.

Smith brought up the topic of 'like structures' in the setback averaging. An example of a large deck was given; also a concrete patio. Flottesmesch suggested spelling these things out more clearly in the wording. Smith suggested *pervious* deck to *pervious* deck. Discussion was also held on other structures. Barsness inquired if habitable was included in the definition. Lefebvre asked if structures of no value could be used. Smith affirmed we need to include something like this (habitable) in the wording for setback averaging. Postovit stated that Aitkin County does address this issue. He referred to the wording of their ordinance. Schultz brought up the question of a home that later poured a concrete slab out front (without permit). Would this count in the setback averaging? Smith affirmed it should be like structure to like structure and that a deck and patio would be different. Discussion was closed and the comments were referred back to the committee.

Third Point of Discussion – Water Oriented Structures

Postovit mentioned that the 2008 recommendations regarding water-oriented structures were not incorporated into the ordinance. Currently, water-oriented structures can be

built on non-conforming lots. The 2008 recommendations would only permit them on standard lots and they would not be allowed on NE lakes. Currently water-oriented structures are permitted to be 250 square feet in size and 12 ft in height. They may also utilize the roof as a deck. The 2008 recommendations would limit them to 120 sq ft in size, 10 ft in height and the roof could not be used as a deck.

Nelson suggested the committee revisit the 2008 recommendations. Discussion was held as to why they were not incorporated into the ordinance previously. Schutz asked why they should not be permitted to use the roof as a deck. Postovit could not recall the reason. Flottesmesch remembered allowing water-oriented structures due to topography issues (slope), so decks did not coincide with the need for storage. Schutz did not see the reason not to allow the decks – still impervious surface. Barsness stated some people abused the definition of ‘deck.’ Nelson agreed with Schutz in that whether or not they use the roof for a deck really should not make a difference.

Smith questioned why the structures had to be constructed on the center portion of the lot rather than just meeting the side setbacks. Flottesmesch stated that the reasoning was for aesthetic purposes for neighboring properties. Knutson clarified the location currently is supposed to be in the center 25 ft of the lot. Vlasak agreed with the center 25 ft, as it does not impact the neighbor. Johnston stated that the structures are only permitted on properties of a certain slope, so they should be out of the neighboring line of sight anyway. For this reason, Johnston felt they could be located outside of the center portion of the lot and closer to the side property setbacks. Vlasak was not aware of the slope requirement. Smith suggested doubling the side property setback for water oriented structures. Postovit clarified that this should work given the structures are only allowed on standard size lots. Vlasak stated he has heard numerous complaints on the size of the permitted structures. Barsness agreed that size was a critical point. Schutz stated that the point of allowing water oriented structures was to allow storage by the water on sloped properties. He is in agreement of the 120 sq ft size limit, as this would meet the goal of storage. Johnston and Barsness agreed.

The above discussion and comments were referred back to the subcommittee for further review.

Fourth Point of Discussion – Resort Committee

Jerry Schutz mentioned that he had not been assigned to a sub-committee. As Dick Pettit is no longer able to work with the Resort committee, Jerry will take his place.

Fifth Point of Discussion – Next Meeting and Agenda

The next meeting is scheduled for Thursday, March 24th 2011 from 9:00 am until 11:00 am. Tentative agenda will be:

1. Approval of Minutes
2. Point of Sale Inspections for Subsurface Sewage Treatment Systems
3. Setback Averaging.
4. Water-Oriented Structures
5. Impervious Surface

Approved

At this time, _____made a motion to adjourn the meeting.
_____Seconded. All in favor. Motion carried.

Respectfully submitted,
Joni Pace