

Becker County Planning Commission
August 11, 2015

Members Present: Vice Chairman John Lien, Commissioner Larry Knutson, Jim Kovala, Mary Seaberg, Harry Johnston, Jim Kaiser, Mary Seaworth, Ray Thorkildson, Jeff Moritz, David Blomseth, Zoning Supervisor Eric Evenson-Marden and Zoning Technician Julene Hodgson. Absent was Chairman Jim Bruflodt.

Vice Chairman Lien called the **Notice of Intent to Amend Ordinance** meeting to order. Zoning Technician Julene Hodgson recorded minutes.

FIRST PURPOSE OF BUSINESS: Purpose: To Amend Chapter 5, Section 2, Subject Matter: Nonconforming deck additions. In 2007, nonconforming deck additions were removed from the Ordinance. This created a situation where all decks on nonconforming structures required a variance in order to add a deck. In order to reduce the number of variances and allow better enjoyment of property, this provision would be amended to allow a twelve (12) ft nonconforming deck addition providing the deck addition does not extend into the shore impact zone and meet pervious criteria.

Hodgson explained the proposal to the Board. The Proposed Language was read:

L. Nonconforming Deck Additions.

A deck addition not meeting the required setback from the ordinary high water level may be allowed without a variance if all of the following criteria and standards are met:

- A. The deck encroachment toward the ordinary high water level does not exceed twelve (12) feet of the current structure setback or required setback for new construction.
- B. The deck addition cannot extend into the shore impact zone;
- C. The deck is constructed in a pervious manner, and is not roofed, enclosed or screened; and
- D. The ground underneath the deck must remain pervious.

Current Paragraphs L – Q would be renumbered.

A “conditional denial” letter from the MN DNR (attached) was given to the Board. The DNR letter stated they would not approve the changes as submitted and indicated the following language would be acceptable to them: “A deck addition not meeting the required setback from the ordinary high water level may be added to structures existing on the date the shoreland structure setbacks were established without a variance if all of the following criteria and standards are met:

- A. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure.
- B. The deck encroachment toward the ordinary high water level does not exceed twelve (12) feet of the current structure setback or required setback for new construction.

- C. The deck addition cannot extend into the shore impact zone;
- D. The deck is constructed in a pervious manner, and is not roofed, enclosed or screened; and
- E. The ground underneath the deck must remain pervious. “

No one spoke in favor of the proposal. John Postovit, Becker County COLA, spoke against the proposal. He discussed the letter he had previously submitted to the Planning Commission members outlining/summarizing COLA concerns. (a copy of the letter will be forwarded to the County Board of Commissioners.) Postovit asked if the county was interpreting the date shoreland structure setbacks were established, as 1971 (When Becker County adopted the original shoreland Ordinance) or before 2011 (when the setback was established to either be the required lake setback or the average setback plus 20 feet). Evenson-Marden stated the County Attorney indicated there is not a clear legal authority of the interpretation of the phrase “the date the shoreland structure setbacks were established” However, a good faith” argument can be made that the date that the most recent setbacks were established, 2011, seems to be supported by fact and upholds the spirit of the law. Mr. Evenson-Marden stated that the DNR will review proposed ordinance change for compliance and consistency with state law but defers to the County in how it interprets its zoning ordinance. Mr. Evenson-Marden was asked if he felt the DNR’s proposed language would change the intent of the Ordinance Review Committee’s recommendation. He replied he had asked the County Attorney’s office that same question and was told they did not believe the proposed language varied substantially from what they understood to be the intent of the Ordinance Review Committee. There was no other written correspondence either for or against the proposal. At this time, testimony was closed and further discussion was held. Mr. Postovit highlighted a guidance document that stated decks were impervious. Evenson-Marden stated the Becker County Ordinance currently defines decks as pervious.

Moritz stated the Board could recommend the proposed changes with the DNR amendments added to the language. Seaberg questioned who would evaluate the property to determine if a nonconforming deck addition could be allowed. Mr. Evenson-Marden stated the Zoning office would do the evaluations during their application review process and added that proposed decks within the shore impact zone would still be required to get a variance. There was no further discussion by the Commission.

Motion: Seaworth made a motion to send the proposal back to the ZORC to review and/or add rewording. Moritz second. 2 in favor, 6 opposed. Motion denied. Johnston made a motion to approve the proposed changes to Amend Chapter 5, Section 2 as submitted. Knutson second with the following change: D. notwithstanding existing impervious areas below a second story deck, the ground underneath a deck must remain pervious. 7 in favor, 2 opposed. Motion carried.

It was asked that the DNR letter be sent to the County Board for them to discuss if they wish to add the recommended language.

SECOND PURPOSE OF BUSINESS: Purpose: To Amend Chapter 8, Section 5
Subject Matter: Amend Minimum Road Frontage to be consistent with Chapter 8, Section 4, which was amended in March 2012. When Chapter 8, Section 4 was amended, Section 5 was inadvertently overlooked.

Hodgson explained the proposal to the Board. The Proposed Language was read:

Section 5 Subdivision of Land

2. Lots.

e. Minimum road frontage. Every lot must have at least sixty-six feet (66') of frontage on a public dedicated road or street other than an alley except that a lot created by a Surveyor's Sketch is not required to have frontage on a public road if access is provided:

- (1) ~~with a fourteen foot (14') wide driving surface;~~ The easement from the property to a public road must be at least thirty-three (33) feet wide when servicing one (1) or two (2) tracts of land;
- (2) ~~on an easement or on property owned by the developer; and~~ The easement from the property to the public road must be at least sixty-six (66) feet wide when servicing three (3) or more tracts of land; except that this provision does not apply to property that is accessed by a forest management road; and
- (3) ~~that access is to no more than two (2) lots.~~ The easement from the property to the public road has a graded and serviceable driving surface.

No one spoke in favor of the application. No one spoke for or against the request. There was no written correspondence either for or against the proposal. At this time, testimony was closed and further discussion was held.

The Board agreed the language was necessary for the Ordinance to be consistent. There was no further discussion by the Commission.

MOTION: Seaworth made a motion to Amend Chapter 8, Section 5 as submitted. Blomseth second. All in favor. Motion carried.

THIRD PURPOSE OF BUSINESS: Purpose: To Amend Chapter 8, Section 5, Paragraph J Subject Matter: Amend the number of times a parent tract can be divided by a certificate of survey. Additional tracts created before the end of the timeline established would have to be approved through a public hearing process.

Hodgson explained the proposal to the Board. The Proposed Language was read:
J. Subdivision of a tract of land into three or fewer tracts. Applications involving tracts of land that are proposed to be subdivided into three (3) or fewer tracts, but are not exempt from subdivision review under Chapter 8, Section 5, subsection A.2, may be reviewed according to the procedures in this subsection. The design

of such subdivisions shall conform to the requirements of this subsection. Within a three (3) year period, a total of three (3) tracts of land may be subdivided from a parent tract by a certificate of survey. Additional tracts may be created through the public hearing process.

No one spoke in favor of the application. No one spoke for or against the request. There was no written correspondence either for or against the proposal. At this time, testimony was closed and further discussion was held.

Kaiser stated concern that even if this was approved to be added to the Ordinance, some people would still find ways to circumvent the Ordinance. A lengthy discussion was held regarding subdividing property by survey and the proposals of larger pieces of property. Kaiser stated this may possibly force people through a public hearing (that they may have avoided before) to which Hodgson stated we look at each application/survey on an individual basis to determine if it meets the criteria of the Ordinance and yes there are times they will have to be approved by the Planning Commission and County Board, that is part of the office review process.

There was no further discussion by the Commission.

MOTION: Kaiser made a motion to deny the proposal as submitted with no recommendation to the County Board. The motion died for a lack of a second motion. Kovala made a motion to accept to Amend Chapter 8, Section 5 as submitted. Blomseth second. All in favor except Kaiser. Majority ruled. Motion carried.

FORTH PURPOSE OF BUSINESS: To Amend Chapter 8, Section 5, Paragraph J(2)
Subject Matter: Amend Administrative Review to be consistent with Chapter 8, Section 5, Paragraph A 2(a)[1] which was amended in March 2012. When Chapter 8, Section 5, Paragraph A 2(a)[1] was amended, Chapter 5 Paragraph J2 was inadvertently overlooked.

Hodgson explained the proposal to the Board. The Proposed Language was read:

1. When allowed. Any quarter-quarter section, government lot, or smaller tract of land which was under single ownership on the effective date of this Ordinance may be subdivided into three or fewer tracts without following the preceding provisions for a plat if a surveyor's sketch of the proposed subdivision is submitted and approved in accordance with the procedures in this subsection J.
2. Review procedure.
 - a. Within a shoreland area.
 - (1) Administrative review. The surveyor's sketch shall be submitted to the Zoning Administrator for approval. The Zoning Administrator shall approve the surveyor's sketch only if it meets or exceeds 2.5 acres. The Zoning Administrator reserves the right to refer to the certificate of survey to the Planning Commission and County Board of Commissioners for consideration with any subdivision

proposal presenting extraordinary circumstances. Approval or disapproval of the proposed subdivision shall be conveyed to the subdivider in writing fifteen (15) days after the submission. If the proposed subdivision is disapproved, the subdivider shall be notified in writing of the reasons for the disapproval. The approval of the proposed subdivision together with a copy of the surveyor's sketch shall be filed with the County Recorder before any conveyances of the subdivided lots shall be valid. (Current subsections 1 & 2 would be renumbered)

No one spoke in favor of the application. No one spoke for or against the request. There was no written correspondence either for or against the proposal. At this time, testimony was closed and further discussion was held.

The Board agreed the language was necessary for the Ordinance to be consistent. There was no further discussion by the Commission.

MOTION: Seaworth made a motion to amend Chapter 8, Section 5, Paragraph J(2) Subject Matter: Amend Administrative Review to be consistent with Chapter 8, Section 5, Paragraph A 2(a)[1] which was amended in March 2012. Seaberg second. All in favor. Motion carried.

FIFTH PURPOSE OF BUSINESS: Purpose: To Amend Chapter 8, Section 5, Paragraph M(4) Subject Matter: Amend the size of a non-riparian lot from a non-riparian lot having to be greater than five thousand (5000) sq ft.

Hodgson explained the proposal to the Board. The Proposed Language was read:

M. Non-riparian lots. Non-riparian lots not meeting the required size of the zoning district may be allowed if the following criteria are met;

1. Non-riparian lots described by metes and bounds conveyance must be described by legal description the riparian lot to which it is being attached to and the combined tract cannot be conveyed separately nor separated without county approval;
2. Non-riparian lots created by platting must include in the plat dedication the legal description of the riparian lot to which it is being attached and that neither can be conveyed separately nor separated without county approval;
3. The non-riparian lot and riparian lot must be located within two hundred (200) feet of each other;
4. The non-riparian lot must be at least ~~be greater than~~ five thousand (5000) square feet ~~in area~~;
5. The minimum road frontage of the non-riparian lot is fifty (50) feet;
6. All setbacks for the applicable zoning district shall apply to the non-riparian lots;
7. The lot area of the non-riparian lot cannot be used in the calculations of impervious coverage for the riparian lot;

8. The maximum lot coverage of the non-riparian lot cannot exceed twenty-five (25) percent of the area of the non-riparian lot.

No one spoke in favor of the application. No one spoke for or against the request. There was no written correspondence either for or against the proposal. At this time, testimony was closed and further discussion was held.

There was no further discussion by the Commission.

Motion: Thorkildson made a motion to amend Chapter 8, Section 5, Paragraph M(4) Subject Matter: Amend the size of a non-riparian lot from a non-riparian lot having to be greater than five thousand (5000) sq ft. Kaiser second. All in favor. Motion carried.

At this time Vice Chairman Lien called the **Applicants Public Hearing** meeting to order. Zoning Technician Julene Hodgson recorded minutes.

Vice Chairman Lien explained the protocol for the meeting and stated that the recommendations of the Planning Commission would be forwarded to the County Board of Commissioners for final action on August 18th, 2015.

Kovala made a motion to approve the minutes for July 14th, 2015. Thorkildson second. All in favor. Motion carried.

Old Business: None

New Business:

FIRST ORDER OF BUSINESS: APPLICANT: Michael & Harriet Powers 437 5th Ave SE East Grand Forks, MN 56721 **PROJECT LOCATION:** E Little Cormorant Rd **LEGAL LAND DESCRIPTION:** 170043103 Lake Eunice Township Non-shoreland PT GOVT LOT 1: COMM NE COR SEC 4: W 496.45', S 363', W 523.42 SELY 310.89', ELY, SLY, WLY AL RD 275.88' TO POB; WLY & SLY AL RD 1021.18', NELY 334.64', SELY 345.18', NWLY 273.70', NW 285.63' TO POB. TRACT C., Section 04, TWP 138, Range 42 **APPLICATION AND DESCRIPTION OF PROJECT:** Request a change of zone from Agricultural to Residential for three tracts consisting of (Tract C-2) 1.9 acres, (Tract C-3) 2.0 acres and (Tract C-4) 1.77 acres.

Scott Walz explained the application to the Board on behalf of Michael Powers. Powers would like to sell some back lots and the potential buyers are riparian lot owners. The survey meets the Ordinance requirements and the proposal is for a change of zone for all parcels to residential. The area by the road is being connected to a riparian lot because it is too small to stand alone. The road surface in use is over further than the original platted road corridor for Summer Haven. Hodgson explained the current riparian owner (Nelson) is aware of the formalities they would have to go through to vacate the part of the road

that is not in use and describe the area back into the lake properties. Hodgson stated the small piece across the road cannot be used toward the 25% lot coverage of the lake lot. No one spoke in favor of the application. No one spoke for or against the request. There was no written correspondence either for or against the proposal. At this time, testimony was closed and further discussion was held.

It was the consensus of the Board that the request meets the criteria of the Ordinance.

There was no further discussion by the Commission.

MOTION: Thorkildson made a motion to approve a change of zone from Agricultural to Residential for three tracts consisting of (Tract C-2) 1.9 acres, (Tract C-3) 2.0 acres and (Tract C-4) 1.77 acres as submitted. Kaiser second. All in favor. Motion carried to approve.

SECOND ORDER OF BUSINESS: APPLICANT: Karen Nelson 10779 Co Hwy 5 Pelican Rapids, MN 56572 **PROJECT LOCATION:** 10779 Co Hwy 5 **LEGAL LAND DESCRIPTION:** PT NW1/4 OF NW1/4 BEG 1200' E & 559.85' S OF NW COR; TH NW 115.72', S 208.11' TO RD, E AL RD 117.28', & N 218.94' TO BEG, Section 36, TWP 138, Range 43 **APPLICATION AND DESCRIPTION OF PROJECT:** Request a change of zone from Commercial to Residential to reflect the current use of the property.

Hodgson explained the application to the Board.

No one spoke in favor of the application. No one spoke for or against the request. There was no written correspondence either for or against the proposal. At this time, testimony was closed and further discussion was held.

It was the consensus of the Board that the request meets the criteria of the Ordinance and the request reflects the use of the property.

There was no further discussion by the Commission.

MOTION: Kaiser made the motion to approve a change of zone from Commercial to Residential to reflect the current use of the property as submitted. Kovala second. All in favor. Motion carried to approve.

THIRD ORDER OF BUSINESS: APPLICANT: Kelly Brackett 24062 Cherry Hill Rd Detroit Lakes, MN 56501 **PROJECT LOCATION:** 24062 Cherry Hill Rd **LEGAL LAND DESCRIPTION:** Lot 1 Block 2 Sunnyvale, Section 30, TWP 139, Range 41 **APPLICATION AND DESCRIPTION OF PROJECT:** Request a change of zone from Agricultural to Residential for one tract consisting of (Tract B) 1.41 acres.

Hodgson explained the application to the Board.

No one spoke in favor of the application. No one spoke for or against the request. There was no written correspondence either for or against the proposal. At this time, testimony was closed and further discussion was held.

Johnston stated the area is all residential use parcels. It was the consensus of the Board that the request meets the criteria of the Ordinance.

There was no further discussion by the Commission.

MOTION: Johnston made a motion to approve a change of zone from Agricultural to Residential for one tract consisting of (Tract B) 1.41 acres due to the request meets the criteria of the Ordinance. Kovala second. All in favor. Motion carried to approve.

FORTH ORDER OF BUSINESS: EAW REVIEW: Review of comments submitted/received regarding a proposal for gravel/aggregate extraction to exceed 40 acres on parcel 06.0402.001 Section 29 S ½ of NW ¼ Cormorant Township with Contractors Leasing/Kost Materials and determination if project needs an EIS. Conditional Use Permit application pending for upcoming Public Hearing.

Evenson-Marden explained the review process to the Board. The review was completed with findings/facts of conclusion. Staff reviewed and prepared responses to each comment issued.

The Planning Commission concluded the following:

1. This “Finding of Fact and Record of Decision” document and related documentation for the project that we prepared in compliance with the procedures of the Minnesota Environmental Policy Act and Minnesota Rules, Part 4410.1000-4410.1700.
2. This “Finding of Fact and Record of Decision” document and related documentation for the project have satisfactorily addressed all of the issues for which formation could have been reasonably obtained.
3. This project does not have the potential for significant negative environmental effects based upon the above findings and evaluation of the following four criteria as specified in Minnesota Rules, Part 4410.1700, Subp. 7:
 - The type, extent, and reversibility of environmental effects;
 - The cumulative potential effects of related or anticipated future projects;
 - The extent to which the environmental effects can be mitigated by ongoing public regulatory authorities; and
 - The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements (EIS).

Josh Kadrmas, Houston Engineering, spoke in support of the EAW and asked that the Phase 1 review recommended by the State Historical Society be requested, not required. There was general acceptance of this change. No one spoke against the EAW. The written correspondence had been previously given to the Board for review. At this time, testimony was closed and further discussion was held.

Lien noted the only negative comment/concern was regarding the prairie chicken “leks” and the author added suggestions for mitigation purposes.

There was no further discussion by the Commission.

MOTION: Blomseth made a motion to submit a recommendation to the County Board for a negative declaration. Johnston second. All in favor. Motion carried.

FIFTH ORDER OF BUSINESS: Informational Meeting: The next informational meeting is scheduled for Wednesday, September 2nd, 2015 at 8:00 am in the Third Floor Meeting Room of the Original Courthouse.

Since there was no further business to come before the Board, Kovala made a motion to adjourn. Blomseth second. All in favor. Motion carried. Meeting adjourned.

John Lien, Vice Chairman

Jeff Moritz, Secretary

ATTEST _____
Eric Evenson-Marden, Zoning Supervisor