### WRIGHT COUNTY BOARD OF ADJUSTMENT

# Meeting of: June 6, 2014 MINUTES – (Informational)

The Wright County Board of Adjustment met June 6, 2014 in the County Commissioner's Board Room at the Wright County Government Center, Buffalo, Minnesota. As Chairman, Bob Schermann, called the meeting to order at 8:30 a.m. with the following Board members present: Bob Schermann, Don Schmidt, Dan Mol, Paul Aarestad, and Charlotte Quiggle present. Barry Rhineberger, Planner, was present to represent the Planning & Zoning Office. Greg Kryzer, Assistant County Attorney, was legal counsel present.

# 1. **DANIEL J. & KIM K. HOLLAND** – Cont. from 5/2/14

LOCATION: 1994 Dempsey Avenue NW – Part of N 1/2 of NW 1/4, Section 27, and part of SW 1/4 of SW 1/4, Section 22, Township 120, Range 26, Wright County, Minnesota. (Albert Lake – Chatham Twp.) Tax #203-000-223301 & -272202

Requests a variance of Section 502.2, 604.6(4) of the Wright County Zoning Ordinance to allow a division of the 76.64 acre parcel as follows: Existing dwelling to be separated on approximately 24 acres leaving the balance of 52 acres (approx.) with less than 300' wide on the public road to encompass the farm buildings and the remaining "building entitlement" with 300' wide on a public road.

Present: Daniel J. & Kim K. Holland

- A. Rhineberger started by summarizing the results of the previous May 2, 2014, meeting. At that time it was discussed at length the best possible ways to divide the property and it was decided that a site inspection would be necessary.
- B. Aarestad indicated that he had no issues with the division of the land, but thought the idea of a shared driveway would be a good solution. He continued on to say that building a road through the middle of farmland would not be appropriate and would not serve the purpose of maintaining agricultural land.
- C. Quiggle indicated that she had not heard the original presentation, but had read the minutes. She felt that an easement would be a logical solution.
- D. Rhineberger stated that, once the division has been approved, unless the board makes a specific condition in the motion stating there was not to be an additional driveway, the Planning & Zoning department would have no authority to deny the request.
- E. Mol agreed that there is enough road frontage to build a second driveway, but thought it would be more convenient for any future property owners to have a shared driveway.
- F. Schmidt stated that he agreed with the other board members.
- G. Schermann stated that as long as the driveway would be shared, he would be fine with the request.

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H. Mol made a motion to approve a variance of Section 502.2, 604.6(4) of the Wright County Zoning Ordinance to allow a division of the 76.64 acre parcel as follows: the existing dwelling is to be separated on approximately 24 acres, leaving the balance of approximately 52 acres with less than 300' on the public road to encompass the farm buildings and the remaining building entitlement; with the stipulation that there is to be only one driveway with an easement to the property. Aarestad seconded the motion.

#### 2. **DAVID FERRELL** – New Item

LOCATION: Part of Lot 2, lying in the NE ¼ and part of Lot 3 of NE ¼, Section 14, Township 121, Range 28, Wright County, Minnesota. (Unnamed Lake - Southside Twp.) Tax #217-000-141100 Property owner: Annandale New Town Market LLC

Requests a variance of Section 502.2, 612 & 717 of the Wright County Zoning Ordinance to allow placement of a travel trailer 68' from a Natural Environment lake. Also review of 1981 action that denied this parcel that was a result of division of original 15-acre lot.

Present: David Ferrell

- A. Rhineberger provided background on the property. When the property was sold in 1981, circumstances left the buyer unable to buy the full 15 acres that were required for the 1 per 40 split. Because this property did not meet that standard, the property needed to stay whole. In 1981 a variance to split the property was applied for and denied. The current request is still a result of an illegal division; therefore Planning & Zoning is unable to do anything administratively. The trailers that were previously on the property have been removed as requested. The pad has been improved. After the division issue has been resolved, the travel trailer request can be addressed. The lot of record standards state that a division of no more than 5 acres can be split out of a 25 acre piece. At the time of the division, the applicant had less than 25 acres, but the division was more than 5 acres. At this point they are looking for a variance of those standards. If that can be approved, then the land with the house on it would be considered a legal division; the remainder would be restricted. Township approval had been received.
- B. Ferrell stated he had nothing additional to add, but did acknowledge that this was an illegal division.
- C. Quiggle indicated that she found the situation troublesome and asked how the property was currently owned. She went on to question that it was an illegal division, but that they were still considered two separate parcels.
- D. Rhineberger stated that forcing a transfer is not allowable.
- E. Ferrell interjected that he was not making his current request to deal with the illegal division, but was looking to get approval for the setback. He questioned why, when the DNR decided to change the body of water to an environmental lake, he was not notified of this classification change. He felt he was in front of the Board due to the lake setback, not necessarily the illegal division that had happened in the past.
- F. Rhineberger informed the applicant that the two issues, are in fact, both relevant to his current request. The ordinance states that until an illegal division is fixed, variances cannot be granted. It is something that needs to be addressed and resolved. Theoretically speaking, because it is an illegal lot, it should not be used for anything a recreational vehicle or otherwise.

- G. Quiggle noted that she had not been at the previous meeting, but that she had read the minutes regarding the illegal division. She agreed that the land should have remained one lot. She addressed the lake classification by stating that this particular lake has been a natural environmental lake for over 30 years and that everyone has to deal with the same setback requirements. She stated that 68', which is less than half of the required setback, falls within the shore impact zone where nothing was to have been built. Because the lot was an illegal division and with the setback issues, she would not support this request.
- H. Mol agreed with Quiggle's statement. He also questioned the timing of the division and wondered what has changed since that time. Rhineberger stated that the ordinance regarding these divisions has been around since 1978.
- I. Aarestad asked if this is considered a seasonal home; Rhineberger responded in the affirmative.
- J. Mol stated that he was more concerned with how to bring his property into conformance and then addressing the recreational vehicle setback issues. Rhineberger informed the Board that this piece of property will probably never be brought back into compliance.
- L. Schermann asked if the lot was currently on the market for sale and questioned how an illegal lot could be sold. Rhineberger answered that Planning & Zoning does not have the authority to prevent sales of illegal lots. Schermann why the matter was even being discussed. If the conformity issues could not prevent the property from being sold, the discussion was a moot point.
- M. Rhineberger stated the reason this issue had been brought up at this time was precisely for this reason. Although Planning & Zoning has no authority to prevent the recording of a deed for an illegal division, the department could deny permits. If this issue would be resolved, if and when the applicant wants to sell the property, there would be no hassle one way or the other.
- N. Mol stated that he would like to find a solution to make this a legal lot.
- O. Schmidt agreed with Mol's statement and a way to remove this lot from its illegal status needed to be found. Aarestad concurred with Schmidt's statement and he also felt that a way should be found to legalize the lot.
- P. Quiggle indicated that she could go along with the process of "cleaning up" the status of the property, but that she would not be willing to go along with the recreational vehicle setback request.
- Q. Schermann then stated that whatever needed to be done to make the land a legal lot would be done and that would be made part of the motion. He then went on to discuss the issue of the travel trailer.
- R. Mol stated that although the setbacks were not being met, if everything was portable, he felt it would be no different than a campsite and would be willing to support the request, as long as the recreational vehicle was used for camping purposes only.

- S. Schmidt asked about the restrictions to the travel trailer placement. Rhineberger responded that the recreational vehicle is required to meet all standards of a principal structure and that water-oriented structures were not allowed on this type of lake. Anything less than 30" above grade and not attached to the structure is considered a patio. They are also allowed a 4' x 8' landing which would be considered an access structure. What was currently located on the site is acceptable and would not need to be removed.
- T. Schmidt agreed with Mol and stated that he would support the applicant putting the trailer in the discussed location.
- U. Aarestad expressed concern about the setback, but due to its seasonal usage and its elevated proximity from the lake, he would be in favor of the variance.
- V. Quiggle asked if there would be a way to locate the trailer further back from the impact zone. She felt that the additional 32' would be less intrusive.
- W. Ferrell expressed concerns with this modification, stating that the trailer would then be located within the 130' setback from a county road. To which Quiggle responded she would find it easier to grant a road setback variance than a lake setback variance. Quiggle requested that Rhineberger give them a visual as to where a 100' setback would place the trailer. Once that visual was presented, she stated that she would be much happier with that placement.
- X. Aarestad agreed that this would be a good compromise; Schmidt agreed.
- Y. Kryzer expressed concern that with this change, the trailer would then be encroaching on the road setback. Rhineberger asserted that there was room for the trailer to be moved and that the road setback could still be met.
- Z. Schermann made a motion approving the reversal of the denied variance from 1981 and to allow a variance of Section 604.6(4)(c)(3) to allow a 5.9 acre division from a lot of record. The remaining 8.9 acres shall be restricted and a deed restriction will need to be filed with Planning and Zoning. Schmidt seconded the motion.

VOTE: ALL IN FAVOR

aa. Quiggle made a motion to allow a variance of Section 502.2, 612 and 717 of the Wright County Zoning Ordinance to allow placement of a travel trailer no closer than 100' from a Natural Environment lake. Mol seconded the motion.

# 3. **SAC for AT & T** – New Item

LOCATION: 15550 – 90<sup>th</sup> Street NW – NE ¼ of NW ¼, Section 21, Township 121, Range 28, Wright County, Minnesota. (Southside Twp.) Property owner: City of South Haven Tax #217-000-212101

Requests a variance of Section 502.2 & 760.4(2)(b) of the Wright County Zoning Ordinance to construct a 300' high communication tower 272' from the north property line and 292' from the west property line.

Present: Ben Duran, Chris Rohr, John Lemke (South Haven mayor)

- A. Rhineberger summarized the request. The applicant is requesting a 300' communication tower with a 272' setback from the north property line and a 292' setback from the west property line. The setback requirement is equal to the height of the tower, in this case 300'. The applicants have explained, due to an irrigation line located to the south and east, they felt this would be the best placement option. The township submitted an approval of the request; no other responses were received.
- B. Duran stated they had tweaked their original request and they were now able to meet the westerly setback requirement. They would now be at a distance of 319'. But because the originally-submitted survey had not yet been finalized, they realized on the northerly side they would need a 50' variance, putting the tower at 250' rather than the 275' that was submitted.
- C. Rhineberger verified with Kryzer that re-notification would be required, due to the change in the setbacks being requested. Kryzer agreed that our notice would no longer be acceptable or valid, due to a change in the applicant's request.
- D. Schermann stated he would not be in favor of approving something that could potentially fall on the roadway. He asked the Board if renotification should be required, to which all were in favor.
- E. Rhineberger asserted if the board was not agreeable to the 272' setback, lessening that distance would more than likely not be approved.
- F. Schermann informally polled the Board members regarding the need for a re-notification to be sent out. All members agreed it would be appropriate to do so.
- G. Mol asked if the 50' setback decrease was so the water irrigator would not need to be moved. Duran responded that the location is city owned property and the irrigator is situated for optimal usage. He went on to say that the parcel in question is large enough to build the tower at the required setbacks, but the efficacy of the system would be greatly compromised, if it were required to be moved. He felt the hardship was in the limitation of the city's ability to maximize the irrigation plan on the water treatment parcel.

- H. Duran said the parcel being affected by the request is located on the other side of the road. The property has only one landowner, who has already been notified and is agreeable to the request. They currently rent the land for agricultural purposes; there are no structures on the property.
- I. Schermann asked about safety issues with these types of towers. Duran responded that the safety standards have been improved and that the new towers do not fall down.
- J. Rhineberger the purpose of notification was not to alert anyone that may be affected by the request. The requirement is to notify the property owners that fall within a 500' radius, or the nearest 10 neighbors. He agreed with Duran's statement that it would be the same 10 people receiving this revised notification. Rhineberger explained because the setback is decreasing even further than the original request, the re-notification is necessary. If the setback were increasing, that would be a less restrictive request and a re-notification would not be necessary.
- K. Rohr asked about a tower located within the city limits of Buffalo, which was explained to him by Schermann that Buffalo is their own regulating entity and this Board is for the review of township requests only.
- L. Schmidt asked if the tower is considered private industry and if the city of South Haven is the only entity that would benefit financially. Duran responded that he felt the entire community would benefit from this tower being built.
- M. Mol stated because the property is large enough to accommodate the tower to be built within the setback requirements, he felt the relocation of the water irrigator would be a solution to be considered.
- N. Aarestad agreed with the fact that towers do not fall down very often, and the road does not have a high traffic volume. He continued on to say he thinks the tower should be brought back within setback requirements. He would like to see an alternative to the current placement.
- O. Quiggle stated that economics seemed to be the driving force behind the decision of where to place this tower, but it was the safety issues that were concerning her.
- P. Lemke stated that the expense to move the irrigation system would be far too expensive, therefore was not an acceptable solution.
- Q. Duran in his experience, he has dealt with many counties and has seen many ordinances. Engineering has increased greatly. When towers do fall, they do not fall from the base of the structure; he also felt that with the new technology standards in place, the improvements in engineering and construction of these towers, and the fact that if the tower did fall, it would be falling on grass and a road that is very seldom travelled.

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- R. Rhineberger if the applicant wanted to change the rules that currently apply, he would need to request an ordinance amendment. The Board of Adjustment is required to address the actual request submitted.
- S. Duran stated the hardship falls on the city of South Haven that would no longer be able to utilize the land for the water treatment as is currently the case. If the variance was not approved, the tower would need to be placed on a different parcel at which point the city of South Haven would lose this rental income.
- T. Schermann the Board is not to make decisions based on monetary factors. He stated that a re-notification would be sent out to the appropriate landowners and the discussion could continue at that time.
- U. Kryzer felt the applicant should provide a map detailing the benefits of a 300' tower vs. a 250' tower. He then recommended the city of South Haven ask their engineering staff about the feasibility of moving the irrigation system.
- V. Schmidt moved to continue the hearing to July 11, 2014, for re-notification purposes. Quiggle seconded.

#### 3. **SUSIE BJORKLUND** – New Item

LOCATION: 11482 Ferman Avenue SW – Part of NW l/4 of SW l/4, Section 32, Township 118, Range 26, Wright County, Minnesota. (Lake Ida – Woodland Twp.) Tax #220-000-322302 Owner: Wright County

Requests a variance of Section 502.2 & 612 of the Wright County Zoning Ordinance to allow expansion of the existing "old school house building" with a 1,162 sq. ft. addition 110' from the ordinary high-water mark of Lake Ida.

Present: Susie Bjorklund

- A. Rhineberger informed the Board that the property is located in Woodland Township and summarized the facts and findings of a variance that had been approved in September 2011. The current request is a change and increase of what was proposed at that time. Because the property is owned by the Wright County Parks department, they dealt with changing the use of the building as well as variances for the expansion of the structure. It is located on Lake Ida, which is an NE lake. The current plans have changed significantly and the addition to a non-conforming structure falling within the shore impact zone, would be substantial. The request now included a walkway from where the existing porch is now located. Once the porch is torn down, the addition would come directly off the school house. The current structure does not meet the required setbacks. The applicant has not been to the township, but two positive neighbor responses had been received.
- D. Schermann verified that the applicant had not yet met with Woodland Township. Rhineberger confirmed the statement.
- E. Bjorklund explained the structure had previously been used for a program for veterans, but has since expanded to include teenagers in crisis. The charitable foundation had grown faster than they had anticipated and now found the office space to be cramped.
- F. Mol asked about the building being County owned, who would be responsible for the actual expansion. He then inquired into the lease agreement with the county and asked about the county's response to the request. Rhineberger stated that the county park administrator had signed the application, therefore it could be assumed that they were in agreement. Mol stated that because it is helping the community, and that it would remain county-owned property, he would be fine with the request.
- I. Schermann stated that he felt the variance off the lake was not an overly-important factor, and that because there is a road between the lake and the property stated in the request, he would not object.
- J. Schmidt agreed that because it is a good cause and because the park system had no objections, he would also support the request.

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- K. Schermann stated that without a township response on record, the decision could not be made. He instructed the applicant to meet with the town board and explained that the request could not be approved until after that meeting had taken place.
- L. Bjorklund assured the Board that she would be meeting with the township prior to the July 11, 2014, meeting. She also informed the Board that she would be unable to attend the next hearing and inquired as to the allowance of a Freedom Farm representative to be present in her absence.
- M. Aarestad liked that the building is being restored and that the application is working directly with the county.
- N. Quiggle stated that although she applauds the works the applicant is doing, she felt that information could not be used in her decision making. She questioned the affects to the road running between the property and the lake. She said she would like to see a permanent storm water management plan created, due to the additional impervious coverage this request would be creating. She ended by stating that as long as all storm water is maintained on the property, she would support the request.
- O. Schermann made a motion to continue the request until July 11, 2014. Mol seconded the request.

# 4. **LAWRENCE J. SCHUT** – New Item

LOCATION: Part of Gov't Lots 1, 2 and Part of E ½ of NE ¼, Section 22, Township 122, Range 27, Wright County, MN. (Nixon Lake – Clearwater Twp.) Tax #204-100-221300; -224200; -221105; -224103

Review and appeal of 1996 Board order requiring 204-100-221300 to remain owned in common with 204-100-224200 as regulated in Section 502.2 of the Wright County Zoning Ordinance.

Present: Lawrence & Loretta Schut, Al Evavold

- A. Rhineberger the applicant owns 4 parcels totaling approximately 52 acres. In 1996, a lot line adjustment was granted dividing additional property owned by the applicant at that time. As part of the approval, 3 parcels (204-100-221300, 204-100-224200 and 204-100-221105) were required to remain owned in common and there was to be one residential building entitlement. The present request is to divide parcel 204-100-221300, which is to include the building entitlement. The owner has 3 additional properties, one with an existing cabin, and the applicant is requesting the properties not be required to be held in common. Rhineberger stated that allowing the division as requested, a land-locked parcel would be created. The township approval had been received.
- B. Schut informed the Board that the map looks as though the property is connected to the Township road, when in fact, that is not how the legal description reads. Rhineberger confirmed that the legal description matches the map that was shown.
- C. Rhineberger stated that easements must be pre-dated 1977 in order to be considered legal. If the Board wants to prevent a land-locked parcel, these parcels must remain owned in common.
- D. Schmidt felt that they needed to decide if the properties should be owned in common to prevent the creation of a land-locked parcel.
- E. Aarestad felt that the properties should be combined to allow access; Quiggle agreed with this statement.
- F. Schermann summarized that 11.65 acres goes with the right of way to access the property and the balance would need to be owned in common.
- G. Kryzer suggested the Board impose a condition to be drafted to reaffirm the existing easement, explaining that easements can be voided after 40 years and that the applicants should re-record something as part of the documents.
- H. Schmidt moved to lift the previous condition that tax parcel #204-100-221300 be owned with the balance of the property and allow it to be separated with the remaining building "entitlement". Remaining Tax Parcels 204-100-224200, 204-100-221105 & 204-100-224103 must stay under common ownership and appropriate Administrative Order/Deed Restriction be recorded at the County Recorder's Office. A document is to be drafted and recorded to re-affirm the easement that was dated prior to 1977. Mol seconded the motion.

# 5. **MICHAEL BEAVER** – New Item

LOCATION: 5413 Rocklin Avenue NW – Part of Gov't Lot 3 & 4 and NW 1/4 of NW 1/4,

Section 6, Township 120, Range 28, Wright County, Minnesota. (French Lake

Twp.) Tax #209-000-062200; Property owners: Hasselberg & Strand

Requests a variance and a lot line adjustment as regulated in Section 502.2 & 604.6(4) of the Wright County Zoning Ordinance to allow the division of the existing 101.59 acre parcel owned by Hasselberg as follows: The existing homestead to be separated off with approximately 21 acres and the remaining 84 acres (approx.) to have the two (2) remaining entitlements. Division of property to follow existing roads and includes attaching a 3.75 acres of the Strand property that lies west of CR 2 with the Hasselberg property (209-000-062200).

Present: Michael Beaver, JoAnne Strand

- A. Rhineberger explained that the property encompasses roughly 105 acres that is divided by a platted Township Road. The request is to use this road and County Road 2 as a dividing line. Beaver would like to purchase the 86 acres with the two remaining building entitlements and the Strand property west of the county road. Mr. Hasselberg would retain his dwelling site south of the township road, with the 21 acres as described. Rhineberger explained because it would be a division greater than 10 acres, a variance is required. He indicated approvals had been received from the township and two neighbors.
- B. Schermann stated that he did not have any objections to the request.
- C. Schmidt agreed that it was sensible to follow the roads as a natural divider.
- D. Mol and Aarestad both stated they had no objections.
- E. Quiggle made a motion to allow a variance and a lot line adjustment as regulated in Section 502.2 & 604.6(4) of the Wright County Zoning Ordinance to allow the division of the existing 101.59 acre parcel owned by Hasselberg as follows: The existing homestead to be separated off with approximately 21 acres and the remaining 84 acres (aprox.) to have the two (2) remaining entitlements. Division of property to follow existing roads and includes attaching 3.75 acres of the Strand property that lies west of CR 2 with the Beaver property (209-000-062200). Condition: Administrative Order and Deed Restriction filed with Planning and Zoning. Aarestad seconded the motion.

# 6. **ANTHONY J. SCHAUST** – New Item

LOCATION: 3878 – 100TH Street SE – E 1/2 of E 1/2 of the SE 1/4, Section 22, Township 118, Range 25, Wright County, Minnesota. (Franklin Twp.) Tax #208-200-224100

Requests a renewal of variance granted November 20, 2009 of Section 604.6(4) of the Wright County Zoning Ordinance to divide off the existing homestead with approximately 11 acres. Division to include more than 2.5 acres of tillable land in order to square of the lot lines and include existing driveway.

Present: Anthony & Linda Schaust

- A. Rhineberger this request is the same as the one approved in 2009, but that variance had expired. More specifically the applicant owns a total of 120 acres, with 80 acres in one parcel, which is all farmed, and the other 40 acres with a newer dwelling. The proposal is to split the dwelling off on approximately 11 acres, all of which was tillable before the house was built in 2001. He stated that the applicant is looking to put the property on the market and for that reason is hoping to renew the original request. He stated that township approval had been received, along with the approval of one neighbor.
- B. Schmidt stated that because it is the same request as one previously approved, he could see no reason to deny it. Aarestad agreed with Schmidt's statement.
- C. Quiggle stated that she also approved the request.
- D. Mol questioned the proximity of this land to the city of Delano, to which Rhineberger responded that no annexation plans were in place at this time. With that information provided, he stated that he would be in approval of the request.
- E. Mol made motion to allow a renewal of a variance granted in November 2009 of Section 604.6(4) of the Wright County Zoning Ordinance to divide off the existing homestead with approximately 11 acres. The division is to include more then 2.5 tillable land in order to square off the lot lines and include the existing driveway. Condition: Deed Restriction to be filed with Planning and Zoning. Schermann seconded the motion.

# **MINUTES**

On a motion by Schmidt, seconded by Aarestad, all voted to approve the minutes for the May 2, 2014, meeting as printed.

**VOTE: ALL IN FAVOR** 

Meeting adjourned at 10:17 a.m.

Respectfully submitted,

Barry J. Rhineberger Planner

Cc: Board of Adjustment County Board Kryzer Twp. Clerks Applicants/owners