

WRIGHT COUNTY BOARD OF ADJUSTMENT

Meeting of: March 5, 2010

MINUTES – (Informational)

The Wright County Board of Adjustment met March 5, 2010 in the County Commissioner's Board Room at the Wright County Government Center, Buffalo, Minnesota. Chairman, Bob Schermann, called the meeting to order at 8:30 a.m. with all Board members present. Barry Rhineberger, Assistant Planner, represented the Planning & Zoning Office.

MINUTES

Wagner moved to approve the minutes for the February 5, 2010 meeting as printed. Bauman seconded the motion. VOTE: CARRIED UNANIMOUSLY

Steve Metzler called the office to say he was delayed by traffic and would be late. Schermann indicated they would hear the next item on the agenda first.

1. JEREMY B. PAATELA – New Item

LOCATION: 483 Halsey Avenue SE – Lot 2, Oak Ridge View, according to plat of record, Section 5, Township 119, Range 24, Wright County, Minnesota. (Lake Charlotte – Rockford Twp.) Tax #215-035-000020

Requests a variance of Section 403, 404.2, 502.2 & 605.5(3) & 612 of the Wright County Zoning Ordinance to build a 270 sq. ft. deck, 42' from the ordinary high-water mark of lake, 13' from the side property line and would bring impervious coverage at 30.5% on an undersized lot. May be within a bluff.

Present: Jeremy & Leanna Paatela

- A. Rhineberger reviewed the 13,388 sq. ft. lot and location on Lake Charlotte. The Board has had requests for this property before them a couple times. The recent variances granted in 2006 were to rebuild an existing one-story house over a walkout basement. The new first floor foot print was 30' x 30', the same size as the walkout basement, with a second story above that measures 30' x 34'. The new request is to construct a 270 sq. ft. deck closer to the lake than the existing house with a 42' lake setback. This does not encroach on the lake the full 16' (width of the deck) because of the angle of the shore. He referenced the bluff conditions, noting the original house was placed in the bluff in the 1950's. He explained the long span of the slope. The other item to consider is the impervious coverage. After visiting the site, he found a deck attached to the garage (boat sits on) and recalculated the coverage for a total of 31.4%.

Written responses were summarized. Town Board recommended approval with some recommendations to improve pervious coverage and redirect water toward the road. Tom Flynn submitted a favorable response; and McDonough raised concerns about impact to bluff, additional coverage and precedent that could be set if approved.

- B. J. Paatela – indicated the 300 sq. ft. temporary parking area, that has plastic with rock over it could be taken up and replaced with geo-textile fabric to improve surface coverage. He noted how the driveway could be improved and existing paver stones replaced with permeable ones. They discussed coverage at the Town Board meeting and runoff from the roof. He suggested gutters could be installed to redirect some of the water draining off the roof toward the road. J. Paatela addressed one of the criteria is whether the hardship is unique and not shared by the neighbors. He noted their lot design makes it unique because it is long and narrow. Lots that surround them are much larger. In the context of the neighborhood, other lots do not have a high coverage. The 30% on their lot still leaves much green space in the area. He relayed their attempts to maintain the shoreline, have worked with the DNR and hired a consultant to address shoreland restoration. As owners they are conscious and concerned about the lake quality. The proposed deck will only require four post footings and deck will allow water to drain through and not present any negative impact.
- C. Schermann asked if the reduction of impervious coverage the applicant has suggested meets the 25% allowed. Rhineberger indicated it would not. His calculations did not include the temporary parking area because it looked like a landscaped area. The standard used for this type of pervious pavers or other surface only reduces impervious coverage by 50%. This is a standard used in State Shoreland practices. In this case, 855 sq. ft. has to be removed and if it were a pervious product they would have to double the amount. This would have to be engineered properly. If used in a driveway, over time it will lose its pervious nature due to compaction. Therefore, driveway would not reduce the overall calculation.
- D. Wagner – noted he is also a lakeshore owner and has owned non-conforming lake property in the past. As a president of a lake association he felt the need to start with the premise that this lot that is two-thirds the size of a conforming lot. They have to call a halt somewhere. This owner knows about variances; and he commends them on the comments on protecting the lake quality. He noted these owners may not always own this lot and the next owner may not have the same concerns. He understands why they would like a deck at this height to overlook the lake. However, he could not support anything this close to the lake and into the bluff.
- E. Bauman – agreed they should not be allowing construction of anything into the bluff. It looks as if the development on this lake lot is at the most it can handle.
- F. Schmidt – felt the Board allowed a large expansion the last time it was before them in 2006. The impervious coverage is beyond what is allowed; and the bluff is a concern and they don't want to see construction into it. The lot has been maxed out.
- G. Kopff agreed with the concerns about the bluff, but she was not on the Board in 2006. She was reviewing the past Board action. She would like to be able to see them have a small deck, especially looking at the layout of the house with a door on that side. In looking at the discussion it appears it was thoroughly discussed and the issue of the proximity of the bluff and concerns were well documented. She asked if she was missing anything and why was there a door lakeside off the second floor. Was there a miscommunication? Kopff asked if any of the

immediate neighbors have been allowed to build anything into the bluff in the last five years. Rhineberger indicated not in the immediate area. A variance to the north was given, but that was a vacant lot and construction was not into the bluff. Kopff stated she wants to consider the homeowners', but there are limits to lots and she cannot support any more development into the bluff. Everyone talked about the difficulties with this lot at that time. If it would have been proposed on the original hearing the Board would not have let it go.

- H. J. Paatela – stated most of the discussion was on the other side of the house where the house connects with the garage and is where the bluff is more definite. Where the deck is there is a flat area and would not impact the steep end. Kopff – noted as Wagner pointed out, the close proximity to the lake of 42' is too close. In general, 65' is the closest. This lot is maxed out.
- I. Schermann agreed with the comments the Board members have made. He summarized the applicants option is to withdraw the request or Board can turn it down. J. Paatela – asked if they could get a smaller deck. Wagner asked if they are allowed a cantilever deck. Rhineberger indicated that is not allowed and they have the impervious coverage issues. J. Paatela explained the house has a cantilever on the finished second floor and another 2' roof overhang. Wagner asked if a cantilever deck no closer than the overhang and roof line would work. J. Paatela stated the bay window prevents that. Wagner – stated even though this suggestion is contrary to his earlier statements; he was looking to see if a walkway could be allowed for a place to step out. He would not consider a 6' deck that Paatela suggested but something that does not extend beyond existing protrusions. Schermann asked if the rest of the Board would allow a small deck if it does not extend out beyond the roof line and the impervious coverage is reduced to 25%. Wagner noted the deck would have to go in the opposite direction from the bay window. Kopff stated she would only be interested in a small deck to utilize the door. In the future when they have these situations they should consider the location of doors. Bauman stated he would agree if they can use it to provide a fire escape.
- J. Rhineberger – reviewed what has been built on the lot and did not see how they could get the impervious coverage reduced to 25%. Schermann stated he would be willing to give the applicant time to see what can be done. Schmidt indicated if they cannot get coverage down he would not agree to the deck. The Board has always held to that, runoff is a concern. Schermann agreed with that. Wagner asked about the calculations and when the overhang is used. Rhineberger stated in this case he used the 2' cantilever and not the overhang, Wagner agreed with Schmidt that they do not want to exceed the 25% coverage. Schermann asked if the applicant wanted to see if he can get the impervious coverage down to 25%, otherwise; the Board would turn it down. J. Paatela stated if pervious pavers won't bring it down they would not be able to meet that. He asked if they could get a 4' deck. Schermann summarized the reason is the impervious coverage. Rhineberger reviewed the policy on what is counted in the coverage and the new change is any overhang that exceeds 24" must be counted in the coverage.
- K. Schermann questioned how the applicant wants to proceed. Hearing the comments, J. Paatela asked for a dismissal without prejudice.

- L. Schermann moved to dismiss the petitions at the applicant's request without prejudice. Wagner seconded the motion.

VOTE: CARRIED UNANIMOUSLY

2. **STEVEN R. METZLER** – New Item

LOCATION: 10147 – State Hwy. 24 NW – Part of Gov't Lot 2, Section 9, Township 121, Range 27, Wright County, MN. (Clearwater Lake – Corinna Twp.) Tax #206-000-093410

Requests a variance of Section 502.2, 612 of the Wright County Zoning Ordinance to build a 12' x 24' four-season porch and a 7.5' x 12' screen porch and 12' x 12' entry addition on the lakeside of existing dwelling, 48' from the ordinary high-water mark of lake and 6' to bluff. Also proposed is a 1,142 second-story addition over the existing dwelling that is 66' from the ordinary high-water mark of lake and 18' to bluff. Also proposing a new 26' x 28' square foot detached garage that bring total accessory structure to 2,754 (354 square feet over the maximum allowed).

Present: Steve Metzler

- A. Rhineberger reviewed the 1.7 acre lot on the east side of Clearwater Lake. The proposed construction was viewed as shown on plans provided by the applicant to build a 12' x 24' four-season porch and 7.5' x 12' screen porch and a 12' x 12' entry addition. The expansion is lakeside with an encroachment of 12' toward the lake and 6' from the bluff. Side yard setbacks can be met. The second-story expansion is built over the portion of the structure that is 66' from the lake. Pictures to show the existing structure were viewed. A new detached garage is proposed that puts the overall accessory structures to 2,754 sq. ft. The existing accessory structures include large storage structures and a guesthouse. Town Board had tabled action on the request for more information on the location of the bluff as it crosses the property. Rhineberger summarized the bluff definition and the calculation that is based on the percent of the slope (30%) and height (25' above the lake). There was discussion with the applicant about moving the addition to the north side of the house. The Township also wanted to explore that possibility but was not able to determine where the bluff extends. Rhineberger noted if it is determined using the only math, the bluff extends to the roadside of the house. The bluff has a long run distance of 85-90', but they also consider where the break is and that is on the lakeside of the house. He noted the bluff conditions cease lakeside of the house. The 18' setback from the bluff was measured from the southwest corner of the house and the visual break moves to the north along the shore.
- B. Schermann felt there are a number of questions to be resolved. He suggested they continue the matter to allow the applicant to go back to the Town Board. However, he agreed to allow some discussion on the proposal.
- C. Metzler explained Ben Olsen, Planner for the Town Board, wants to see 2' contours and Rhineberger sent that to him last night. Rhineberger indicated he received an e-mail from Olsen this morning that indicates the Town Board has not taken any official action and would need the applicant to reappear.
- D. Kopff felt in light of what the Board has done on past requests; they should not allow expansion closer to the lake than the existing house regardless of where the bluff is defined. It is possible to expand to the side in this case because of the size property.

- E. Wagner – the summary questions get to “practical difficulty” and the Board has to make a judgment on those. The applicant has answered them. The criteria that address whether it is in conflict with the Land Use Plan and requires that steep slopes, erodible soils be protected are kept in a natural stable state. The second question is whether the request is a substantial variation and the applicant responded that the existing house is already. He felt they have to start from where it is supposed to be. He would not support going forward on the lot. The lot is large and there are multiple garages and could not see a justification for exceeding what is allowed.
- F. Bauman stated the Board has held close to the maximum accessory structures. He would not support going closer to the bluff.
- G. Schmidt – agreed not to encroach on the bluff, he would not be opposed to the second story. Unless some of the accessory structures are coming down, he would not support more.
- H. Schermann – indicated he concurred with the Board’s statements. The information would be relayed by the representative of the Township Planning Board that is present.
- I. Metzger stated he has talked with the Township about some changes and asked if the Board would hear those. He noted the 66’ setback from the high-water mark. He pointed out the bluff line on the survey. The building would be limited to that 66’ setback line. He would move the expansion to the other end of the house. This would take new construction out of the bluff and would not extend closer to the lake than 66’. Rhineberger asked Kopff what was meant by “in line”. Kopff stated she did not mean to extend towards the lake at the closest point of the existing house corner, but in line with the structure. She did not think there is any justification for a variance to encroach. Wagner agreed. There are other feasible options. Bauman, Schmidt and Schermann concurred. Metzger explained the proposed porches are 36’ x 12’, moving it to the north side which is only 24’ wide that would put it 7’ closer on the north end, but a number of feet further back than the closest corner of the house from the lake on the south end. No closer to lake than what is there would be considered, but no closer than the existing foot print and not the 66’. Rhineberger – using the survey he calculated the setback at the point is 81’. Board members noted he has some footage to work with. Kopff stated the plan may have to be reworked, but a variance for 1-2’ might be acceptable.
- J. Schermann indicated the applicant needs to go back a look at the options and meet with the Town Board.
- K. Metzger asked for the Board’s reaction to the second floor. Schmidt asked if this fits the character of the neighborhood. Based on the Assessor’s records, Rhineberger noted most are one-story, but from the lakeside there might be two stories visible from the lake. There is only one house that was allowed the second-story in 2005 but did not require a variance. Another is a story-and-half. Schermann noted that two-story is 81’ from the lake and another home is on a large tract of land. Metzger noted that the Olsen’s home is a very large home. Rhineberger stated the characteristics of that lot are much different, the home is sitting on six acres and have a lake setback of 130’ and there is no bluff. The applicant has the room and

option to rebuild the entire structure. If the home were moved back there would be no need for this hearing. The amount of improvement is substantial compared to what is there and this meets the criteria for new construction.

- L. Metzer stated he was considering the view from the lake and some of the homes look like two-stories. His proposal would not look as intrusive and noted the trees will shield the structure from the lake. Wagner indicated he is not familiar with the lot and the applicant needs to make his case to them. The Board has to consider what the view from the lake. Rhineberger – agreed this shoreline is well treed. Wagner agreed those trees must stay on the bluff. Metzer – noted the picture and the proposed second-story will be below the top of the trees. Schermann indicated if the neighborhood has all one-story homes, that is what they generally want to see. Rhineberger suggested the Board make a site inspection to get a better perception from the shore. Schermann – he was willing to go along with what the Board wants to do. He would want to keep the height similar to the one-story homes in the neighborhood. Wagner noted without the porch in front this will be a full two-story and felt the porch in front softens that. Schermann indicated there seems to be some resistance to a two-story if it takes a variance from the lake. He suggested the applicant come back with the Township's recommendation. Quiggle stated she was not sure if the Township would reschedule the regular meeting due to annual meeting.
- M. Wagner moved to continue the petition to March 26, 2010 for Township review. Kopff seconded the motion.

VOTE: CARRIED UNANIMOUSLY

3. **KEITH RAISANEN (DCRISC)** – New Item

LOCATION: 4852 Reardon Avenue SW – Part of SW 1/4 of SW 1/4, Section 29, Township 119, Range 28, Wright County, Minnesota. (Cokato Twp.) Tax #205-000-293300 & -293100 OWNER: Independent School District 466

Requests a variance of Section 405 & 502.2 of the Wright County Zoning Ordinance to allow expansion of a non-conforming use to allow construction of the Dassel-Cokato Regional Ice & Sports Center on the school property.

Present: Keith Raisanen and Clark Moe, representing the DCRISC; Jeff Powers, Superintendent of Schools and Kevin Dahlmann, Chairman of the Dassel/Cokato School Board

- A. Rhineberger – the review is a change to a non-conforming use to expand the school with an ice arena for recreational purposes. The proposed building is 135' x 270'. Applicants will appear before the Planning Commission for a land alteration. A review through the SWCD Board is on-going, a copy of the submission for land alteration was noted: is being reviewed and will be heard next Thursday by the Planning Commission. A drainage ditch has been impacted by the school structure itself; and, the School Board is working with engineers and trying to resolve that. A positive response from the Town Board was received. A negative response from the neighbor who feels the additional hard surface will have a negative impact on the existing drainage problem.
- B. Raisanen – explained the activities that the arena will accommodate and needs for an ice arena. School related uses such as phy-ed, a quasi field house for fall and spring sports during inclement weather are planned for the building. Both cities, and the township have been supportive. Meyer-Rohlin has been hired to address the runoff concerns and appears the holding pond will take care of these issues.
- C. Moe –confirmed they have land lease agreements in place, met with SWCD and Staff at Planning & Zoning several times. Information received, with some small revisions, shows the plan meets the “Swift” requirements, the NPDES permit.
- D. Raisanen answered Wagner’s question on who the individuals represent. A 5013(c) non-profit corporation was established for building the facility. The organization was formed ten years ago. Dahlmann explained this is an example of private and public entities working in partnership. The school is supplying the land and the DCRISC will own the building. Powers noted the advantage to the District is hockey program, broom hockey and the kids are now travelling to Litchfield and the sheets of ice will be a benefit to the hockey program. The benefits it provides to the District were noted. The land where the arena will be built is not large enough for a future school site. The District has purchased other land to the north and east that will meet future school needs. They are hooked up to the City of Cokato sewer.
- E. Schermann supports the idea. Questioned the statement they are going to build a shell. He questioned if they cannot finish the project who would take it over. Raisanen the lease

agreement provides a clear plan and is currently being reviewed by their legal counsel. They have five years to finish Phase II. The Organization feels they can complete it within 18 months, but if they cannot complete it within five years the building would go to the school.

- F. Bauman asked who would control the activities. Raisanen – explained during the school hours, the school has control; the evening hockey hours typically between October through March would be scheduled by the Hockey Association. The School Board will have to approve any uses outside of that. It could be possible to have ice year around, but not economical. They are looking at a very traditional rink use. There might be other uses off season, such as an expo that are currently held in the school buildings.
- G. Wagner – noted the financial situations schools are currently finding themselves in are his concern.
Powers stated the agreement is very clear and represents three-years of discussions. The issues are very sensitive and they do not want to take on additional liability. Wagner noted in their 5013C application that will have to be spelled out clearly. Raisanen it is clearly spelled out for youth activities and their counsel feels it is covered. Wagner – stated it would have to be spelled out that if it fails they will donate the building to the District.
- H. Schermann asked if they get the lease agreement in hand would they be protecting the County. Salkowski felt with the School Board Superintendent and Chairman present he feels that assurance has been given, but receiving the written agreement would provide more support. The request is an expansion of a non-conforming use which in general those uses eventually are eliminated. This is unique in that this is not something that will cease. Prior proposals looked more commercial and were not on school property, but as they understand the arrangement if anything goes wrong the building will go to the District. If they are successful, the use will be school related, except for a few other uses that go on in school gyms everywhere. Schermann questioned how the Board should proceed if this is not a variance. Salkowski suggested the action be held over for Findings to be drafted. The Board is approving expansion of a non-conforming use based on the presentation and information provided, don't have to meet the criteria for a variance, but puts on record the reasons for approval. Those could be prepared by counsel and be ready before the next meeting.
- I. Kopff – in support of expansion of a non-conforming situation, this is school related and this is a unique situation. She would feel differently if this were a private company and would want assurance in the documents that this will go to the school and agreement is not just for 5-10 years but for the long term.
- J. Powers agreed to supply the documents and felt they will be satisfied that it addresses these concerns.
- K. Wagner – the runoff issues will have to be addressed. He would support the request. Salkowski stated the Planning Commission will be addressing the runoff control and details. Agrees they have to make sure there is no additional runoff on the neighbor and if they can improve the situation, all the better.

- L. Bauman agreed if they can have the agreement submitted and have the County Attorney draft Findings he could support the expansion. Schmidt concurred with those statements. He indicated the runoff should be addressed to make sure the issues are taken care of.
- M. Rhineberger – asked if the Board wants to see the agreements as written. Board members indicated they want to see the final agreements. Wagner – stated he is not able to review the legal aspect, but Wagner and Kopff indicated they should be submitted to the County Attorney for review.
- N. Schermann moved to continue the hearing to March 26, 2010 and direct the County Attorney to draft Findings for approval, subject to the applicant submitting the lease agreements to the County Attorney for his review. Bauman seconded the motion.

VOTE: CARRIED UNANIMOUSLY

4. **JACOB DESMARAIS** – New Item

LOCATION: 824 40TH Street SE – Part of E 1/2 of SE 1/4 & that part of the E 5.50 feet of W 1/2 of SE 1/4, Section 19, Township 119, Range 25, Wright County, Minnesota. (N. Fork of Crow River -Franklin Twp.) Tax #208-300-194403 Property owner: John Seemann

Requests a variance of Section 502.2 & 612 of the Wright County Zoning Ordinance to allow a 128 sq. ft. deck addition 50' from the Crow River and a new 7.5' x 18' entry (currently a covered deck) on the back side of structure.

Present: Jacob DesMarais and Lori Seemann

- A. Rhineberger reviewed the 16.3 acres on the Crow River. He pointed out the portion that is an oxbow of the river, but the flood plain elevation is the same as the main stem. The proposed setback for the 128 sq. ft. deck and conversion of covered porch into a mud room on the back side were reviewed. The setback from the main channel is 175' and 50' from the oxbow. Access to the property meets the flood plain elevation standards. The lowest floor of the house would have to be raised if the house were ever rebuilt. The new addition will be built to meet the requirements. Lot is heavily treed. Rockford Town Board responded that the applicant did not meet with them; but they are a neighboring township and applicant is not required to attend that meeting. Franklin Town Board approves.
- B. Construction plans were reviewed that include an interior remodel and moving a door. The main deck is to be moved for access. Response from Crow River Joint Powers recommends proper erosion control measures are implemented to avoid sediment entering the wetlands and eventually the river. Rhineberger did not expect there would be much disturbance. DesMarais indicated they only need to dig frost footings.
- C. DesMarais stated they are limited on what can be done because of the existing traffic flow within the home and a door that has to be moved to open up a full kitchen. On the front of the house they are not changing the footprint, just enclosing the covered porch into a mudroom.
- D. Bauman stated he could agree since there is no further encroachment on the river. Schmidt asked when the original house was constructed. Seeman indicated 1971. Schmidt agreed with the plan as long as they implement the erosion control suggested. Kopff indicated she does not have an objection to adding 135 sq. ft. of living space since the setback from the main stem is 175'. Wagner did not have an objection. There is no change to the shoreland, noting the river could do more damage to the structure than this would do to the river. The addition does not move closer.
- E. Schmidt moved to allow a variance to allow 128 sq. ft. addition on a house that is 50' from the oxbow of the Crow River and a 7.5' x 18' entry addition that is now a covered deck. Condition: Silt fence be installed to prevent any sediment from getting into the wetland or river. Kopff seconded the motion. VOTE: CARRIED UNANIMOUSLY

5. **JOHN B. MOTZKO** – New Item

LOCATION: 310 Common Street SE – S 1/2 of SE 1/4 of NW 1/4; and NW 1/4 of SW 1/4 and E 1/2 of SW 1/4; and SW 1/4 of SW 1/4, Section 31, Township 118, Range 25, Wright County, Minnesota. (Franklin Twp.) Tax #208-200-313400 & -313300

Requests a determination on the number of residential building entitlements (“1 per 40”) for the farm as regulated in Section 502.2 & 604.6 of the Wright County Zoning Ordinance.

Present: John & Danice Motzko

- A. Rhineberger reviewed the property location. The applicant is asking for an entitlement interpretation of the farm he purchased from his father. A map was displayed to show the three quarter-quarter sections and another half quarter-quarter (additional land was bought in 2003). Rhineberger used the map to explain how entitlements are calculated using that acreage. Based on this, there are a total of four entitlements. Two residential entitlements were taken out in the southwest corner of the farm, there is an existing house, leaving one more entitlement. The applicant asserts there should be one more. There have been discussions with Staff and it was decided he could pursue a decision on the entitlements rather than an appeal of the Administrator. He felt this gives the Board more latitude than an appeal. Copies of scanned images of the notes provided by the applicant were viewed. Motzko explained this was the paperwork he kept to keep track of the research. Rhineberger stated when the last Deed Restriction was drafted, signed and recorded; it states there is one remaining entitlement in addition to the existing house. Response to the notice included inquires from residents who were concerned the applicant might be developing the property. One written response from McKenzie indicated they hope the “1 per 40” density can be maintained. The Town Board did not make a recommendation, would not be opposed to leaving the decision up to the County.
- B. J. Motzko stated when he purchased the farm in 1980 his father had told him there were four entitlements. That was not his primary concern at the time because he was running the farm. Since that time his health changed and in the late 1990’s he started looking at what he had. Because of the road frontage needed and amount of low land, he bought the SW 1/4 of SW 1/4 that his Dad bought in 1981. He contacted the County about moving three entitlements to that parcel and was told he could. That is when he first took notes from that map (maps with applicant’s notes were displayed on screen) that said there were four entitlements including the existing house. He went ahead and purchased that 40 in 2003. He contacted Salkowski when he bought the additional land, the maps said he had four entitlements with the farm house; and a division was made. In 2005 he decided to sell the second lot off and met with Salkowski and discussed moving three over. He noted #313301 was the lot his Dad had sold off, that was off parcel #-313300 in 1986. That lot should not have counted against the farm because at the time, that was not part of his farm. He moved one of his entitlements over to that same forty. After that time he wanted to move a house the school built out for his daughter. When the County updated the notes they should not have included the lot his Dad sold off. He felt this was a mistake. Salkowski told him that he does not have enough acreage to qualify for four entitlements. He has been planning on this for a long time and thought he still had an

entitlement for his daughter and another to build his retirement home. He has always gone to the County first and this is what he remembers but now is told different.

- C. Schmidt stated he cannot make a judgment based on who said what. He has to look at the acreages and use the total. He did not see how they divided things how they could come up with another.
- D. Kopff tried to compare the half-section map the applicant provided to the County's map. She asked if the applicant re-wrote the notes. Motzko stated yes. She asked about the previous documents recorded. Rhineberger reviewed one dated in 1986 was on the SW 1/4 and another notarized and recorded in 2006. Kopff noted the original acreage of 138 acres with an existing house; and a division in 2005 and at that time there was a Deed Restrictions that states there is one entitlement with the existing farmstead. Her question is if he thought there were four why Motzko signed a document that said there were not. Motzko stated his interpretation was different. He assumed remaining entitlements meant new ones. He does not see the existing farmstead as an entitlement unless it was torn down. He was looking at the map before they updated the notes and it had said four each time he came to the County. He purchased the additional land in 2003. Kopff felt the only explanation she could perceive is that because the properties have the same last name. Rhineberger stated the notes made in 2005 which includes the calculations and the only way to transfer the entitlement was to include all of them. He summarized where the entitlements came from and were used. Kopff felt it is difficult and if they could establish that there was miscommunication I don't see anything concrete that establishes that. The acreage only accounts for three. She could not see another.
- E. D. Motzko asked if they see the three entitlements before they purchased it. Kopff explained that would include the farmhouse. Kopff felt the only reason it might have been said, is if it would have included the parcel to the southwest that they now own. Motzko stated he is basing this on meetings with the Planning & Zoning Office and stated he would not have bought that 40 acres if he did not gained an entitlement, the price he paid reflects that. He would not have sold one off to a stranger but saved it for his daughter. He should not be held accountable for that division when it was done before he bought it. He stated that he cannot prove why the map said four entitlements. As far as the deed restriction, he reads that to mean he has two entitlements, not counting the farmstead. Kopff stated if someone owns 40 acres with a house that would be the entitlement. The document states "including the farmstead" and in her mind is there to clarify it.
- F. Wagner asked if one of the first things Motzko stated was "his Dad said there was always four" and that was before he bought the other 40, and that was 138 acres. Motzko that is right, he is not asking for a variance but wants the Board to see that there was a mistake. Wagner felt Motzko, who is familiar with large acreages, should have known 138 acres would only give three entitlements. Motzko stated at the time he bought the farm he was not concerned with it. D. Motzko stated it has always said four. Wagner you are looking for a potential opportunity, and if a judge were to look at this, they would want documentation. The one thing we have is the Deed Restriction, and we are supposed to know what we are signing. He did not know that there is anything to support a change.

- G. Salkowski indicated they did not know where to go with this. He felt Motzko is honorable. There was a misunderstanding somewhere but cannot find where it originated. Salkowski felt it might be because John's father told him he had four and did not doubt that. In the best light for John's case; forget the forty that was restricted that he bought later. The only reason it mattered was because it had to be tied to the farm to move an entitlement over. Twenty-five years ago, it is possible someone said "I have three forties and a twenty, how many do I have?" If someone did not check the acreage, it could have been assumed the acreage was there. However, it was never documented and he has no way of knowing. The difficulty is when the Deed Restriction was drafted that might have been the time to sit down with John to make sure he knew what it meant. As it stands, the acreage is measured and it is clear. Because John felt strongly about this, Salkowski felt this should come before the Board for interpretation. If there were 140 acres we would not be having this discussion. Kopff questioned if the 20 acres to the north was short. Motzko stated it is one of the forties that are short. Salkowski stated they go by acreages and not legal descriptions. Kopff asked if it was the 20 added later. Salkowski, no it has been part of the farm.
- H. Motzko – noted Salkowski mentioned that he was going off what his Dad said. But, what he has been going off is what he was told each time he went up to the Planning & Zoning office. He always talked about moving three entitlements over, including the time he wanted to move one in 2005. Since the notes were moved over, now they question the acreage and he is just short. He has a lot invested in his planning. He did sign the deed restriction but interprets it differently; the existing house is not an entitlement, Rhineberger explained the Deed Restriction does not say remaining, it says there are two entitlements on the farm including the existing home. A house is counted as an entitlement.
- I. Bauman – he would have to base entitlements on the acreage. Schermann agreed based on the acreage they have the house that is there and one left. Motzko – asked if he was given wrong information all along. Schermann – could not determine what was there, but have to go by the law. They have weighed their opinions, but did not see where they could find more than one more in addition to the homestead. He indicated it appears the Board would turn down the request. The applicant has an option of withdrawing the request. Motzko asked if withdrawal leaves it open. Schermann – open to come back, but they would have to convince someone else. Rhineberger – a decision for denial can be appealed to a Court.
- J. Hearing the options, Motzko agreed he would withdraw the request. He was informed he would need to sign a form for the record.
- K. Schermann moved to dismiss the petition without prejudice at the applicant's request. Schmidt seconded the motion.

DISCUSSION: Due to the circumstances, Wagner asked if the applicant could be refunded a portion of the fee paid. Board members concurred and Salkowski with the costs incurred, there could be a refund of half of what he paid.

VOTE: CARRIED UNANIMOUSLY

Meeting adjourned at 11:00 a.m.

Respectfully submitted,

Barry J. Rhineberger
Assistant Planner

BJR:tp

Cc: Board of Adjustment
County Board of Commissioners
Zins
Twp. Clerks