

WRIGHT COUNTY BOARD OF ADJUSTMENT

Meeting of: March 26, 2010

MINUTES – (Informational)

The Wright County Board of Adjustment met March 26, 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. Tom Zins, Assistant County Attorney, was legal counsel present.

1. KEITH RAISANEN (DCRISC)- Cont. from 2/5/10

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: Kevin Dahlman, representing the Dassel-Cokato School Board; Jeff Powers, Superintendent of Schools

- A. Rhineberger indicated the hearing was continued for the County Attorney's office to draft Findings. Although the applicant has not received a copy of the Findings, he had discussed the conditions with the representatives of the School. Zins summarized the Findings, making special note that use is limited to "school" related activities, the conditions on the lease agreement and requirements of the SWCD and Planning Commission conditions as it relates to the drainage and land alteration. Dahlman indicated they are in agreement with those conditions.
- B. Schmidt moved to grant a variance to expand the non-conforming use and adopt the Findings and Order for Variance as presented. Bauman seconded the motion.

VOTE: CARRIED UNANIMOUSLY

2. **STEVEN R. METZLER** – Cont. from 2/5/10

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: Applicant not present

- A. Rhineberger announced the applicant called and is running late. Schermann indicated they would hold the matter over until the end of the agenda.

3. **SAMUEL T. SCOTT**- New Item

LOCATION: 10753 Grover Avenue SW – Lot 47, Terra Teresa, according to plat of record; and also Part of Gov't Lots 1 & 2 and part of the NE 1/4 of SE 1/4, Section 25, Township 118, Range 27, Wright County, Minnesota. (Victor Twp.) Tax #219-016-000470 & 219-000-254105

Requests an interpretation of Section 404 & 502.2 of the Wright County Zoning Ordinance as to whether the building entitlement currently used on lakeside (platted lot of record) can be transferred to the vacant back parcel that lies to the northeast (7 acres approved in 2006 to give the applicant property to build a storage building).

Present: Sam Scott, Clifford Lutz, Brad Radtke, Paul Clark, Rosa Lutz, Mindy Specket

- A. Rhineberger reviewed the location of the property. The applicant has a lot with a cabin on Lake Mary along with a seven acre lot created out of the Working farm in 2006 as a restricted parcel for a 4,000 sq. ft. storage building. Also, a request to rezone was denied on the Working farm in 1999. The current request is to take the cabin on the lake and move it back to the seven acre lot and rebuild. If approved, the lake lot would be restricted. Rhineberger noted the lakeshore lot is only 5,500-5,600 sq. ft., only about one-eighth of the lot area required for a new lot today. He reviewed the section of the Ordinance that allows the Board to adjust lot lines or allow something that makes it closer to meeting the Ordinance standards. The Board also has authority to make interpretations of the law and whether it fits within those criteria. A positive response was received from the Town Board. Schermann indicated he received a call this morning from a Supervisor on the Town Board who indicated the recommendation is withdrawn as they would like the applicant to attend their next meeting for further consideration. One favorable response submitted by Working was received. Rhineberger summarized the content of seventeen responses and an e-mail received in opposition to the request. He read the names of the respondents, including a representative of the Lake Association. (See written responses on file) The separate reasons listed include: would create second-tier development, something that the Land Use Plan does not condone; the current cabin and lot is not maintained; restriction on the back lot should not be lifted; want the nature of the area to stay the same; the Ordinance does not allow a transfer because the properties are not contiguous; potential for an entitlement to be moved back to the lake lot; would set a precedent that is contrary to the land use plan and there is no hardship as there are other unbuildable lots on the lake; leaving a non-buildable shoreland lot could open up lake use for other people.
- B. Scott – noted people have referenced two tier development, but that is not correct. His proposal would not add any additional residential sites, no additional traffic. He has the right to rebuild the house on the lake. He felt from an environmental standpoint, it would be a positive thing for the lake to rebuild on the back lot. He would either rebuild on the lake or few hundred feet down the road. He questioned why the neighbors would oppose a vacant lot on the lake, as he thought it would benefit everyone. He agreed the cabin is in rough shape, but did not want to put money into it without knowing what he could do. He would rather invest in back where he would have more space. There may have been some misrepresentation of his intentions by some people. He has no intention of developing the property, this is for his

own use and he has no plans to request any additional residential entitlements. He has an interest in his property as well as everyone else.

- C. Schermann stated he got involved when Scott talked with him about the proposal and in talking with the Administrator it was felt there might be an opportunity to consider this. What has come up since, is seventeen residents that are opposed and potential ramifications for the County. Zins is present to help address the situation. Schermann felt it is a good thing for the lake, but there are problems. The applicant can rebuild on the lake and there is nothing the County can do to stop it. If the Board were to allow this request, they would make certain the lake lot could never be built on.
- D. C. Lutz – stated he is directly south of the seven acres. He spoke with Rhineberger yesterday about the proposal. The division to split off the seven acres from the Working farm was for a restricted parcel. In 1999 the Commission denied rezoning for Working. Rhineberger had explained this division is not the same and is not spot zoning. Lutz stated if they are allowed to put a house back there it will impact the natural and wildlife area. He does not use any chemicals on his yard because he does not want it to run into the wetland. His neighbor, Brad, is planning to build a good distance to the north and he does not have a problem with that because it was an agricultural entitlement. Scott is planning to build a new home, but it would not be the same as lifting the cabin and setting it on the back lot because it could be much larger. Lutz stated he is primarily concerned with the impact to the environment. Rhineberger had indicated yesterday, if Bakeberg is willing to sell land to allow the road to be moved back and expand the lake lots, the Board would support that. Lutz asked what the lakeshore lot would look like if the house is moved off. Scott stated there would be no cabin and would be lawn. In response to Lutz, he indicated he has not applied weed prevention chemicals and did not know he would in the future. Lutz – referred to the DNR information discourages weed prevention and sand blankets. He noted the area in back is a wildlife area that should be preserved.
- E. Brad Radtke – referred to Section 502.2 which outlines written notice must be sent to property owners. He did not receive notice and he was told of the meeting four days ago. He understands he should have had ten days to prepare for the meeting. Rhineberger – stated he has spoken with Radtke about that. Radtke stated his request to push this meeting off to give more time was denied. Radtke – stated he has other points he would like to address. Scott is a real estate agent, appraiser with Washington County and recently took a position on the Planning Commission for Arden Hills. His point is that Scott is educated in the area of real estate and knows what he is doing. The hearing is on Section 404 that requires, road frontage, a minimum of 20,000 sq. ft. and this lot is well below that. The County ordinance states that if a holding tank is the only available form of sewer treatment, the structure cannot be improved more than 50% of the value of the original structure. Rhineberger has told him the State allows exact replacement. The tax records show Cronky was the previous owner at which time the land was valued at \$108,000 and 2006 it was \$124,000. In 2006 Scott received an adjustment on his taxes that reduced the value to \$55,000-\$60,000. If the assessed value is what it should be, using the 50% allowed for improvements, he would have about \$30,000 to fix up the property, on a holding tank. He is in agreement a larger home and sewer system makes sense if he moves the entitlement across the road; but there is no percolation test to prove the sewer up

and that information would have to be provided before a decision is made. Regarding Section 502.2, his understanding is that it addresses a hardship. He felt Scott has created his own hardship by having the value of the lake lot reduced.

- F. Schermann – noted the value of the assessed cabin is not valid anymore in light of the new State statute. If he rebuilds in the same footprint, it is allowed. Rhineberger – explained the State rule that allows improvement, alteration and rebuild as long as it does not get any larger. Radtke – stated he is not saying the applicant cannot repair or rebuild the lake cabin. The entitlement transfers under Section 604.6 that states he cannot transfer entitlements between non-contiguous properties. The request does not comply with that section of the Ordinance. Regarding the Working property, Scott has that on a contract for deed. He asked if the reason for the value is because of the zoning. He questioned if the property has to be rezoned to get the entitlement moved there. Scott has not paid his back taxes. Schermann and Rhineberger indicated that has now been taken care of. Radtke – did not think it would be in the best interest to allow the variance, the applicant does not have a hardship and this would not benefit the County.
- G. Clark stated he has known Scott for ten years and can speak to his character. His main concern is a variance to the Ordinance or an exception that could impact the future and open up second-tier development around the lake. He has no concern about Scott building on the acreage because he felt Scott would be respectful of the land. He felt it would be up to the Board to interpret the law and whether he can use the residential building right in back. He is opposed to small second-tier lots, unless they are ten acres.
- H. Rosa Lutz – asked the Board to consider the best interest of the community. She did not believe this proposal is, she felt it would impact their right to privacy. This would open the door to many other second-tier lots.
- I. Mindy Specket – the Board had placed a restriction on the seven acres and now he is asking they lift that. Schermann –if allowed, there would be no residence on the lake.
- J. Zins – reviewed where the petition started under the Board of Adjustments authorization, Section 502.2. The Board can review lots of record or make an adjustment, or move in other ways to more nearly achieve the standards of the Ordinance. It is the Board’s decision whether a variance should cross district lines. An argument could be made that this more nearly meets the Ordinance by moving the building site off a tiny lot and away from the lake, although it has not been done. The Board has allowed adjustments, crossed district lines, to go across the road to add land for sewers and has been done in the spirit of improving a lake situation. This action has allowed space for sewer and sometimes storage buildings. This Board has some leeway to interpret the Ordinance. The other side of it, they are going into the AG district with the right to live on the back lot and looking at 604.6 of the Ordinance that allows the BOA to say where homes are; but cannot create extra entitlements. Just looking at the AG district, it says they cannot create additional building sites in that District and that could be used as a legal argument. The original lot was allowed for a shed and now they are being asked to look at the “practical difficulty”. Zins stated they cannot look at that in this case because it would be a “practical difficulty” on top of another. The other argument that could be made is that

they are making a situation better by moving a house off the lake. On the other hand, moving the house to the back opens up future requests of moving entitlements much further away in the AG zone. He questioned how far they can go to improve the lake. If the Board grants this there would have to be iron-clad guarantees, determine the lake lot is unbuildable, the applicant has to agree to that and something recorded so all potential buyers are put on notice. However, this does not prevent future owners from coming back and asking to build. In this case, we know this lot is encumbered by a mortgage and the bank has to be involved because of the impact to property value of the lake lot. Those assurances would have to be given to protect the County's liability. As Rhineberger has noted, we have not done this in a non-contiguous situation.

- K. Schermann – indicated they would continue the hearing to give the Town Board time for further review. He would like to see a letter from the mortgage company to indicate whether they are willing to let the entitlement be moved to the other lot. The contract has to be up to date so there is no default on that.
- L. Kopff – she felt the previous action in 2006 for the seven acre restricted lot for a storage building sets them up for this. Her first reaction was that it would clean up a small lot by getting the house off the lake and clears up two negatives, one an irregular seven acre lot and a house on the lake gets taken down with less stress on the lake. In terms of the Ordinance, two zoning districts and non-contiguous lots sets the County up with a difficult precedent to go forward. She might feel differently if the seven acres were directly across the road and they could require that the entire property be re-platted to make sure it stays under common ownership, never gets sold separately and avoid a precedent for moving entitlement to non-contiguous lots. She did not feel they should set up a situation where they have a small sliver on the lake that may or may not stay in common ownership. That 5,000-6,000 sq. ft. could become part of another residential lot and then added into their equation for building a larger structure on the lake. At this time she is not comfortable approving this, and if they give it more consideration she would like to see the site to make sure she is not missing something.
- M. Wagner – the information they have is the seven acres has not been farmed for a long time. He asked if there are wetlands. Rhineberger stated there are some in back, there is some elevation. He has not walked the property and does not have any elevations on it. Wagner – the comment on percolation tests, would have to be conditional. Rhineberger – stated that is a requirement for any residential division and they must prove up two sewer sites. He has discussed this with the applicant, he did not ask for the information until they get some indication from the Board. Wagner is a lake owner on Cedar and does not agree that maintaining a 50 foot substandard lot is good for the environment. His first reaction was that it is a great idea to move a residential site off the lake to the back. He understands the concern about over use of the lake access lot, but there are some rules in place to protect homeowners on that kind of use. The issue of the financing, he would not take action until the County is satisfied that Bank has signed off. He does not want the County to end up in Court over moving value off the lake lot if there is a default. He is not concerned with the second-tier development because there are ordinances that will prevent that. As much as he would like to get the home off the lake, he is concerned about the lot that has financing and setting a precedent.

- N. Bauman – stated in essence the Board is creating a buildable lot, has not been rezoned and could not agree because of the precedent it could set for other parcels that exist around the lakes.
- O. Schmidt – the requirement for contiguous lots is a big issue and how far someone might want to extend that in the future. If they allow this they would open up a new issue. He felt they have to hold to the requirement that transfers can only be moved to contiguous land. The applicant has the right to rebuild his cabin and can remain on the holding tank. He felt they should continue to give the Town Board more time to consider the recommendation.
- P. Schermann indicated he would have to concur with the concerns expressed by Kopff that it is a good idea to get rid of the house, sewer and well on the lake; but, there are too many problems, financial situation that the County could be liable for. As far as moving to the backlot, it could be rezoned some day despite what people want. The Board could limit it to just one house back there and no house on the lake. Zins agreed with Bauman it could be in fact considered “defacto” rezoning and that seems to be the sentiment of the Board.
- Q. Bauman suggested they continue this until April for Township reply and give the applicant time to provide further information. Zins asked where they are within the “60-day rule”. Rhineberger stated they have until May. If the bank signs off he asked if that changes their opinion. If they continue and this information does not change their mind, they may need to continue another time for findings. Schermann wants further time to review. Kopff felt the precedent issue is too great to say if the Bank signs off she would vote in favor.
- R. Schermann – asked if the two lots could be put in common ownership. Salkowski felt between the Board action and something the attorney’s might draft, they could tie the properties together. The bank has an interest in the lake lot and they should know whether they are willing to go along with this. If they don’t and there were a foreclosure they will be coming after the County for loss in value. He agrees it may be nice to clean up the small lake lot. He agreed it would be nice if they were contiguous; but, suggested they take more time to see if there is a solution. Schermann – asked if the County Attorney could tell them that these two could be joined under common ownership. Salkowski explained they would have to be signed agreements and would have to be recorded to put future owners on record they have to stay together. Schermann asked Kopff if these documents are provided and they have approval from the bank, would that change her mind. Kopff asked how they would treat the next request. She would like to see it, but there are many similar lots around the County and the Board might have requests every month to create five acre lots off the farm field to get the house off the lake. She did not know how they could support this, unless there is something unique about the seven acre lot. Wagner felt if there were common ownership and the bank holds common financing there might be a way to find this unique. The positive is to get the home off a 5,000 sq. ft. lot and put it in a better setting. Bauman – he still cannot agree on the non-contiguous ownership even if they have common ownership. This will set a precedent that could overwhelm the Board. Schmidt – agreed with Bauman, future owners will get a small residential lot on a lake and think they can now build their mansion by picking up ag land. Schermann suggested they continue the hearing.

- S. Scott – indicated he would agree to a continuation. The financing is not a problem and he can pay off one of the loans and get one financial agreement on both properties. The argument for setting a precedent, he felt it is absurd to think they would move entitlements from one township to another. He questioned why one township would give up that value to another.
- T. Schermann asked if Salkowski and Zins could work on a legal document that would address keeping the two parcels under common ownership. Zins stated those can be included in the conditions and recorded. However, in the long run whether that holds they don't know. The other issue is precedence and absurdity of distance to another township, and the Board is creating an exception to the rule and would have to explain the reason it is being done and how this one distinguishes it from future request. If the Board goes there, they can work on the language, but there are no guarantees.
- U. Rhineberger – if they continue this for assurances from the Bank, township response there is still the issue of the tests for the sewer. Schermann – agreed if the decision is favorable, they would ask for those tests. Rhineberger – noted added continuances extends the time frame. Schermann felt it appears from the consensus at this time, it is not looking favorable for the applicant. Scott – asked if the request is turned down whether the Board is advocating a replacement on the 50' lot. Schermann explained that is what the law would allow. Zins felt the environmental arguments sound good, but this Board has to consider the long-term impact. Scott asked how often the Board looks at the financial end. Zins stated not often, however, the County is involved in a law suit at this time.
- V. Schermann moved to continue the hearing to April 16, 2010. Kopff seconded the motion.

VOTE: CARRIED UNANIMOUSLY

DISCUSSION: Board members were polled on whether a site inspection would be helpful. Wagner, questioned delaying a decision and did not think a site inspection will help. Kopff indicated a site inspection does not address the environmental impact, because it is not just shoreland lots that impact the lake. If others would like to see the site she is willing go along.

- W. Schmidt moved to set a site inspection prior to the next meeting. Schermann seconded the motion.

VOTE: CARRIED, Wagner opposed

2. **METZER** - Cont. from earlier on agenda

Present: Steve Metzger

- A. Rhineberger summarized the reason for the continuation was to give the applicant time to revise plans. The Board asked that the portion that further encroached on the lake setback be removed. Town Board approval was received. The new plans were reviewed by the Town Board and . The first plan was reviewed for comparison to the new 12' x 36' four-season porch moved to the north end of the house 73-74' from the ordinary high-water mark of lake. The entry is still part of the request and is 7.5' x 12'. Rhineberger noted he missed an expansion of the house that is infill and the two areas were noted. The foundation and floor trusses are there on the one side and the other infill is a covered deck on posts. The additional footprint adds up to 140 sq. ft. The second-story addition is still part of the plans. Board members had expressed concern how a second-story might impact views from the lake. The Town Board notes that the applicant could move the house 9' back and build whatever he wants. Applicant has submitted several pictures of structures in the area as well as a picture taken last summer to show the amount of tree cover that buffers the view of the house from the lake.
- B. Wagner questioned plans for a deck lakeside. Noting any new deck or further encroachment would require a separate variance. Metzger stated he wants to keep the deck where it is. Rhineberger stated the applicant is allowed to replace the deck as long as it is the same footprint. Rhineberger informed the applicant plans should not include a door off the second story toward the lake. Wagner explained a recent lake setback on another lake was denied for a deck because it would further encroach on the setback variance given a couple years ago . He supports the revisions the applicant has made since the last meeting.
- C. Bauman indicated he had concerns with the second-story, but if it fits into the neighborhood he would not object. Also, the bedroom in the basement would have to be eliminated. Rhineberger explained if they count the rooms that could be used for bedrooms, they would have five. The sewer is sized for a four bedroom home. He talked with the applicant who indicated the closets in a room identified as a "music" room could be removed. To be able to use the bedroom in the basement he would have to install the proper ingress/egress window.
- D. Schmidt felt the applicant has addressed the concerns he had. The trees on the shoreline would buffer a second-story addition.
- E. Kopff stated the trees on the site and nature of the lot is why she would go along with the second story.
- F. Metzger asked if the entry is acceptable. Rhineberger used the plan to show how the building lines would extend, staying in line with the house from the lake at 68-69'. Wagner indicated he would not argue over that, noting the applicant could move back 9' and there would be no review. Rhineberger noted the entry is further back from the lake than the closest corner of the existing house.

- G. Wagner moved to grant a variance of Section 502.2 & 612 of the Wright County Zoning Ordinance to allow an entry that will infill a portion of the existing structure and be 68' from the lake; allow construction of a 12' x 36' four-season porch on the north side of dwelling 73' from the ordinary high-water mark of lake and a 1,142 sq. ft. second-story addition over the dwelling that is 66' from the ordinary high-water mark of lake at the closest point and 18' from the bluff. Construction of a 7.5' x 12' entry addition is allowed at 68' from the ordinary high-water mark because it is in line with the existing foundation. Condition: Accessory structures must not exceed 2400 sq. ft.; the dwelling can have a maximum of four bedrooms and one non-conforming bedroom would have to be removed. Kopff seconded the motion.

DISCUSSION: Kopff suggested reasons and condition on the tree cover be included.

Wagner amended his motion to include: Reason: The second story is allowed because there is adequate tree cover and heavy vegetation that shields the structure from the lake and said trees and cover must be maintained. Kopff amended her second.

VOTE: CARRIED UNANIMOUSLY

MINUTES

On a motion by Wagner, seconded by Bauman, all voted to approve the minutes for the March 5, 2010 meeting as printed.

SITE INSPECTION

Board scheduled a site inspection for Friday, April 9, 2010 at 8:30 a.m.

Meeting adjourned at 10:25 a.m.

Respectfully submitted,

Barry J. Rhineberger
Assistant Planner

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