

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
NOVEMBER 27, 2006

The Goodhue County Board of Adjustment was called to order at 7:00 p.m. by Chairman Brad Anderson in the Goodhue County Justice Center located at 454 West Sixth Street in Red Wing, Minnesota.

Present: Stanley Klair Brad Anderson Dennis Monroe Judy Fritzingler Mike McKay
 Randy Juliar Mike Wozniak

Absent:

¹Motion by S. Klair seconded by J. Fritzingler and carried to approve the November 27, 2006 Board of Adjustment Agenda. Motion carried 6:0.

M. Wozniak stated that there were some names abbreviated that would be amended to state the full names.

M. McKay said that it should be jump ball instead of junk ball.

²Motion by J. Fritzingler seconded by D. Monroe and carried to approve the October 23, 2006 Board of Adjustment minutes as amended. Motion carried 6:0.

Staff Updates: L. Hanni said the zoning technician position closed today. The new administrator will start January 8th, Scott Arneson from Aiken County. Would it be possible for this board to meet an hour earlier? Five would be best, six would be ok.

C/B. Anderson said that the earliest he could make it would be 6:30.

L. Hanni clarified that they can try it out in January for 6:30 and see how it goes.

M. Wozniak said that Allen Most will be proposing a change of zone and subdivision and would like to extend an invitation for County officials to go on a site visit to the property. It will probably be a late afternoon so they could still have some daylight to drive and walk the site.

C/B. Anderson asked if this has come to the township.

J. Fritzingler said that they are looking at it at their Planning Commission.

Conflict/Disclosure of Interest: None to be discussed.

Ray Matthees –

M. Wozniak presented the staff findings as follows:

Raymond Matthees is making an appeal to staff's decision that the property in question did not qualify as a replacement building site location according to Article 2, Section 2 Subdivision 31 of the Goodhue County Zoning Ordinance. Mr. Matthees is also requesting a variance to replace that dwelling on a different location on the property rather than in the vicinity of the original dwelling location.

Background

Mr. Matthees states that there was once a dwelling located on this property, but the last remnants of it were buried last year. Attached is a letter from Jason Fitzgerald which states he buried the evidence of the building site. There is also evidence from 1938, 1951, and 1991 aerial photos that there was a building site in that location. It is also apparent a farmyard was present in the 1976 soil maps.

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For a location to meet the definition of a replacement site it needs to meet two of three criteria: 1) existing farmyard, 2) standing outbuilding, 3) existing dwelling or foundation. This property does not have any physical evidence of the above definition.

Goodhue Township has indicated that they support the request.

The intent of re-building replacement sites in the same location is to prevent a person from coming in at a later date and trying to get a replacement site again. The applicant has stated that the reason for moving the site to the other side of the property is because that is the poorer agricultural land. Attached is an enlarged copy of the soils map indicating the proposed location is on lower soils than the possible original location.

Findings of Fact

In the following findings of fact “1” will represent the appeal that this qualifies as a replacement site and “2” will represent the variance to move the replacement site to the other side of the property.

- Subd. 1. In exercising its authority to review any order, requirements, decision or determination made by any administrative official, the Board shall not grant any appeal or variance unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:
- A. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
 - 1a. **There is an overwhelming amount of aerial photographs that support the fact that there was once a building site in this location.**
 - 1b. **There is written evidence from the person who claims to have buried the physical evidence of the replacement site.**
 - 2a. **The proposed new location is on a knoll and is the poorer of the agricultural land. The soil maps rate the land slightly lower than the original location.**
 - 2b. **Since there is no evidence of the original location and it is by public hearing and record that this site has to be determined a replacement site, the chances of the applicant being able to circumvent the ordinance and get an additional building site would be very rare.**
 - B. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant, and that the granting of the variance will not alter the essential character of the locality.
 - 1 & 2. **There are no issues with this section.**
- Subd. 2. In the case of variances, they shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control.

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2. **The applicant would like to replace the building site on the poorer agricultural land and avoid digging up the items that were previously buried. This property is zoned A-1 which is the Agricultural Protection District. Protecting the higher quality agricultural land is consistent with the intent of the official controls.**

Mr. Matthees stated that he has four pictures of the building site. He has a 1914 plat map that shows where the building site was. He also has a newer one with the whole 40 on it. He said in the 1951 photo they had a clay pit in the back and they leveled that off. The county also bought land for the county road. Where the lighter sand is on the 2005 photo is where he would like the site moved.

D. Monroe asked how many acres the site is.

Mr. Matthees said that it was a complete 40 acre parcel.

S. Klair asked if they would be selling off a parcel.

Mr. Matthees said he would be selling the whole thing.

R. Juliar clarified that they were selling the ten acre corner.

Mr. Matthees said no, they are selling the whole thing.

C/B. Anderson opened the public hearing.

Jerry Tipke said that his concern is not the replacement site; they know that it was there. If they move the site there is no control. If they allow the site to be moved it could be within 100' of his property line. He isn't very keen on a house being that close to his property line. There are sandy soils in that NE ¼ that they could move the dwelling around with in the corner and still be on the lower soils.

With no public comment J. Fritzinger motioned and D. Monroe seconded to approve the closure of the public hearing. Motion carried 6:0.

R. Juliar stated that he went on the site visit and said that he was concerned with the driveway where the dwelling would be located on the knoll. It would either require substantial fill involved or a steep driveway.

D. Monroe asked how many feet the proposed site is from Jerry's property line.

L. Hanni said we haven't received a building permit on it yet. The minimum would be 100'.

³Motion by R. Juliar and seconded by M. McKay to approve the appeal that this location qualifies as a replacement building site. Motion carries 6:0

D. Monroe stated that it is a little less productive according to the soil map.

M. Wozniak read again from the report regarding moving the location.

D. Monroe asked what the hardship was.

M. McKay stated that the two hardships he has heard regarded digging up the remnants of the old house. The second would be the slightly poorer agricultural land.

⁴Moved by D. Monroe and seconded by R. Juliar to deny the variance to move the replacement site based on not seeing a substantial hardship. Motion carried 6:0.

Roy Hakala –

M. Wozniak presented the staff findings as follows:

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Staff Recommendation: Staff recommends that the Board of Appeals and Adjustment take action to uphold the issuance of a Land Use/Land Alteration Permit on September 26, 2006 to permit grading of the property of Eric Stelter (East Portion of Lot 1, Block 1 Hidden Valley Addition. Further it is recommended that this action by the Board be based on the "Findings of Fact" included in this report.

Background Information:

The subject property is situated on Bay View Drive in the Hidden Valley Third Addition subdivision in Wacouta Township. Mr. Stelter subdivided Lot 1 in 2005 to create an additional Buildable lot which is approximately 120 feet wide and 670 deep. The property is situated on the top of a bluff overlooking the Mississippi River.

Zone District: The subject property is situated in a residential subdivision situated in the County's R-1 (Suburban Residential) District. Mr. Stelter's property conforms to the lot size and width standards for the R-1 District.

Shoreland Management Area: The subject property is situated within the Shoreland Management Overlay Zone which extends 1000 feet from the Ordinary High Water Line of the Mississippi River. The property is situated on a stretch of the Mississippi River that is located within U.S. Lock and Dam Pool No. 3 and is considered a *General Development Lake* for Shoreland Management purposes. Residential lots for single family homes that are riparian (abutting the water) must be a minimum of 20,000 square feet in area and 100 feet in width. Mr. Stelter's property exceeds this requirement.

The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones requires issuance of grading permit unless associated with a building project for which a building permit has been issued. Following a meeting with Wacouta Township Officials and Mr. Stelter in May 2006, Mr. Stelter applied for a Land Use/Land Alteration permit to grade his property in order to comply with the following definition from Article 2, Section 2, Subd. 62, paragraph A. of the Goodhue County Zoning Ordinance:

- A. Lot Area Buildable.** That portion of the lot remaining after the deletion of any floodplain, road rights-of-way, wetlands, slopes of twelve (12) percent or greater; conversely, a lot capable of meeting the requirements of this Ordinance including the provision of adequate area for the installation and maintenance of on site sewer and water facilities.

Mr. Stelter's initial grading permit submitted on May 22, 2006 was denied based on several issues relating to the need for more information and the need to address how the grading would match up to the existing grades on abutting properties. A subsequent grading permit application submitted on July 5, 2006 was also denied based on several issues the most significant of which related to concerns over the proposed removal of over 3,000 cubic yards of material (soil) from the property. On September 26, 2006, a Land Use/Land Alteration Permit for Mr. Stelter's property was approved. The approved plan balanced proposed cut and fill and addresses the matching up of existing grades of abutting properties and right-of-way through the use of retaining walls. The approved Land Use/Land Alteration Permit has been challenged by an abutting property owner, Roy V. Hakala, through an appeal to the Board of Appeals and Adjustment. The Goodhue County Zoning Ordinance Article 23, Section 6, Subd. 11., provides authority for the Board of Appeals and Adjustment to decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with any provision of the zoning ordinance.

Applicant's Grounds for Appeal: Roy V. Hakala resides at 29939 Bayview Drive on the lot immediately abutting Eric Stelter's property to the south. His application includes a list of eleven reasons why the Land Use/Land Alteration Permit should be denied. Staff will address each of these reasons below:

1. Removal of the volume of material to grade the lot areas would create an unacceptable Impact on township roads.

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Staff Response: The proposed grading plan balances cut and fill and therefore would not require removal of any significant volume of material from the subject property.

2. The plan for disposal of removed fill is inadequate.

Staff Response: Again, the proposed grading plan balances cut and fill and therefore a plan for disposal of removed fill is unnecessary.

3. The grading plan is insufficient to show the contours and how they match with the Neighboring property.

Staff Response: The grading plan does provide adequate detail by indicating how existing contours on abutting properties will be match either by grading to match or through the construction of retaining walls.

4. The proposed retaining walls will have a severe adverse impact on the neighboring property.

Staff Response: It is the opinion of staff that the proposed retaining walls will have minor or no impact on abutting properties. The retaining wall to be constructed along the south lot line (abutting the Hakala property) will range from 0 – 4’ in height with most of it in the 2-3’ height range. The retaining wall along the north lot line, the road right-of-way and the driveway will range from 0 – 6’ feet in height. Retaining walls have been utilized on many properties in the R-1 Zone District to help property owners address significant grade changes on their properties.

5. The lot which is proposed to be graded for the site of construction of a home is not buildable. A home, driveway, septic system and other improvements cannot be designed to fit on the portion of the lot that is defined as buildable.

Staff Response: Mr. Stelter has submitted a Certified Survey identifying 20,071 square feet (0.46 acres) of site area located between the Right-of-way of Bayview Drive and the top of the bluff.

6. The proposal is not consistent with portions of the Goodhue County Comprehensive Plan. Among others: Policies 2, 3, 5, and 7 of Goal 1: Preservation of the Natural Environment of Element 1; and Policies 1 and 2 of Goal 1: Environmental Systems of Element 3.

Staff Response: The Hidden Valley Third Addition is an established subdivision and the area that would be impacted is limited to 20,000 square feet that was previously part of a platted lot. The environmental impacts associated with constructing a home on the subject property would be negligible and would not rise to the level of being inconsistent with the above referenced Goals and Policies of the Comprehensive Plan. In fact, approval of the variance versus implementing of Mr. Stelter’s approved grading plan would reduce overall site impact and allow some of the existing vegetation on the site to be retained.

7. The application is inconsistent with the considerations and conditions for the issuance of permits set forth in Article 17, Section 11, Subd. 2. D. of the Zoning Ordinance, including the requirement that alterations of topography shall only be allowed if they “do not adversely affect adjacent or nearby properties.” Clearly, the adjacent and nearby properties will be adversely effected. The applicant’s plan contains incomplete and uncertain erosion control provisions.

Staff Response: Land Use Management Staff in reviewing the third submittal of the Land Use/Land Alteration Permit Application of Eric Stelter determined that the impact on abutting properties would be very limited. The permit was approved subject to both implementation of erosion and control measures proposed by Mr. Stelter (see enclosed letter from Eric Stelter dated May 22, 2006 plus additional requirements recommended by the Goodhue County Soil and Water Conservation District which may be found on the September 26 letter (enclosed) from Planner/Zoning Administrator, Michael A. Wozniak, AICP, which authorizes approval of the Land Use/Land

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Alteration Permit. It is the opinion of staff that erosion and sediment control measures are more than adequate to address potential impacts from the proposed grading activity.

8. The property does not contain twenty thousand (20,000) square feet of buildable area. It runs contrary to the stated language in the zoning ordinance, as well as the spirit and intent of the code, to grant to a person a permit to grade property, to create buildable area where such areas does not exist. This is particularly true in light of the fact that the lack of buildable was created by the landowner.

Staff Response:

Goodhue County has not been administering the "Lot Area Buildable" requirement that requires 20,000 square feet of lot area at grade of less than 12 percent. There may be a variety of reasons why this standard has not been administered and they included the following:

- Until the recent available of two foot contours county-wide, the County did not have accurate topographic data to make such a determination.
- The County does not mandate the submittal of Certificate of Survey that indicates both horizontal and vertical placement of a home and also that would indicate the area of the lot that would comply with the "Lot Area Buildable" standard.

The "Lot Area Buildable" standard was raised during the Wacouta Township review of Mr. Stelter's Building Permit. Once this Zoning Ordinance was brought to the attention of County Staff it was determined that Mr. Stelter must either comply with the requirement or seek a variance. However, it is the opinion of Land Use Management Department Staff that the County should consider amending the zoning ordinance to remove this requirement. Any consideration to that end should be undertaken independent of consideration of this appeal.

Other property owners in the vicinity of Mr. Stelter's property and elsewhere in the County have not been held to the "Lot Area Buildable". Other homes located on the abutting lots and other lots on Bay View Drive appear to have been constructed with minimal grading to avoid disturbing the natural grade to the greatest degree possible, however they have clearly been permitted to grade (for example: to construct walk out style homes in some cases). The Zoning Ordinance does not state that property may not be graded in order to comply with the requirement for having 20,000 square feet of buildable area at less than a 12% grade.

9. The excessive grade prohibits the activity requested by the application. Goodhue County Subdivision Controls Ordinance Section 6 Subdivision 7-C provides: "Slopes in excess of eighteen (18) percent natural grade shall not be graded, excavated, cleared of vegetation, or developed." The riverside slope of the Stelter property is in excess of eighteen percent, as shown on Mr. Stelter's own map. This grade also is the natural grade of the property, as visible on topographic maps dating back to 1974, well before any development occurred in the area.

Staff Response: It has been the County's practice to administer the subdivision ordinance requirements for grading when the initial subdivision occurs; when road right of way, infrastructure and rough site grading occurs. Section 6, Subdivision 7-C is not administered as site grading is proposed in conjunction with individual home sites to facilitate building projects. Mr. Stelter submitted a revised survey dated 10/10/06 (enclosed) which illustrates existing grades on his property.

10. No excavation can be allowed because the property is in a Bluff Impact Zone. Minnesota Rules Section 6120.2500 Subp. 18c defines "Top of bluff" to mean "the higher point of a 50-foot segment with an average slope exceeding 18 percent." By these rules (which the Goodhue County Ordinance states must supersede both county and township definitions) the true and legal definition of the bluff's edge is several feet back from the line shown on the applicant's drawing. When Wacouta Township's required thirty-foot setbacks is applied to

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this bluff edge definition, a substantial portion of the property must be deducted from the buildable area. The remaining areas within the setbacks on the applicant's property are only 7,776 square feet, and all of it is on a grade of greater than twelve percent. This property contains no buildable area.

Staff Response: Staff has consulted extensively with Bill Huber, Area Hydrologist with the Minnesota Department of Natural Resources regarding the interpretation of the above Minnesota Rules Section 6120.2500 Subp. 18c. The State of Minnesota has delegated the authority for the regulation of Shoreland Management to local governments. Local governments such as Goodhue County are required to adopt Shoreland Management regulations that must be reviewed by the DNR before being implemented. Our Goodhue County Zoning Ordinance included a definition for "Top of Bluff" in Article 4 (Bluff Land Protection), it reads as follows:

Section 1, Subd. 4:

TOP OF THE BLUFF. The point on a bluff where there is, as visually observed a clearly identifiable break in the slope, from gentler to steeper slope above. If no break in the slope is apparent, the top of the bluff shall be determined to be the highest end of the highest fifty (50) foot segment that exceeds twenty (20) percent slope.

In the case of the Stelter Property to top of bluff was clearly demarcated when the property was surveyed when the home was constructed before the Lot 1 was subdivided by Mr. Stelter. However, on site a break in the slope is clearly evident and it is also evident by the wood line that separates the forested bluff from the areas cleared for the home sites when Hidden Valley Third Addition was originally subdivided. Also, the Goodhue County Zoning Ordinance utilizes a twenty (20) percent slope over the highest end of the bluff to define area should be identified as "Bluff" and clearly the thirty feet of Mr. Stelter's property closest to the top of the bluff (from his survey) does not exceed 20 percent slope.

The Lot Area Buildable definition (Article 2, Section 2, Subd. 62) clearly does not say that building setbacks shall be included. County Attorney, Steve Betcher has reviewed this matter and concurs with this position.

11. The property is within a Bluff Impact Zone which prohibits the proposed excavation. Minnesota law defines the property as "Shoreland". State Shoreland rules apply within 1,000 feet of the water, which includes the property. Minnesota Rules 6120.2500 Subp. 1c then define a "Bluff Impact Zone" as "a bluff and land located within 20 feet from the top of a bluff." Rule 6120.3300 Subp. 4-B (8) states "Fill or excavated material must not be placed in bluff impact zones."

Staff Response: Article 2, Section 2, Subd. 10, includes the following definition for Bluff Impact Zone:

Bluff Impact Zone: All of the land lying between the top of the bluff and the toe of the bluff.

Again, Staff has consulted extensively with DNR Staff regarding this matter. Goodhue County's Zoning Ordinance takes priority over the language in DNR Rules because the DNR allows some flexibility in how local governments regulate the Shoreland area. Many years ago the County's Shoreland Regulations did define Bluff Impact Zone to extend 20 feet back from the top of a bluff. However, this definition was changed during a major amendment of the Zoning Ordinance in 1991.

The proposed grading plan is consistent with the County's Shoreland Management Regulations which have been reviewed and found acceptable by the DNR.

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Findings of Fact:

Goodhue County Zoning Regulations, Article 17 (Shoreland Management Regulations), Section 11 (Shoreland Alterations), Subd. 2 (Topographic Alterations/Grading and Filling), Paragraph C., requires the issuance of a grading permit for the movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.

County Planner/Zoning Administrator, Michael A. Wozniak, AICP, on behalf of the Goodhue County Land Use Management Department issued a Land Use/Land Alteration Permit to conduct site grading to prepare Mr. Stelter property (the east portion of Lot 1) for construction of a home. This permit was issued on September 26, 2006 and was subject to compliance with the following conditions:

1. Grading and required erosion/sediment control measures shall be completed according to the grading plan (Drawing Number S-3733) as revised on September 12, 2006 (see attached copy). Erosion and sediment control shall be completed according to provisions included in your letter dated May 22, 2006 (attached) and according to the following recommendations from the Goodhue County Soil and Water Conservation District: the area to be graded shall be seeded and/or mulched (straw) within 48 hours of completion of grading work. The recommended seeding specification is rye, wheat, or oats at a rate of about 1 ½ to 2 pounds per acre.
2. The Goodhue County Zoning Administrator shall be notified when grading work is to begin and upon completion.
3. Any grading activity on abutting properties shall occur only with the permission of the affected property owner.
4. Grading work must be initiated within one year from date of issuance (September 26, 2006).

The issuance of the September 26, 2006, Land Use/Land Alteration Permit to Eric Stelter for his property in Hidden Valley Third Addition is in conformance with requirements established in the Goodhue County Zoning Ordinance. Further the permit is consistent with the requirements established in Minnesota Rules regarding Shoreland Management and is consistent with the intent of the Goodhue County Comprehensive Plan.

Mr. Hakala said that he is not the sole complainant and has a petition signed by the entire neighborhood opposing this project. He introduced Brian Alton, the neighborhood's attorney.

Brian Alton stated that there are several reasons why the grading permit should not be given and that the board should find error in decision to grant the grading permit. By way of background the zoning ordinance for the county requires that the minimum lot size is 20,000 square feet of buildable area. Buildable area is "that portion of the lot remaining after the deletion of any floodplain, road rights-of-way, wetlands, slopes of twelve (12) percent or greater" In reality none of the lot is buildable because almost all of the property contains slopes in excess of 12%. The applicant does not have a buildable lot. Wacouta Township has not given the applicant a building permit. The applicant is seeking a grading permit to create an area with slopes of less than 12%. The purpose of the shoreland area is to preserve steep slopes, not destroy them. He is using the shoreland ordinance to destroy the steep slopes which should not be permitted. If he was out of shoreland he wouldn't be able to apply for a grading permit. It was not the intent of the county to give people a loop hole to create areas at less than 12% slopes. This is contrary to comprehensive plan. Element 1 Goal 1 talks about the preservation of the natural environment, also Element 3 Goal 1 Environmental Systems. Even if you ignore 20,000 square feet at 12% grade, Mr.

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Stelter does not have 20,000 square feet because that area on the map does not accurately show what he owns. This map is inaccurate. The westerly border shows that it runs 2 degrees west of due north. In reality the line runs 2 degrees east of due north. The deed that Mr. Stelter gave the neighbor reads two degrees east of due north, not due north. If you show the correct evaluation it would be somewhere less than 19,000 square feet. Next, the grading of the wall which will have adverse affects to the neighbors property. The retaining walls would be a detriment to the neighbors property. There have not been any indications of special circumstances in this case. Shoreland grading permit cannot be granted unless it is demonstrated that it will not have adverse effects on nearby properties. It is also required in the zoning code that the driveway of 20' of flat grade adjacent the road. Finally, the grading permit application is circumventing the Wacouta Township regulations which state that it is based on it's natural state with limited alterations.

Mr. Hakala said that he is not the sole complainant. All of the houses are 400-500 feet apart. All of the lots are 7-9 acres. Mr. Stelter intends to put in a lot that is out of character with the area. All of the dwellings are built according to zoning ordinance. All of the lots conform to the 20,000 square feet buildable area. Mr. Wozniak said the lot was bulldozed. Mr. Wozniak said that the whole bluff top was bulldozed some time ago, which isn't true. It was a prairie.

M. Wozniak said that is not a statement he made. He said it has been cleared of vegetation in some areas and it is manicured lawn right up to the top of the bluff.

Mr. Hakala said to clarify that, the manicured lawn is largely natural prairie grass and pasture grass. Trees don't grow on the top of the bluff. Eric Stelter bought the adjacent house. He contacted him a few years ago to see if he would let him move trees onto his property. Mr. Stelter said the reasons were because he couldn't sell for adequate profit so he was going to sell with less land, and that he loved the area so much he wanted to live there the rest of his life and he only needed a very small house. Mr. Stelter assured him that there was adequate area. He agreed to let Mr. Stelter move the trees onto his lot to provide for more screening between lots. Mr. Stelter then placed the lot for sale; he couldn't sell because it wasn't buildable. He then tried for a building permit from Wacouta Township. The building permit was denied because it did not comply with township ordinances. Michael Wozniak turned down two grading permits. Mr. Wozniak stated that if he was in his present position at the time he would have denied the subdivision. Once the boundary is corrected to match Mr. Sharp's deed he will only have 18,000+ square feet. Mr. Wozniak has decided the bluff edge is the natural tree line. The picture in the application the shows the marker is in the woods over the bluff edge. For a grading permit, the neighbors immediately filed an appeal which is suppose to stop all activity. Mr. Stelter continued work anyway and installed a silt fence on the bluff line. Mr. Huber from the DNR says that 15 feet from the bluff is the true bluff edge and you cannot excavate into that area. There is a silt fence there that should not be there. To control the grade there are substantial retaining walls. The retaining walls 2-4 feet are not accurate. He has no control over the kind of wall no control over the maintenance of the wall. Absurd that it wouldn't affect neighboring properties. Retaining walls build against the face of the wall, not beside it. Two story house that would span the entire width of the lot. He can hear Mr. Stelter's voice clearly on his property. Everybody who moved onto Bayview Dr had expected all of the lots to remain the same size. Even if the County would uphold grading permit can't get building permit from Wacouta Township.

Gary Sharp said that he bought the property on the opposite side of Roy. He was attracted to this area and the spaciousness of the lots. The appraisal for the lot was based on the entire lot. He knew Mr. Stelter would split that off, but did not consider the ramifications. Totally out of context with the rest of the community, and it would destroy the character of the neighborhood.

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Ryan Moss, Mr. Sharp's attorney, Cedar Rapids, Iowa said that he wanted to point out the bold statement that Mr. Stelter's property exceeds the requirement of 20,000 square feet and 100' width. This is a gateway premise that has to be answered before we get any further. If Mr. Wozniak would have consulted the deed to Gary, he would have see that it has a call marking the east line of Gary's property which was retained by Mr. Stelter doesn't even have the 20,000 square feet that is required to get into this process in the first place. The call, which is surveyor speak for heading, direction, and boundary. The same call that sets the heading for Gary's property is repeated in the proposed site plan application. Mr. Stelter will probably say that the deed that was recorded that was consulted on was somehow an error you can't even consider that, it is outside your jurisdiction. If you look at the drawing, there are two lines that are drawn in next to the survey line. Blue represents true north lot, the pink line is the 2 degree marker depicting what the deed says. If you notice the width decreases as you go from the street northward. That area has to be deducted from the area Mr. Stelter says is buildable; which leaves roughly 18,849 square feet. Right there we are under the threshold of 20,000 which we need to even get into the door to be considering this thing in the first place. Secondly on Mr. Stelter's variance application he includes an exhibit that is called "Stelter's residence". On that drawing there is a setback 15' setback on the east side of his property, on the west side of the property is 24'.

L. Hanni asked Mr. Moss how long they knew that the deed was off.

Mr. Moss said that it was just brought to his attention.

L. Hanni stated that if they knew this ahead of time it should have been included in their application to staff ahead of time.

Mr. Sharp said that he got a call from the surveyor stating that they made a mistake can he could sign a paper to fix it. He did not and sent it to his attorney to review.

L. Hanni said that if someone knew that the buildable area is cutting so close. The accuracy of the survey does come into play.

L. Hanni asked if he corrected the deed.

Mr. Sharp said he did not; he sent it to his attorney.

C/B. Anderson asked if the information is not correct.

L. Hanni said that the survey provided does not match the deed.

M. McKay said that the information the surveyor used is not correct.

L. Hanni said that the survey drawing does not match the legal description on the deed.

M. McKay asked if the 1,221 square feet that was deducted, if that was a hard number.

Mr. Moss said that if you have a licensed surveyor go out it would be close to that. It would be less than what Mr. Stelter has stated is it.

R. Juliar asked about M Wozniak's calculations of the walls and would the new measurements affect the diagram.

M. Wozniak said the problem is if there is not 20,000 square feet on top of the bluff, there is not enough buildable area for a dwelling to be built.

L. Hanni said the construction of the retaining walls would not be of our review.

M. Wozniak said that if the grading permit is upheld, there would be a building permit process to oversee the standards of the retaining walls. That would be irrelevant if there is not enough buildable area.

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C/B. Anderson asked when the buildable area definition has been in the zoning ordinance.

M. Wozniak said it has been in it since 1986. It has never been enforced. The issue never came up when he was here in 1999-2000. They are dealing with it in an appropriate way.

R. Juliar said that this is the 20,000 square feet at less than 12%.

L. Hanni said that at this time if we do not have correct information you may want to table this to get the correct information. Right now we have some unknowns.

R. Juliar said that since everyone is here we could continue, but we should table it until we can

Eric Stelter said as he understands it there was a one word error in the documents. David Johnson assured him it does not diminish or decrease the square footage on the lot. This does not change any of the running measurements given. If you take simple math which everyone is taking you come up with 22,000 square feet.

L. Hanni said that that is a four degree error.

Mr. Stelter said he is not qualified to comment on that.

M. McKay asked if his assumption is that the word is going to change from east to west.

Mr. Stelter said that is how he understands it. It needs to be corrected and they will need to re-verify that they have their 20,071 buildable area.

Jaren Johnson, Mr. Stelter's attorney, said that this was all reviewed to maintain that there was 20,000 square feet. Keep those two issues separate. The 20,000 square feet that is addressed by Mr. Wozniak is lot size. Then there is lot buildable. They are not the same. This is all news to them. It was never brought to their attention. There is no converse evidence to support these claims, there is no counter survey. What you have in front of you is an application that is in excess of 20,000 square feet, until they rebut that, that is the information they have to go on.

Mr. Sharp said that he wouldn't have liked to have been blind sided either. He just found out about it. Mr. Stelter's attorney, surveyor, knew about this all along. They brought it to his attention.

C/B. Anderson asked if they pulled out their deed if the lines would overlap.

Mr. Stelter said that the legal description on that

Brian Alton gave Mr. Wozniak Eric Stelter's deed to himself. There are two deeds that show that the line drawn 2 degrees to the west is incorrect, it is certainly more than 71 square feet.

Mr. Hakala showed another map that Ken Spate prepared based on the public documents.

C/B. Anderson said that it is pretty obvious they are not going to clear this up tonight. They could open public comment and table it. There is no way he would be able to make a decision based on this conflicting information.

R. Juliar said they also have the sixty day to worry about. He thinks that it's fair that this degree isn't going to change a lot of their comments.

M. Wozniak said that you wouldn't even get a grading permit is if he couldn't build.

Mr. Alton said that they would be willing to waive their rights for this issue to be cleared up. They would like the people who are here tonight to testify at the January meeting.

C/B. Anderson asked M. Wozniak who needs to provide additional information in this appeal.

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M. Wozniak said that we would ask the applicant to confirm to tell us the actual square footage above the top of the bluff. If they are going to somehow rectify this we would like to know what is going on. There is burden on the applicant, but we have the resources to check what is submitted and to confirm if it is accurate or not.

J. Fritzingler stated that she would like to hear from anybody who cannot make the January meeting.

Moved and seconded to table request until the January meeting.

⁵Motion by J. Fritzingler and seconded by D. Monroe to table the appeal to staff's approval of a Land Alteration Permit for grading more than 50 cubic yards of material in the Shoreland District on parcel number: 43-251-0011 until the January 22, 2007 meeting so long as they waive the sixty day requirement. Motion carried 6:0.

R. Juliar asked what Mr. Stelter would like to do about his variance. According to this drawing it is buildable, according to the deed it is not. By January they will have Hopefully it can be correct by then.

Eric Stelter –

M. Wozniak presented the staff findings as follows:

Recommended Action:

Staff recommends that the Board of Appeals and Adjustment approve the variance request of Eric Stelter to allow construction of home on a lot in the R- 1 Zone District with less than 20,000 square feet of Buildable area (less than 12% grade) based on the finding of facts included in this report.

Background Information:

The subject property is situated on Bayview Drive in the Hidden Valley Third Addition subdivision in Wacouta Township. Mr. Stelter subdivided Lot 1 in 2005 to create an additional Buildable lot which is approximately 120 feet wide and 670 deep. The property is situated on the top of a bluff overlooking the Mississippi River.

Zone District: The subject property is situated in a residential subdivision situated in the County's R-1 (Suburban Residential) District. Mr. Stelter's property conforms to the lot size and width standards for the R-1 District.

Shoreland Management Area: The subject property is situated within the Shoreland Management Overlay Zone which extends 1000 feet from the Ordinary High Water Line of the Mississippi River. The property is situated on a stretch of the Mississippi River that is located within U.S. Lock and Dam Pool No. 3 and is considered a *General Development Lake* for Shoreland Management purposes. Residential lots for single family homes that are riparian (abutting the water) must be a minimum of 20,000 square feet in area and 100 feet in width. Mr. Stelter's property exceeds this requirement.

The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones requires issuance of grading permit unless associated with a building project for which a building permit has been issued. Following a meeting with Wacouta Township Officials and Mr. Stelter in May 2006, Mr. Stelter applied for a Land Use/Land Alteration permit to grade his property in order to comply with the following definition from Article 2, Section 2, Subd. 62, paragraph A. of the Goodhue County Zoning Ordinance:

- B. Lot Area Buildable.** That portion of the lot remaining after the deletion of any floodplain, road rights-of-way, wetlands, slopes of twelve (12) percent or greater; conversely, a lot capable of meeting the requirements of this Ordinance including the provision of adequate area for the installation and maintenance of on site sewer and water facilities.

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Mr. Stelter's initial grading permit submitted on May 22, 2006 was denied based on several issues relating to the need for more information and the need to address how the grading would match up to the existing grades on abutting properties. A subsequent grading permit application submitted on July 5, 2006 was also denied based on several issues the most significant of which related to concerns over the proposed removal of over 3,000 cubic yards of material (soil) from the property. On September 26, 2006, a Land Use/Land Alteration Permit for Mr. Stelter's property was approved. The approved plan balanced proposed cut and fill and addresses the matching up of existing grades of abutting properties and right-of-way through the use of retaining walls. The approved Land Use/Land Alteration Permit has been challenged by an abutting property owner, Roy V. Hakala, through an appeal to the Board of Appeals and Adjustment. The Goodhue County Zoning Ordinance Article 23, Section 6, Subd. 11., provides authority for the Board of Appeals and Adjustment to decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with any provision of the zoning ordinance. The appeal is listed on the agenda for the November Board of Appeals and Adjustment meeting preceding this item.

Building Permit Application (Wacouta Township): Mr. Stelter submitted a building application for construction of a single family home on the subject property on May 8, 2006 (see attached letter with attachments from BENEPARTUM Law Group dated October 18, 2006). Mr. Stelter contends that Wacouta Township has failed to respond to his request as required by Minnesota Statute 15.99 (60 day law) and for this reason he has not submitted his variance request for review by Wacouta Township. It is the understanding of Land Use Management Staff that Wacouta Township does not agree with Mr. Stelter's position on this matter and has informed him to that affect in writing.

Any action taken on this variance request by the Board of Appeals and Adjustment should be made contingent on either the normal building permit approval/authorization from Wacouta Township or recognition by Wacouta Township that the building permit request is no longer subject to township review based on lack of compliance with Minnesota Statutes Section 15.99.

Impacts on Abutting Properties: Various individuals have expressed concerns regarding the permitting of grading and/or home construction on Mr. Stelter's lot. Objections are primarily based on the opinion that the size of the lot is not consistent with other lots in the neighborhood. However, although Mr. Stelter's property is not as wide as the other lots on Bay View Drive it does significantly exceed minimum lot area and width standards for the R-1 Zone District. Other concerns of neighbors may best be understood by referencing the appeal to the Land Use/Land Alteration Permit Application and Staff Report.

Hardship may not be created by landowner: An issue that has been raised by Wacouta Township Officials is that according to the Goodhue County Zoning Ordinance the applicant may not obtain a variance for a hardship that they may have created. Mr. Stelter did not create the steep slopes

Findings of Fact

- Subd. 1. In exercising its authority to review any order, requirements, decision or determination made by any administrative official, the Board shall not grant any appeal or variance unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:
- C. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
 - a. **If the applicant were to be able to build on his property without complying with the "Lot Area Buildable" definition he would be able to save and/or relocate on the site, existing mature trees.**
 - b. **Avoid disturbing the previously approved on-site sewer system plan.**
 - c. **Allow the natural grades on the four property lines to remain substantially unchanged with the exception of the driveway grading.**

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- d. **Minimize the possibility of erosion problems even with silt fence and seeding as approved.**

Subd. 2. In the case of variances, they shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control. **Goodhue County has not been administering the “Lot Area Buildable” requirement that requires 20,000 square feet of lot area at grade of less than 12 percent. There may be a variety of reasons why this standard has not been administered and they included the following:**

1. **Until the recent available of two foot contours county-wide, the County did not have accurate topographic data to make such a determination.**
2. **The County does not mandate the submittal of Certificate of Survey that indicates both horizontal and vertical placement of a home and also that would indicate the area of the lot that would comply with the “Lot Area Buildable” standard.**
3. **The “Lot Area Buildable” standard was raised during the Wacouta Township review of Mr. Stelter’s Building Permit. Once this Zoning Ordinance was brought to the attention of County Staff it was determined that Mr. Stelter must either comply with the requirement or seek a variance. However, it is the opinion of Land Use Management Department Staff that the County should consider amending the zoning ordinance to remove this requirement. Any consideration to that end should be undertaken independent of consideration of this appeal.**
4. **Other property owners in the vicinity of Mr. Stelter’s property and elsewhere in the County have not been held to the “Lot Area Buildable”. Other homes located on the abutting lots and other lots on Bay View Drive appear to have been constructed with minimal grading to avoid disturbing the natural grade to the greatest degree possible.**
5. **Granting of the requested variance to the “Lot Area Buildable” standard would provide for treatment of Mr. Stelter in a manner consistent with how other property owner’s in the R-1 Zone District have been treated in recent years.**
6. **Siting of the home as proposed in the May 12, 2006 survey from Johnson and Scofield Surveyors subject to erosion and sediment control measures recommended by the Goodhue County Soil and Water Conservation District reduces the impacts on existing vegetation and limit impacts on the existing grade of the property**

Eric Stelter said that the project started back in July of 2004. It started with basic research. He looked in the county recorders office for any information relevant to Hidden Valley 3rd addition. There were no covenants in place to prohibit him from splitting the lot. He then contacted Fred Plaas. He asked Fred what he would need for a building permit. Fred gave him two pages regarding building requirements. He brought it to Johnson Scofield to get a building site to meet the building requirements. They completed the survey based on that information and wrote a letter to Joanne Wood. She confirmed the area with the requirements of the ordinance. It was stamped and signed the same day. He had the house for sale twice before the split. He wasn’t fond of the swimming pool and the maintenance required with it, and was not fond of the helicopter pad. At the time they were unsuccessful selling the home in its entirety. He looked at his split options to maintain a buildable lot. As he mentioned in a brief e-mail to Kristi; Roy and he met in August, on the 24th he hired a tree service to move the trees onto Roy Hakala’s property and onto Gary Sharps property. Due to concerns of the neighbors Mike McKay and Gary Iocco did a site visit to see what they were up to. The septic permit was permitted 9-16-04. In that process they received an offer from Gary Sharp and his wife on the 5.1 acres and that ultimately closed on 10-15-04. There immediately came a flurry of opposition to the home project. It ultimately transpired into a month long debate from Wacouta township whether this property was buildable. He didn’t even know about the 12% slope

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requirements. Clearly Joanne Wood would not have signed and approved the lot split if the 12% would have been an issue. It was up for sale for a while and waited a cooling period and worked on the building plans for the new home. It is 1800 square feet. They want to build a home on their river view lot. This issue with the survey was generated by Roy Hakala. Mr. Hakala did not mention it to him, or Mr. Wozniak, but instead he marched into Johnson/Scotfield and told them that they made a mistake. The driveway will comply with the 20' of flat grade to the road. The switchback of Bayview drive is 16%. There is not even a ½ inch deep erosion rut in the lot. The screening is thoroughly in place. The measurement from his home to Hakala's home is in excess of 200'. Clearly the Sharp's has a maturing 15 year old row of trees. Gary Sharp was aware of his intentions prior to closing on the property. The screening provided by him at his expense on Roy's lot as agreed. They submitted finished home plans on May 8th. The application was made in Fred Plaas's office and sent a check via certified mail because he refused to accept a check. He does not want the retaining walls. This would be consistent with the County policies since it has never been applied. Nobody else has variances for 12% but they have building permits and did not need variances.

C/B. Anderson asked if we are in the same position with the lot size and need to determine the exact footprint of that before we can rule on this.

M. Wozniak said that either action would have to be taken or the applicant would have to agree to go to the next meeting because we would be going beyond 120 days.

Mr. Johnson said whether the lot size is 20,000 or 18,000 or whatever they said it is, it doesn't change staff's recommendation and doesn't change the fact that the County has completely disregarded this requirement since 1986 or whenever it was in the ordinance.

M. McKay said he disagreed.

Mr. Johnson said there have been no cases from staff that the requirement has been enforced.

M. McKay said that may be true in regards to the 12% slope, but when it comes to the 20,000 square feet. Eric himself has said the requirement was handed to him. That is a hardship he brought upon himself if that lot is large enough.

Mr. Johnson that the lot is 2.3 acres. He said you are confusing the two issues. They are completely separate issues and you cannot confuse the two.

M. McKay said that he knew he had. He knew he needed 20,000 square feet buildable.

Mr. Johnson asked how that change, the 20,000 square feet is still there.

M. McKay said that you cannot create your own hardship. He said that he had information from Fred saying that he needed 20,000 buildable square feet. Tonight that he is going to present that he does not have it.

Mr. Johnson said that is presented by the opposition.

M. McKay said he has a recorded deed and a certified survey, which is he suppose to accept.

Mr. Johnson said that the analogy still remains that the County has not enforced the 20,000 square feet buildable.

M. McKay said he cannot speak to that. Eric just said that he knew he needed 20,000 square feet buildable.

Mr. Johnson said that whether the site has 20,000 square feet of area, it has 2.3 acre it is not an issue.

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C/B. Anderson said that he understand where he is going with it. If he had a survey of the other properties in the area to see whether or not they had it, he might be more comfortable making that decision.

Mr. Stelter said that with that argument being over with he would be willing to waive the 60 day requirement.

⁶Motion by D. Monroe and seconded by J. Fritzinger table the request until the January 22, 2007 meeting. Motion carried 6:0.

⁷Motion by D. Monroe and seconded by J. Fritzinger to adjourn the November 27, 2006 Board of Adjustment meeting at 9:35 p.m. Motion carried 6:0.

Respectfully Submitted,

Kristi R. Gross

Secretary

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MINUTES

¹ APPROVE the November 27, 2006 Board of Adjustment Agenda. Motion carried 6:0.

² APPROVE October 23, 2006 Board of Adjustment minutes as amended. Motion carried 6:0.

³ APPROVE the appeal that this location qualifies as a replacement building site. Motion carries 6:0

⁴ DENY the variance to move the replacement site based on not seeing a substantial hardship. Motion carried 6:0.

⁵ TABLE the appeal to staff's approval of a Land Alteration Permit for grading more than 50 cubic yards of material in the Shoreland District on parcel number: 43-251-0011 until the January 22, 2007 meeting so long as they waive the sixty day requirement. Motion carried 6:0.

⁶ TABLE the request until the January 22, 2007 meeting. Motion carried 6:0.

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