

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
JANUARY 22, 2007

The Goodhue County Board of Adjustment was called to order at 6:30 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 Judy Fritzingler Mike McKay Randy Juliar
Michael Wozniak, AICP

Absent: Dennis Monroe

¹Motion by J. Fritzingler seconded by S. Klair and carried to approve the January 22, 2007 Board of Adjustment Agenda. Motion carried 5:0.

²Motion by R. Juliar seconded by S. Klair and carried to approve the November 27, 2006 Board of Adjustment minutes as amended. Motion carried 5:0.

Staff Updates: M. Wozniak said that the judge ruled in favor of the County in the Kevin Mark case. He also said that the May Board of Adjustment meeting has a conflict with Memorial Day and would like the Board to think of another date, possibly the Tuesday after.

C/B. Anderson asked if the other position has been filled.

M. Wozniak said that Shawn Henrichs started January 16th.

Conflict/Disclosure of Interest: M. McKay said that due to his responsibility on Wacouta Township Board addressing the Eric Stelter situation, and since they are currently dealing with the same requests in the township; he will remove himself from those two items on the agenda (Roy Hakala, Eric Stelter).

C/B. Anderson asked if he would be taking part in the discussion.

M. McKay said that he would not want his actions to be construed as him influencing the vote so he will not be a part of the discussions but will be available if the Board has any questions.

M. McKay stepped down from the board.

Roy Hakala –

M. Wozniak stated that this item was tabled from the November agenda due to information that was presented at the meeting regarding a mistake that was made on recording the deed for his property. Mr. Stelter informed us that Mr. Sharpe agreed to fix the deed error and that the deeds should be recorded within 30 days. On the grading permit this issue could be a condition of upholding the grading permit and could be a condition that it is recorded within 30 days. He continued to discuss what was provided in the report including the following staff memo:

Included with this memorandum is a copy of the staff report and attachments provided to the Board of Appeals and Adjustment for the November, 2006, Meeting when this item was first considered. Also included with this report is a copy of a letter from Brian Alton, Roy Hakala's (Applicant requesting the Appeal) Attorney.

This report has been prepared to supplement the November 16, 2006, Staff Report prepared for this item. At the November 16, 2006, meeting the Board tabled consideration of this item because a discrepancy in the legal description on the deed of Mr. Stelter's property raised the concern that the property as described in the deed did not include 20,000 square feet of lot area above the top of the bluff. This would make it impossible for Mr. Stelter to comply with the requirement of having 20,000 square feet of lot area at less than a 12% grade after the completion of proposed site grading.

Mr. Stelter has recently informed Land Use Management Staff that Mr. Sharpe, the gentleman who purchased the other portion of the original lot has agreed to accept an adjustment to the legal description on the deed of Mr. Stelter's

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property in order to make the legal description consistent with the survey drawing prepared by Johnson and Scofield, Inc., Surveying and Engineering. It is the opinion of staff that Mr. Stelter now has 20,000 square feet above the top of the bluff.

The balance of this staff report is devoted to addressing the thirteen points referenced in Brian Alton's letter (dated January 5, 2007). Most of these points pertain to the appeal to the grading permit issuance; however, some of them actually address the variance request which is also under consideration by the Board.

1. There is little or no land of less than 12 % slopes. The applicant ought not to be allowed to circumvent the zoning code by grading to get an area that contains slopes of less than 12%.

Staff Reply: The requirement that lots in the R-1 District have at least 20,000 square feet of "buildable area" has been in the County's Zoning Ordinance since 1986, but, has never been enforced. There appears to be no record of any building permit applicant in the R-1 District having ever been required to show evidence that the lot they wish to build upon has 20,000 square feet of lot area at less than 12% grade. However, grading of slopes that exceed 12% (with proper erosion and sediment control measures) has been permitted on many properties within the R-1 Zone District.

2. The applicant seeks the grading permit under the Shoreland protection ordinance (Article 17 S., Shoreland Regulations). The Shoreland Regulations were adopted to preserve, not destroy steep slopes. The Shoreland Regulations state they have been adopted for the purpose of "preservation of ...natural topography..." Steep slopes are defined as lands with slopes over 12%. The applicant seeks to use the procedure in this ordinance to destroy rather than protect topography.

Mr. Stelter has not proposed to grade nor would he be permitted to grade on the steep bluff on the subject property that extends down to the Mississippi River. This is by far the most prominent and most sensitive portion of the site. It is of course, Mr. Stelter's preference to do as little grading as possible as the other home sites located within the subdivision have been allowed to do. He is only proposing to grade portions of the site with slopes steeper than 12% because he is being told he needs to comply with "Lot Area Buildable" definition (Article 2, Section 2, Subd. 62, Paragraph A.) in the Goodhue County Zoning Ordinance. Goodhue County has not administered this requirement since its inclusion in the County's Zoning Ordinance in 1986. Applicant's to build on the other lots within the Hidden Valley Subdivision, have not been required to provide evidence that they have 20,000 square feet of buildable area. A cursory analysis by Land Use Management Staff has shown that some of the lots in Hidden Valley Third Addition have 20,000 square feet of lot area at less than 12% slope and some do not. All of the lots have been graded to prepare the home sites, install driveways and on-site sewer systems. Grading has occurred on slopes in excess of 12% on many if not all of the lots in Hidden Valley Third Addition.

It is the opinion of Staff that Eric Stelter's approved Grading Plan will not cause any significant environmental impacts. The grading would be done within an existing build up subdivision not on raw land. Proper erosion and sediment control measures will be taken and the resulting grades will not be detrimental to abutting properties or inconsistent with accepted residential development practices.

3. The zoning regulations for the primary district in which the lot is located have precedence in this instance over the Shoreland district overlay regulations. The Shoreland Regulations state that more restrictive requirements in the ordinances apply (Article 17, Section 4). The zoning code does not allow for a grading permit to destroy slopes in excess of 12% even if the Shoreland Regulations could be interpreted to allow a grading permit to destroy steep slopes.

The zoning ordinance states that agricultural activity or development is either not recommended or described as poorly suited for steep slopes as defined in the County Soil Survey or lands having average slopes overly twelve (12) percent grade, as measured over horizontal distances of fifty (50) feet or more, that are not bluffs. Goodhue County has permitted both agriculture and residential development in rolling topography such as the Hidden Valley Third Addition subdivision when grading is required on slopes in excess of 12 percent, but not areas defined as "bluffs" as long as proper erosion and sediment control measures are taken and no unacceptable environmental impacts will result. Grading for home construction, driveways, and on-site sewer systems on other

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lots with Hidden Valley Third Addition and other R-1 Zone District properties in Goodhue County provide evidence of this practice.

4. There is a reason for the 12% standard in the zoning code definition of buildable lot. It was put into the zoning code for a purpose. That purpose is to prevent building on slopes greater than 12%. If, under the Shoreland protection ordinance a property can obtain a grading permit to grade away slopes in excess of 12 % then the zoning code definition means nothing.

Goodhue County has permitted grading of slopes over 12% outside of the Shoreland Area either in conjunction with a building permit or subject to the issuance of a Land Use/Land Alteration Permit (Grading Permit). The Zoning Ordinance does not state that slopes greater than 12% may not be graded, although it clearly indicates that either agriculture or residential development are not recommended. Goodhue County has chosen to work with land developers and property owners to accommodate a limited amount of residential development on rolling topography abutting bluff lands because of high desirability of these areas due to the exceptional views of bluff lands and rivers and streams. As previously noted in this staff report, Goodhue County has not enforced the requirement of needing to have 20,000 square feet of lot area at less than 12% grade since it's adoption in 1986.

5. There is nowhere else in the county ordinance that allows for a grading permit to circumvent the zoning code. If this property were not within the Shoreland overlay district, the applicant could not apply for a grading permit to eliminate 12% slopes. It was not the intent of the count to give a property owner a loophole in the ordinance. The Shoreland Regulations are intended to protect steep slopes, not to allow a property owner to bulldoze away those steep slopes.

Goodhue County has permitted grading of slopes greater than 12% outside of the Shoreland Area either in conjunction with issuance of a building permit or through the issuance of a Land Use/Land Alteration Permit (Grading Permit) at the discretion of Land Use Management Department Staff. The distinction between areas outside and within the Shoreland Area is that the Shoreland Management Regulations (Article 17, Section 11, Subd. 2., Paragraph C., 1.) specifically states that "The movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones" requires a grading or filling permit. Again, the zoning ordinance discourages but does not preclude grading of steep slopes. The County has elected to permit grading of "steep slopes" under limited circumstances as long as proper erosion and sediment control measures are implemented and environmental impacts are limited. The County has preferred to limited alteration of the rolling landscape common to areas abutting bluffs and which may be one of the reasons why the requirement to have 20,000 square feet of lot area at less than 12% grade has not been administered since its inception.

6. The grading permit is contrary to certain policies of the comprehensive plan. Element 1, goal 1 – preservation of natural environment policies 3, 5, and 7.

Policy 3. Environmental assessment shall be conducted for those developments, which have the potential of affecting the existence or quality of any of the affected environmental features.

Policy 5. Alterations to the landscape, which will tend to inhibit or eliminate the role of any natural drainage way in the hydrologic system, shall not be permitted.

Policy 7. Tree and vegetation removal may be limited in areas sensitive to erosion such as shore land and bluff land or other areas designated with significant scenic and environmental values.

Element 3, goal 1 – Environmental systems policies 1 and 2:

Policy 1. New or expanding land uses shall take into account the environmental impact of the proposed project.

Policy 2. New or expanding land uses shall also take into account the cumulative environmental impact of surrounding development.

In evaluating consistency with the Goodhue County Comprehensive Plan we must take into consideration the limited scale of this project. The grading permit will impact 20,000 square feet of lot area on a 2.3 acre property. These 20,000 square feet is located within an R-1 Zone District in an existing platted and developed residential subdivision. The area to be graded was part of an

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existing home site (prior to the lot split) and has been planted with lawn and ornamental trees and shrubs. Any impacts on natural resources and storm water runoff by the proposed grading would be negligible.

7. Even ignoring the 12% grade requirements in calculating the 20,000 square feet buildable area. Mr. Stelter does not have 20,000 square feet. The map presented by the applicant does not accurately show the area that he owns. The map presented by the applicant does not accurately show the areas that he owns. A portion of the property that is shown on Mr. Stelter's property as belonging to him has been deeded by him to Gary Sharp. The 20,761 square feet is actually less than 19,000 square feet (it has been calculated to be 178,889 square feet).

Mr. Stelter has informed Goodhue County Land Use Management Staff that the error in the legal description for his property that was inadvertently included in the property deed's when Lot 1 was split is being corrected. He has stated that Mr. Sharpe has agreed to the necessary adjustment to make the legal description match the land survey that illustrates the property boundaries. Further confirmation of this correction will be offered at the Board of Appeals and Adjustment Meeting. The bottom line is that Mr. Stelter has indicated that his property description will conform the survey which had been submitted to the County (enclosed with November Meeting Report) and the survey indicates that he has more than 20,000 square feet above the top of the bluff.

8. The grading and retaining wall will alter the essential character of the area. It will have an adverse impact on persons, property or improvements. According to Article 26, Section 3 of the zoning code, the Board must find that it will not alter and not adversely impact. The grading and retaining wall will be a detriment.

The use of retaining walls to achieve satisfactory grades for home sites, driveways and accessory buildings is very common throughout Goodhue County due to the rolling topography and extensive bluff lands. The maximum height of the proposed retaining walls would be 5-6 feet for the wall abutting Bay View Drive and 3-4 feet for the wall abutting Mr. Hakala's Property. It is the opinion of Land Use Management Staff that the impact from these retaining walls on the essential character of the area will be limited. This of course is a subjective issue.

9. The Board must also make a required finding that there are special circumstances or conditions affecting the land not applicable to other property in the area. The property owner has not presented any evidence that there are special circumstances.

This point made by Brian Alton, relates to the variance request of Eric Stelter not the appeal to the issuance of the grading permit.

The applicant has requested to utilize his property in manner similar to other properties owner's in the R-1 Zone District and within the Hidden Valley Third Additions residential subdivision. He has noted that he is being asked to provide evidence that he is in compliance with a provision of the Goodhue County Zoning Ordinance that no other property has been asked to provide since the provision was first adopted in 1986. In order to utilize his property in manner similar to others in the R-1 Zone District and within his own subdivision he has been directed by Township Officials to pursue a grading permit from Goodhue County. His special circumstances relate to the fact that he is being required to conform to a different standard than other property owner's in the District in order to utilize his property for a use permitted in the R-1 District to be constructed in a manner similar to other homes in the district.

10. Article 17, Section 11, Subd. 2 (D) of the Shoreland Regulations provides that shore land alterations must not adversely affect adjacent or nearby properties. The grading and retaining wall will adversely affect adjacent nearby properties.

Land Use Management Staff does not agree that the proposed grading and retaining walls will negatively impact adjacent or nearby properties. The proposed retaining walls will be subject to issuance of a building permit to ensure conformance with the State Building Code.

11. The application for a grading permit to the county is a subterfuge to circumvent the Wacouta Township requirements. Wacouta Township ordinances require that each lot must be suitable "in its natural state for the proposed use with minimal alteration.

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This is a standard that Wacouta Township is responsible to administer. The Township has been informed that the both the appeal to the grading permit and the variance request (to not have to meet the 20,000 square feet at 12% requirement) are being considered by the Goodhue County Board of Appeals and Adjustment and the Township has the right to make comment. It should be noted that Wacouta Township has not required evidence of compliance with the 12% grade requirement in the past and is currently not demanding evidence of compliance in review of recent building permit applications for compliance with Township Zoning.

12. The driveway as shown on the applicant's plan does not contain twenty (20) feet of flat grade as required by Article 3, Section 6 of the zoning code.

Mr. Stelter has not requested a building permit from Goodhue County at this time. Prior to issuance of a building permit he will be required to indicate that his driveway will conform with the requirement of have twenty (20) feet of flat grade as required by Article 3, Section 6 of the zoning code. The Board should bear in mind that Goodhue County does not normally required submittal of a survey as part of Building Permit Submittal requirements that would provide vertical data regarding grading. The County may require such information as is necessary to ensure a building permit applicant's conformance with the provisions of Article 3, Section 6 (Access Drives and Access) of the Goodhue County Zoning Ordinance. However, many of the homes and driveways in the area were constructed without prior submittal of site grading plan's with a survey level of detail illustrating proposed lot and driveway grades.

Mr. Hakala said that Mr. Wozniak's report is full of conclusions of opinions. He would like to correct two inaccuracies. Mr. Wozniak denied that he had told him the entire bluff top was graded. He checked his notes and he did in deed say that the bluff had been graded, on June 9, 2006. Mr. Hakala also presented e-mails written by Bill Huber that support the findings that the controlled vegetative clearing area is half the structure setback. Mr. Wozniak has stated that the grading permit in the shoreland district is ok because he will not be affecting the steepest part of the slope near the river. However the shoreland district extends 1000' from the river at this point and Mr. Wozniak does not have the authority to change that boundary. The county, township, and state all indicate that grades of 12% or more cannot be included. Furthermore these rules are designed to balance development with the preservation of natural resources. It is inconsistent with the purpose, rules, and minimal impact provisions of those plans to start allowing 85' wide houses on 120' wide lots all along the edge of the river bluffs. No one attempted to subdivide any lots or create unbuildable lots into buildable lots. Mr. Stelter said that he hinted he should be allowed to have a steep driveway because the switchback on Bayview Dr. is. Mr. Wozniak said this can be dealt with later when a building permit is applied for, but it should be addressed with now. He showed a picture of his son by Mr. Stelter's property. Mr. Wozniak said that these tall retaining walls would not have an adverse affect on the adjoining properties, but says that it is a subjective opinion. This is not a request of a homesteader that has made his home there. It is totally inappropriate to state that the Township would be willing to violate their own ordinance. Mr. Plaas considers this property non-conforming and will not issue a building permit. They are asking that the Board enforce the laws, ordinances, and rules.

Brian Alton, attorney for the applicant was present. He said that there are several neighbors that were present here tonight that would negate the fact that the retaining walls would not have a negative impact. He pointed out that there is survey depicting the top of the bluff. And that the lack of enforcement in the past is not a reason to perpetuate the problem.

M. Wozniak said that he has been working closely with the DNR and has been told on several occasions by Bill Huber that the County Ordinance prevails.

Roy Hakala said Section 5 of the Wacouta Township Ordinance, Section 5 of the Goodhue County Ordinance and Section 3 of the Wacouta Subdivision Ordinance all refer back to the more restrictive standards, which would be DNR, therefore DNR prevails.

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M. Wozniak said that DNR does not enforce their standards therefore they negotiate it with the Jurisdictions.

C/B. Anderson opened the public hearing.

Ryan Lausa said he was here on behalf of Gary Sharpe. Gary bought the compliant lot when he bought the land in 2004. They are amendable in issuing the corrective deeds. To make it a westerly call instead of an easterly call. Gary is still opposed to the plans for grading and constructing a house. Mr. Stelter needs a variance if he is going to construct a house on the area of less than 20,000 square feet. It was a compliant lot when he owned it originally. Instead he is going to get a grading permit. The hardship was of his own making. The staff has basically agreed that Mr. Stelter has 20,000 square feet on the top of the bluff. The top of the bluff is administrator's rules say that the top of the bluff is the highest point where a 50 ft segment exceeds 18%. He thinks Goodhue County says it is 20%.

M. Wozniak clarified that the bluff impact zone is defined in the Goodhue County Zoning Ordinance as toe of bluff to top of bluff. It does not include that 20 ft.

Mr. Lausa said that state rules does include that 20 ft. What he is trying to say is that County staff is telling you it is ok to disregard the angle, but also the 20 foot buffer. We have good guidance as far as what constitutes the top of the bluff. The zoning ordinance for the county says that it is the more restrictive of the two. There are no structures allowed in the bluff impact zone, or grading and filling. We do not have a certified top of bluffline from a certified by a surveyor. He shares a drawing showing "approximate line of top of bluff" then gave out another page from the application. He goes over colored map. There has been a lot of time spent in staff's report that the 20,000 square feet buildable hasn't been enforced. If it is so irrelevant why would they take the time to define it? If it is irrelevant why is it required in A-1, A-2 and R-1 districts? If it shouldn't be enforced why should it be in there in the first place? There are a number of things that the original authors of the definition leave out some of those other ones and leave in this one if it's somehow irrelevant. How do you make an argument to a citizen, that we haven't enforced this rule why should we enforce it now? One of the reasons it was not enforced was because we did not have sufficiently accurate data, now that we do have the accurate data are we going to throw the data out. Maybe nobody made a stink about it until now. Neighbors have done their homework. They are asking the County, the landowner, and you guys to actually follow what is written in the code, because they relied on that when they built their house.

J. Fritzinger asked what the pink lines were on the map.

Mr. Lausa said that those were the building setback area.

C/B. Anderson said that doesn't mean that you cannot grade inside that.

M. Wozniak said that yard setbacks are not referenced in the definition.

David Johnson said that he has a copy of the signed corrected deeds. To give a little bit of background; they were hired by Mr. Stelter to create a lot. After speaking with the County and Township, they were supposed to have 20,000 square feet of buildable property. The boundary lines were laid so there was a little over 20,000 square feet there. They located the top of the bluff. The word approximate doesn't mean that it is not specific, it is just that it is not a perfectly straight line. They applied the layman's method for determining the top of the bluff.

C/B. Anderson said that if they were to put a square footage of what was on top of the top of the bluff.

Mr. Johnson said 20,071 square feet.

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Ron Rosenthal said that he knows that it doesn't meet the strict definition, they were buildable lots in the way that they were platted. It does not match with the large lot subdivision. Joanne Wood was the administrator, just because it was split for a buildable site. There are no mature trees on top of the bluff. The driveway it doesn't show the house and it doesn't show the pad or the house. The variance is for a hardship case. There is no way possible to prove a hardship. Eric cannot go to the Township for a variance period because you cannot create your own hardship.

Gerard Goering said that he has been there 11 years. He questioned the size of the lot and was verbally told that that is how the subdivision was platted and those lots are not sub-dividable. Generally speaking the neighbors do not support this subdivision. Mr. Stelter is exploiting this situation for profit. It is going to look ridiculous. He urged the board not to approve the grading permit

Phyllis Feterbush said that they are the last people that purchased their home. They specifically asked their realtor that they could not subdivide their lot. They found that there is no covenant. She asked Bernard Gadiant why did they have such huge lots. He was told they could not put more than 8 lots in that area of Bayview Dr. This is the first time that someone attempted to subdivide. For over a year every month some of them from Bayview Dr. were at the Township meetings asking Mr. Stelter to come forward and explain what was going on. Under what realm of understanding staff, do you think that a retaining wall is not going to change the neighborhood? All they are asking is to uphold the ordinance. Wacouta, Township, and State; He thinks he can do something different. Just follow the law.

Laura Teel said that as homeowners built their homes on Bayview Dr. they were all closely monitored to make sure we were in compliance with the ordinance. Why are they here? Wacouta Township ordinance invalidates subdivisions of properties that then require later variance for building purposes. A variance is designed to remedy a plight beyond your control. Eric has been in full control of his plight and is now making his problem our problem and more specifically the Hakala's and Sharp's problem. Ordinance and regulations are set forth in great expense to guard the character of the neighborhood. As homeowners they expect respect of the ordinances to protect their neighborhood. They choose not to live in an area with large homes on small lots in a high density area. She asks for assistance and respect to these ordinances.

M. Wozniak said that the Goodhue County Board of Appeals and Adjustment deals with appeals and variances in regards to the Goodhue County Ordinance. This board does not have authority to administer township ordinances. Wacouta Township has authority granted by the state of Minnesota to conduct planning and zoning as it seems fit. The applicant had a right to propose grading and has the right to apply for a variance from this board. That is why we are here.

C/B. Anderson said that Mr. Hakala has a right to appeal that decision. But they cannot make a decision on Township ordinances.

M. Wozniak said that the administration of the 20,000 square foot buildable area requirement at less than 12%. When this issue was brought up Mr. Stelter was told immediately what he was subject to complying with and that he needed to make an application for grading for being compliant with the requirement or seek a variance. County is not ignoring the requirement. We are being truthful, it has not been administered in the past and are trying to explain to this board why.

Eric Stelter said that he would like to respond to some of the comments that were made pertaining to the processes and that they are claiming that what he is requesting is different than what they did when they built their homes. The standards the County is held to are substantially different than ones they were held to. He said they are done with the edge of bluff issue. The edge of the bluff hasn't changed since they have built their houses yet their house is based on that edge of bluff line. Passed around pictures of how close the houses are to the edge of the bluff. It is all based on the feelings they feel about him. The

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grading and the protection of the slopes of land, all the issues being brought up weren't issues when they built their house. They don't mention that the DNR 20' setback that they tried to impose on him. Mr. Hakala has a retaining wall and deck less than 10' from the bluff edge. His house is less than 30' from the bluff edge. Yet, they will tell you that he shouldn't be able to build under the same circumstances. It has been thoroughly debated that some how or another that retaining wall are diminishing aspect of a home today. He showed a picture of a 1400 cubic yard cut that Mr. Hakala has in his yard so that he can have a tuck-under garage. Mr. Hakala has 7-8' retaining walls. The retaining walls on my property are not going to impose danger on Mr. Hakala's property. They are not going to fall off his 3-4' maximum height retaining wall. He has had conversations whether or not the original lot met the ordinance. There is no document showing what the topography of the lot was prior to grading for the house. It is very likely that that home did not have 20,000 square feet at less than 12% slope. There are retaining walls on that property. There is a new retaining wall this summer. It required excessive excavation and more than 50 cubic yards of fill to be brought in. There is no grading permit on file for that property. My retaining walls are diminishing but theirs are never mentioned. His home is not gigantic. It fills their available space up while meeting all required setbacks. The lot wasn't developed for him to financially prosper on the sale. The house was for sale for a year and a half. He was able to make use of the land that he had. The intent was to build a house when he split the lot. If he couldn't build on it there would have been no point to split the property. The ordinance says that the split will not be approved if it will not be allowed to use for it's intended purpose. Nobody has been able to produce a certified topographic map of a buildable lot except him. There wasn't accurate topographic information is not really accurate. That same information has been available from land surveyors for probably hundreds of years. The information is available if you ask for it. Look at the neighboring lot. Was his house built on land that did not have a single spot of 12 % slope on it? Across the road Chris Hage has just constructed a house that is close to the township road, 65% of the literal bluff edge surrounding the home. There is no other flat land. Nobody was forced to comply even though the homes were built and permitted with the 12% buildable lot area firmly in place. A walk out home typically requires an 18 % slope if you want a full house for the walk out. When Gary bought his house he fully disclosed that he was planning on building a house there. Never did he imagine that he would have to build retaining walls on his property. The wall isn't a safety factor. There are no erosion control or sediment issues. The wall runs up the hill and down the hill the water will not run down the wall. There is no water running over the wall, it all runs parallel the wall. The slopes on the side of the driveway will be graded so they are mowable slopes. The house was planned to meet the contours of the lot.

Crystal Olsen has concerns with the proposed retaining walls. Her daughters ride their bikes in the area and she was wondering if the retaining walls would cause site line issues. Some cars come jutting out, if there is a retaining wall built they won't be able to see pedestrians, cars, bicyclists. That is a huge concern. Otherwise, the conformity with the area most of the houses have 320' frontage; this would only have 120' frontage.

Gary Sharpe said that he purchased the house from Eric. Some of the things Eric said about him were grossly inaccurate. The retaining wall that was built this summer was built to replace one that was there that he was lead to believe was in good condition. As far as he knew all along that Eric was going to build a house there; Eric sold him everything because he was going to live on his boat and move to Florida and he had no need for it. It comes down to negative impact. He didn't buy down there to have a house squished next to him.

Bill Federbusch said that he is a neighbor and was a member of the Wacouta Town Board until March of 2006. It really comes down to a subjective opinion on their part to make this decision. There are retaining

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walls and 12% grades and why am I being singled out. The area was platted in 1985 and the homes built in the early 90's. The ordinance was updated in 1994, so it didn't apply to these homes.

C/B. Anderson clarified that the Wacouta Ordinance was updated in 1994.

Mr. Federbusch said correct.

C/B. Anderson clarified that that doesn't pertain to us, we are the County.

Mr. Federbusch said that he understands. He is just trying to give a little perspective. The split was approved for the intended purposes. It was stated that the subdivision was done for profit purposes. Mr. Sharp and other people have testified that he is not going to live there, he is going to go live on a boat. This land was for sale for \$369,000 after it didn't sell, Eric wants to build a house on it. Was the intent to build a house or not build a house? Mr. Federbusch draws a picture on the whiteboard of a "cart before a horse". Eric went and conferred with Joanne Wood first, i.e. Goodhue County. He being on the town board, he was informed at some point and time that a subdivision has taken place, when he was on the town board. There was a circumvention of the township ordinance.

C/B. Anderson asked if the Township has a subdivision ordinance.

Mr. Federbusch said that it has a subdivision ordinance. And it parallels with what the county says and what it says is that if a variance will be needed you can't subdivide. At the end of the day, it is a judgment call.

C/B. Anderson said that if we approve this, he still needs to go to the township, and they have no say in what the township will do.

Mr. Federbusch said he understands, he is just trying to bring some perspective to what is ultimately going to be a judgment call.

M. Wozniak said that the township has never told the County that they enforce a subdivision ordinance, at least not during this process.

M. McKay said that prior to him they did. But that is a done deal. It is water over the bridge. But just a couple points of order. Wacouta's ordinance mimics the County's ordinance 98%. There is very little variance, so we keep talking as if there is a big difference here, there isn't. What puts the Township in a bind is because they mimic the Goodhue County's ordinance they have all the ordinances that they don't have the mechanism to administer.

J. Fritzinger said that she thought the Township did not recognize his building permit and then so defaulted.

M. McKay said that the Township's position is that Eric still has to come to the Township. Eric is stating that he submitted additional information with another check and another application to Fred, and they are stating a statute that requires an answer within 60 days and they no longer have to. That is why he excused himself because he is expecting at some time for this to go into litigation. The Township did meet on the grounds and it is stated in the minutes that Eric was told that the land was not in compliance. Mike was there and it was decided that in order to bring it into compliance they needed a grading permit and then they could bring it back to the Township.

R. Juliar said that they needed to center their decision on the County Ordinance.

Mr. Federbusch said that they have the approval of the Township. They have the character and harmony of the neighborhood, which is addressed in the Goodhue County Ordinances. When they bought their property in 1999, they bought it based on the rural nature of the neighborhood. They very specifically

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asked their realtor who said it could not be subdivided. They were told there was a covenant, which they later found out there was not a covenant. What type of precedence to be set? There may be other neighbors that will try to subdivide their property too. If this is approved why wouldn't somebody else do it? There is a dangerous slope here for setting that precedence. They are just asking you to enforce what is in the language of the Goodhue County ordinance. And the oxymoron of the variance, because if there is a variance, you can't approve the subdivision and that couldn't have happened.

Lesley Hakala said that Eric was not around when we these houses were being built. We went to the county and got permission. Myron Alm's went to the County and got permission. He doesn't know that their retaining walls do not come anywhere near anybody else's property. He doesn't know when they put in their patio, their design did not meet County standards and the County said that is as far as you can go; and that is as far as they went. He does not know what he is talking about. He was not in the neighborhood at the time. She does not like being accused. Also, he said the Hage's property is an eyesore. He's right, it is; he sold it to them. In other words, their property is less valuable because he was there, and she wants it to stop right now.

Mr. Stelter said that his first spot when he split the land was at Fred Plaas's office. His request to Fred Plaas was that he was looking to split his property and asked for the documents for a lot split and a new home. Mr. Plaas handed him two pages one saying that he needed 20,000 square feet buildable area, he does not think that Fred even knew about the 12% slope at that time. He did not circumvent the township in any capacity. Then he talked to Joanne Wood and then Johnson Scofield continued with the survey work. It was stated that for a year they had requested that he make an appearance at the Wacouta Township Board meeting. That is an absolute flat out lie. There was never a single request for him to come and explain what his attention was. The stories of him packing up and moving on his boat hardly coincide with at the time he had a 10 year old daughter in school in Red Wing. He was a single dad at the time. He wasn't about to move. They have searched every County record, there are no covenants, the fact that Federbusch's were told by a realtor that the lots wouldn't change, their beef should be with the realtor.

Mr. Federbusch when we're talking about inaccuracies, the Township went to great extent. When they found out the lot was subdivided without township knowing about it, he said number one they needed to have findings of fact. He shows a document specifically requesting information regarding Wacouta Township information. There are four letters in writing for fourteen months. He may have went to Fred Plaas the zoning administrator, but he did not go to the Town Board for fourteen months.

C/B. Anderson said that that is the township's issue

Mr. Federbush said that when he comes up here and says this is the case, that is not the case

R. Juliar said that in all fairness to the Board, and we are a county board and this may go on for 10 more hours as far as the townships concerns. Either way he sees it is that will be going to go to court probably. But it has to stay primarily to the County.

C/B. Anderson said one more and then we need to wrap this up.

Mr. Alton said that he wants to bring it back to the beginning. The Goodhue County Zoning Ordinance says a buildable lot has to contain 20,000 square feet of land after deleting floodplain, roads rights of way, wetland, or slopes of 12% or greater. He doesn't have a build a buildable lot and shouldn't be able to do it.

With no further public comment J. Fritzinger motioned and S. Klair seconded to approve the closure of the public hearing. Motion carried 5:0.

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R. Juliar asked if the variance was granted he wouldn't need the grading permit per say.

M. Wozniak said that he would need to comply with the minimum 14% grade standard for driveway. He would have to have a building site, as far as the pad the building would be on. He would have to have an approved plan for an on-site sewer system as well. Other than that grading would be minimal.

R. Juliar said that the site looked buildable as far as the slope where the house is going to be built. That is what he has seen throughout the County and other places. It is not anything that different as far as the lay of the land on that lot. On the other subject as far as the 20,000 buildable, he was involved in the Comp Plan Update and they talked about buildable lot. Never was it mentioned about the 12% slope.

J. Fritzinger asked about the driveway.

R. Juliar said that in order to get the building permit it would need to be designed to meet those needs.

S. Klair asked who maintains the retaining wall.

C/B. Anderson said that he didn't think that issue was before them.

M. Wozniak said that those walls would be reviewed for being subject for issuance of a building permit. When the building permit is issued for the home, if there are any concerns for safety or anything in conjunction with site work they would be addressed.

C/B. Anderson said that he has an issue of what the purpose of the 12% slope. Nobody has a reason why it is in there and he has a hard time when it is one person that gets picked out of the whole bunch. He has a hard time saying that this is what we are going to hang this guy with. He wants this to go back to the Planning Commission with a reason why they are doing it. The precedence has been set that we haven't upheld it or that we have. It needs to be changed in some matter or we are stepping out on a limb.

R. Juliar asked if they make a motion to uphold the land alteration permit it means that he would not necessarily do that if he got the variance.

M. Wozniak said that he would have the option to proceed and to that, but of course if the variance were denied he would of course have the option to do that. All of this is subject to the approvals of the Township.

R. Juliar clarified that the reason he was doing this was because he is required to meet the 12% standard.

M. Wozniak said he doesn't know why it hasn't been upheld since 1986. It hasn't been administered by the county. It is in an obscure place in the ordinance, but his thoughts are there is more to it than that.

S. Klair asked if he didn't do the grading would that eliminate the retaining walls.

M. Wozniak said that if the variance is approved grading would be minimal and the retaining walls would not be necessary.

R. Juliar said that since Mr. Stelter is seeing he is being held to a higher standard, this is his option.

³Motion by R. Juliar and seconded by C/B. Anderson to uphold the 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 based on the findings of fact of the November 16, 2006 & January 2007 reports.

J. Fritzinger said she personally does not like that idea. She does not like digging up the land as much as they are proposing and to put retaining walls in.

R. Juliar said that he agrees with her. But, with that being said he hopes the variance will alleviate that problem. And the problem he has with all this is that he is being held to this standard. He can't see one person being held to a standard when he was out there and saw what he saw.

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J. Fritzingler said the variance could take care of this issue without allowing the digging up of the whole hillside and huge retaining walls.

M. McKay said that if he comes to the Wacouta Town Board. If he is going to go ahead and build this why go and rip up the earth. But if he goes to the Wacouta Town Board with a lot that qualifies that is an entirely different situation than if he needs a variance. That's why you have the sequence you got.

Motion fails 2:2 J. Fritzingler & S. Klair dissenting.

C/B. Anderson asked if the appeal is denied.

M. Wozniak said that the action to uphold the permit fails. Does this Board feel the need to instruct staff to deny the grading permit? He explains the next step and suggests the Board direct staff to revoke the grading permit.

⁴Motion by J. Fritzingler and seconded by S. Klair to have staff revoke the grading permit based on the 2:2 vote.

C/B. Anderson asked if by doing this you don't want them to build the house.

J. Fritzingler said that no, she just doesn't want to them to grade.

S. Klair said no, he doesn't want them to grade, they can build a house without grading.

C/B. Anderson said that we can't hear the variance, because the variance is to the grading permit.

M. Wozniak clarified that why it's important to do this, since a grading permit has been issued, it is important for this Board to provide a specific action to the revocation of the permit and to substantiate a findings of why it is being done.

R. Juliar said that since it is a tied vote it was a failed motion which would take care of that wouldn't it.

M. Wozniak said the Board is not comfortable providing direction regarding revocation of the permit.

J. Fritzingler said she doesn't like what he is going to be doing to the land. There are going to be huge retaining walls and the safety. Her wish is that we vote down this, and look at the variance separate.

C/B. Anderson said he can go with that.

M. Wozniak said that we can deal with the variance separate, but Mr. Stelter still needs to deal with Wacouta Township and those requirements.

Motion carries 3:1 R. Juliar dissenting.

Eric Stelter –

M. Wozniak presented the staff findings as follows:

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.

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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. 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

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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 Alternation 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:

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:
- 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.
 - 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.**
 - 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.**

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.

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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.

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.

Mr. Stelter said that to build a home on the lot as it exists was always his first intent. Without retaining walls there are no visibility issues. The only retaining walls would be to allow for the walk out basement. That was the intent throughout the process. He would like to build his home on the slopes as they exist. They've thoroughly discussed the process with Joanne Wood and the County office. Even though nobody else has had to ask for a variance on their existing grades, Mr. Wozniak has requested him to do this because of the feelings involved with the neighbors. He is looking to do very little impact on the lot and build on it as is. The grading aspect only came into it as an alternative. Once the process is done they plan to open the dialogue with the township again. Ask that they also treat us the same as they have every other person in the township.

R. Juliar said that he made need a retaining structure on the side of his driveway possibly.

Mr. Stelter said they are going to make the driveway compliant. The final plan shows the exact 50' radius and the 20' of flat grade. There are no other areas that have to meet the 20' flat grade. They hit the road on a 10%, 12% grade. It's a standard that he is asked to uphold that nobody else is. The bank that is there is not a natural grade, it is a road cut that was left after making the road cut. In lieu of cutting through the slope they are going to create a mowable bank. It is not really a safety issue. They would rather create a mowable slope.

C/B. Anderson opened the public hearing.

Mr. Alton said that they have heard lots of testimony to use the prior comments into the current record.

See comments during public hearing from the previous request

Mr. Alton continued to say that the board knows what the requirements are for a variance. Mr. Stelter created the lot split. That is a circumstance that he created. This was done for economic purposes. It is inconsistent with the shoreland overlay regulations. The intent of the shoreland is to protect the steep slopes. He read through the findings of fact requirement from the Goodhue County Zoning Ordinance. That is evidence that the applicant needs to provide evidence to make their findings.

Roy Hakala said the driveway plan, in order to dodge his septic area is tight against his property line. Eric in pledging to taper the end of that driveway pledged to cross over his property line. Excavate on his property.

C/B. Anderson asked if he gave Mr. Stelter permission to grade on his property.

Mr. Hakala said absolutely not.

C/B. Anderson said that then he expects him not to grade on his property.

Mr. Hakala said that he wouldn't be able to fit the driveway in.

Ron Rosenthal said that he wanted to point out an inconsistency for the Meyer property on Sevestapol Rd., and received a variance to the 20,000 square feet buildable and the driveway was addressed in that also.

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Bill Federbusch said that that was a platted lot that they granted the variance on. Nobody is pointing to Eric and trying to single him out. This is another example of cart and horse.

With no further public comment S. Klair motioned and J. Fritzinger seconded to approve the closure of the public hearing. Motion carried 4:0.

J. Fritzinger said she understands that there is a lot of objection to the smaller lot size in this area. Based on the fact that the County has not used the 12% grade in the past she made the motion.

⁵Motion by J. Fritzinger and seconded by R. Juliar to approve the variance request of Eric Stelter to allow construction of a 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 based on staff's recommendation and findings of fact. Motion carried 4:0.

Carol Ann Wangen

M. Wozniak presented staff's report as follows:

Ms. Wangen is requesting a variance to build an additional dwelling in the NW ¼ of NE ¼ Section 26 T111N R18W, in the A-2, Agricultural District, by way of transferring from the SE ¼ of the NW ¼, to the NW ¼ of the NE ¼.

Background

The property that Ms. Wangen would like to build on is zoned A-2, Agricultural. There is currently a dwelling in the ¼, ¼ section (NW ¼ of NE ¼). The soil type where Warsaw Township would allow a building site is ToD with a crop equivalency rating (CER) of 55. Her ideal spot would be closer to the road, however that site would require a variance from the township's regulations of spacing between dwellings.

The property that Ms. Wangen would like to move the site from would be located in the SE ¼ of the NW ¼ of Section 26, Warsaw Township. There are nine dwellings currently in the section (12 are allowed). The majority of the soils on that property have a CER of below 60. The applicants have stated that the building site is now in a field and is not very accessible from the road. It would require a driveway over a ¼ mile long. They would like to transfer the building site from that ¼, ¼ to the one mentioned in the above paragraph.

Warsaw Township has indicated that they support this request.

The concerns staff has about the proposed location is that even though bluff land is not present, there are still significant slopes. The driveway to the proposed site must meet the access drive standards as outlined in Article 3 of the Goodhue County Zoning Ordinance.

Another concern of staff is the width of the lot. The site map submitted by the applicant shows the width of that property as 333.92'. After removing the 100' side property line setbacks it would leave an area 133.92' wide to place a dwelling and subsequent accessory buildings. We believe if this variance were granted it would need to be made clear to the applicant and in the record that no variances to property line setbacks would be permitted in the future due to the applicant possibly creating a hardship by placing the dwelling on the smaller property. This may be fixed by widening the 10 acre property before selling it.

Finally, the tracking these ¼, ¼ transfers is also worth mentioning. Quarter, quarter transfers are not new to the Board. They have been done in the past, but none have been done in the last two years. One of the reasons these may have been discouraged is because they are difficult to track. Staff is currently researching past ¼, ¼ transfers and will be mapping them in the future. As long as it is well documented what has occurred, it should not be that difficult to track.

The other difficult part of this process is that the county's policy is that nobody owns building rights. Building locations are on a first come first serve basis, so how is it possible that someone may apply for a variance to take that right away from the other property owner(s) in the ¼, ¼ section. The transferer could

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apply for a variance long before they plan to build and now they are guaranteeing a building site on their land so long as there is one left in the section. Is that possibly circumventing the intent of the ordinance?

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:
- 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.
 - 1. **The proposed building area would be slightly closer to the township road and the driveway would not be crossing tillable land.**
 - 2. **This property is much like the surrounding properties in the same vicinity. It is comprised with much the same topography and soil types. There is little that sets it apart from the surrounding area.**
 - 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.
 - a. **The variance will not alter the essential character of the location. Building in the proposed location allowed by the township would have similar impacts on the land as building in the allowed $\frac{1}{4}$, $\frac{1}{4}$. If a variance would be obtained from Warsaw Township, the "ideal" location as stated by the applicant would have much less impact on the steep slopes present in the area.**
- 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. **The SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ is currently owned by two different property owners. Granting the variance could take away another property owner's ability to build a dwelling. Granting the variance would ultimately be guaranteeing a building site on the applicant's land so long as there is a building site available in the section. This would not be in harmony with the general purposes and intent of the official control. No hardship has been presented.**

Staff Recommendation/Resolution

Based on the above stated findings of fact staff recommends to deny the variance to build an additional dwelling in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 26 in Warsaw Township.

Jotsie Johnson showed the board where the allowed building site is, and stated that they are requesting this to avoid having a very long driveway.

Ms. Wangen said that it is difficult to get back to the site that exists. You would have to go over on the other side. It has a very steep hill and it goes up hill, the proposed location is a gradual hill. There would not be the ravines. Her intention is to sell 18 acres. She fully intends to sell it and somebody would build there. She wouldn't be holding onto a site.

M. Wozniak said that the 10 acres isn't the problem as far as the county is concerned.

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Ms. Johnson said the minimum they would go is 14.89 acres.

M. Wozniak said that if the existing site would be built on, it would have to be split, and a separate and distinct parcel would have to be created.

Ms. Wangen explains the map.

C/B. Anderson opened the public hearing.

Ken Volness is the neighbor just to the east of Ms. Wangen. The whole neighborhood is on the market right now. The building site that she has, and according to the township you need 150' of road frontage. The location that she is proposing is a separatable building site which is in very high commodity in Sogn Valley. The land is very private. If you allow her to put a building location which gives her the opportunity to sell it off, you would be making his property unbuildable. It is disenfranchising him totally. Within 1000' of that building you can't build anymore. He is trying to sell his house and he is telling potential buyers they could replace his current house further up the hill. If she built where proposed he would not be able to move his building site.

Joe Murry asked what the ideal building site is about. The township upholds the rules of the Township. They would not grant a variance.

With no further public comment J. Fritzingler motioned and S. Klair seconded to approve the closure of the public hearing. Motion carried 5:0.

J. Fritzingler said the 10 acre parcel is a very steep location.

Ms. Johnson said that it is much more accessible than the other location.

M. Wozniak said that the standard for driveways are that they cannot exceed over 14% grade. It would take some meandering.

M. McKay asked which would be least intrusive.

J. Fritzingler said that she was surprised that there was even a building site back there. She thinks they would both be intrusive.

M. McKay asked what the hardship is when they both require a meandering driveway.

Ms. Johnson said that the reason they are talking 18 acres instead of 10. So they can fit a driveway and building on there nicely.

M. McKay said that the stated hardship is the existing driveway location.

J. Fritzingler said that she is concerned that they would be taking a building site from someone else.

M. Wozniak said that if the board should feel to approve the variance, they could add a condition that a building permit must be taken out within one year of the decision.

R. Juliar said that you are still holding that other possible building site for one year.

Ms. Wangen said that she would be willing to go along with that condition.

C/B. Anderson said in the past when they have transferred one ¼, ¼ to another ¼, ¼ they have owned the whole ¼, ¼.

M. McKay said that he is not sold on the hardship. It sounds like there would be challenges with the alternative driveway.

R. Juliar said that he has a problem messing with someone else's opportunity.

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⁶*Motion by S. Klair and seconded by J. Fritzinger to deny the a variance to build an additional dwelling in the NW ¼ of NE ¼ Section 26 T111N R18W, in the A-2, Agricultural District, by way of transferring from the SE ¼ of the NW ¼, to the NW ¼ of the NE ¼ based on staff recommendation and findings of fact. Motion carried 5:0.*

R. Juliar left the meeting

Robert Benson

M. Wozniak presented the staff's findings as follows:

Mr. Benson is requesting a variance to build an additional dwelling in the NE ¼ of the NW ¼ in Section 23 T112N R18W, in the A-2, Agricultural District, by way of transferring from the NW ¼ of the NW ¼. He is also appealing to build a dwelling on land with a crop equivalency rating (CER) above 60.

Background

The property that Mr. Benson would like to build on is zoned A-2, Agricultural. There is currently a dwelling in the ¼, ¼ section (NE ¼ of NW ¼). The soil type where he would like to build is RaB with a CER of 82. There are currently 6 dwellings in the section. There is a wooded area on that portion of the property which would not require an appeal. Currently, a field access drive is located on the property. Mr. Benson proposes to move the driveway further NE. He has said that he spoke with MnDot and they approve of the new access drive location; saying it would be the preferred access point due to the topography in the area.

The property that Mr. Benson would like to move the site from would be located in the NW ¼ of the NW ¼ of Section 23, Stanton Township. The majority of the soils on that property have a CER of above 60. The only permissible building location would be in the wooded area which is very close to a bluff impact zone. It would require a ¼ mile driveway through land with a CER of 70-82. Mr. Benson and Stanton Township are the only property owners in this ¼, ¼. Transferring from this ¼, ¼ would not take away any other individual's right to build.

Stanton Township has indicated that they support this request.

Findings of Fact

Please Note "1" is for the variance to build in the ¼, ¼; "2" is for the appeal to build on CER above 60.

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.
3. **The allowed building location is environmentally sensitive and has very highly rated soil types present. The proposed building area would be located closer to the township road and would have a much smaller impact on the area.**
4. **There is a wooded area located on the proposed move-to location close to the road. There is an existing access drive in that area where a person would not need to build in the middle of the field.**

D. That the granting of the application will not materially adversely affect the health or

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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. **Allowing the building in the NE ¼ of the NW ¼ would not alter the essential character of the location. More of an impact is perceived when running long driveways to low soil types or wooded area rather than building closer to the road where less agricultural land would be impacted.**
2. **Allowing the building to be built in the proposed location of the field could possibly alter the essential character of the location. That is approximately a ten acre field with a majority of the soils at a CER of 82.**

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. **The intent of allowing dwellings on land with CERs below 60 is to maintain the agricultural land with the least amount of impact. The available ¼, ¼ is not an ideal location for a dwelling. It is in an environmentally sensitive area, and the driveway would take a large amount of land out of agricultural production. Granting the variance to build an additional dwelling in the NE ¼ of the NW ¼ by way of transferring a site from the NW ¼ of the NW ¼ is in harmony with the intent of the official control.**

Staff Recommendation/Resolution

Based on the above stated findings of fact, staff recommends approving the variance to build an additional dwelling in the NE ¼ of the NW ¼ of Section 23 in Stanton Township by transferring it from the NW ¼ of the NW ¼. Also, based on the above stated findings of fact, staff recommends denying the appeal to build a dwelling on soil with a crop equivalency above 60.

K. Gross described the site visit. She said that from her opinion where the field road is there now would be a better place to build the dwelling. The dwelling could be in the wooded area and not take up any of the agricultural land and it would be a short driveway there. Otherwise if you look at where the dwelling would be permitted right now would probably need an appeal to the CER because the woods go right down the slope. But the impact there would not be that significant because the township just built a new town hall and extended the township road to the end of their property line. If his driveway extended off that it would have minimal impact on the field.

Mr. Benson said that they could put it there but they would be crossing over the field. If they build where they are proposing their access would be wrapping all around from Hwy 19.

K. Gross said that you don't need to access where your road frontage is. You would be able to extend a driveway off that township road.

J. Fritzinger said that if you move the site that 10 acres would no longer be tilled.

C/B. Anderson opened the public hearing.

Don Benson said that he has farmed that land until last year. There is nothing that grows on the knoll. As you look at the Boyscout Camp. To the west, they have a lot of problems trespassing. They would love to see this thing moved away from their property.

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With no further public comment S. Klair motioned and M. McKay seconded to approve the closure of the public hearing. Motion carried 4:0.

M. McKay asked clarification on the staff recommendation.

M. Wozniak said they would allow a home to be built in the triangular site, but not in the location that he was proposing.

M. McKay clarified that they would be able to build, but then you said that it is all 82 CER.

K. Gross clarified that whole area of the field is 82, but there is a wooded area on the property they would be able to build in.

Mr. Benson said that it isn't as good of ground as it says it is. One out of 3 years you do not get anything off of it.

M. Wozniak asked if you would be able to access it if they approved the site lower on the property.

M. McKay asked if they can make a condition on a recommendation regarding the access.

M. Wozniak said that the access permit is part of the building permit process and it would be required to receive the building permit.

⁷Motion by M. McKay and seconded by S. Klair to approve the variance to build an additional dwelling in the NE ¼ of the NW ¼ in Section 23 T112N R18W, in the A-2, Agricultural District, by way of transferring from the NW ¼ of the NW ¼ and also approve the appeal to build a dwelling on land with a crop equivalency rating (CER) above 60 based on the applicant knowing the land best and trusting that he would be able to do a smaller footprint and shorter driveway in the proposed location, this would be the least intrusive situation and the number 1's and Subdivision 5 in staff's findings of fact. Motion carried 5:0.

Norma Haglund

M. Wozniak thanked the public for waiting out for their request. The first two items were carried over from November and the Board was obligated to hear them first. He presented the staff recommendation and findings as follows:

Mr. and Mrs. Haglund are requesting a variance to split 6.58 acres in the A-3 district rather than the required 35 acres (variance is for 28.42 acres).

Background

Mr. and Mrs. Haglund are in the process of selling parcel A and B on the enclosed survey to Gene Glander. Both parcels are located in the Section 31 of Florence Township. Parcel A is a separate parcel. Parcel B is part of a 112 acre parcel number 32.200.0380. This parcel is part of an area called "Auditor's Subdivision of Central Point."

Normally when this type of request would come forth we would require parcels A & B be combined so that the existing parcel A would be less non-conforming. Since parcel B in this case is part of an auditor's subdivision, parcel A and B cannot be combined.

The applicant has stated that they will be selling parcel B. They are not aware of the intent of the use of parcel B. They are aware that this variance is not granting the right for a dwelling to be built here. The variance is simply to allow the land to be split from the larger portion of the parcel.

Florence Township has indicated that they support this request.

Findings of Fact

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- 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:
- E. 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.
 - 5. **The property in question is located across CSAH 5 from the rest of the parcel. The road provides a natural divide. The applicants are not requesting to increase the density in the section by building another dwelling. Since the parcel is located in an auditor's subdivision it cannot be combined with the other property being purchased which would be the natural remedy.**
 - F. 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.
 - a. **There aren't any foreseeable detrimental effects to surrounding property owners from granting the variance.**

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. **The intent of the 35 acre requirement is to provide enough area for the city to grow and provide a space for orderly development in the future. Allowing the variance should not have an impact on the ability for the city to grow in this direction. An additional house is not being requested. The hardship present is that the tax parcel is located in an auditor's subdivision and is unable to be combined with the existing parcel to the east. This was not created by the landowner.**

Staff Recommendation/Resolution

Based on the above stated findings of fact, staff recommends approving the variance to split 6.58 acres in the A-3 district rather than the required 35 acres (variance is for 28.42 acres).

M. Wozniak said that there have been concerns raised by neighbors about a potential mining operation going in and just wanted to clarify that that is another request and would require a conditional use permit and a public hearing.

M. McKay asked to clarify what an auditor's subdivision is.

M. Wozniak said that it is like a plat. It was used in a number of older communities as a tool to clean up and establish definable boundaries. It could be combined with the parcel outside the auditor's subdivision only by re-platting.

J. Fritzing asked how you can split it off but not put it together.

S. Klair clarified how many people they were selling to.

Mrs. Haglund said one person.

C/B. Anderson asked if it was buildable.

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K. Gross said no, the two together don't equal 35 acres.

C/B. Anderson opened the public hearing.

Shannon Springer asked why it isn't buildable right now.

M. Wozniak said that under the current zoning they are required to have 35 acres.

Ms. Springer asked if they were to have a quarry.

M. Wozniak said that it would be another request before a different board. It is not what they are approving tonight.

Sheri Heitman said that whether or not the variance can be stopped. She is a registered feedlot, wouldn't they need to be 1000' out from them if they were to develop that out.

M. Wozniak said that there is a setback from a feedlot and that could hinder them from developing it.

Ms. Heitman clarified that the variance is just to sell off the land.

With no further public comment J. Fritzinger motioned and M. McKay seconded to approve the closure of the public hearing. Motion carried 4:0.

⁸Motion by S. Klair and seconded by J. Fritzinger approve the request for a variance to split 6.58 acres in the A-3 district rather than the required 35 acres (variance is for 28.42 acres) according to staff recommendation and findings of fact. Motion carried 5:0.

⁹Motion by S. Klair and seconded by J. Fritzinger to adjourn the January 22, 2006 Board of Adjustment meeting at 10:26 p.m. Motion carried 5:0.

Respectfully Submitted,

Kristi R. Gross

Secretary

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MINUTES

- ¹ APPROVE January 22, 2006 Board of Adjustment Agenda. Motion carried 5:0.
- ² APPROVE November 27, 2006 Board of Adjustment minutes as amended. Motion carried 5:0.
- ³ UPHOLD 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 based on the findings of fact of the November 16, 2006 & January 2007 reports. Motion fails 2:2 J. Fritzinger & S. Klair dissenting.
- ⁴ APPROVE the appeal, REVOKE staff's issuance of the grading permit. Motion carries 3:1 R. Juliar Dissenting.
- ⁵ APPROVE the request for a variance to build a dwelling closer than the required 1,000' minimum setback from a registered feedlot based on staff recommendations and a thorough review of it. Motion carried 6:0.
- ⁶ DENY the a variance to build an additional dwelling in the NW ¼ of NE ¼ Section 26 T111N R18W, in the A-2, Agricultural District, by way of transferring from the SE ¼ of the NW ¼, to the NW ¼ of the NE ¼ based on staff recommendation and findings of fact. Motion carried 5:0.
- ⁷ APPROVE the variance to build an additional dwelling in the NE ¼ of the NW ¼ in Section 23 T112N R18W, in the A-2, Agricultural District, by way of transferring from the NW ¼ of the NW ¼ and also APPROVE the appeal to build a dwelling on land with a crop equivalency rating (CER) above 60 based on the applicant knowing the land best and trusting that he would be able to do a smaller footprint and shorter driveway in the proposed location, this would be the least intrusive situation and the number 1's and Subdivision 5 in staff's findings of fact. Motion carried 5:0.
- ⁸ APPROVE the request for a variance to split 6.58 acres in the A-3 district rather than the required 35 acres (variance is for 28.42 acres) according to staff recommendation and findings of fact. Motion carried 5:0.
- ⁹ ADJOURN the January 22, 2006 Board of Adjustment meeting at 10:26 p.m. Motion carried 5:0.