

Vilas County Board of Adjustment  
Ken Eichelberger Administrative  
Appeal Hearing Minutes  
October 24, 2008  
Winchester Town Hall



Members Present:

Glyn Roberts – Chairman  
Donald Huntley – Vice Chair  
Joy Hanser  
Martin Ketterer  
John Barron

Others Present:

David Sadenwasser

Dawn Schmidt

Mary Greenman

Jim Janet

Tim Vocke

Kenneth Eichelberger

Bernice Nowak

Harry Butler

Tom Blake

Brian Vukovich

Rick Clem

Richard Pavlov

John Wilson

Mark Schuelke

Tom Brogelman

Gale Brogelman

Joe Osfar

Phillip S. Williams

Nancy Williams

Vilas County Board of Adjustment Secretary

330 Court St. Eagle River, WI 54521

Vilas County Zoning Administrator

330 Court St. Eagle River, WI 54521

Vilas County Assistant Zoning Administrator

330 Court St. Eagle River, WI 54521

Vilas County Deputy Zoning Administrator

330 Court St. Eagle River, WI 54521

Attorney - Eckert, Kost, & Vocke

729 Lincoln St. Rhinelander, WI 54501

Appellant

7801 E. Birch Lake Rd. Winchester, WI 54557

Agent – Northwoods Permit Specialists

7714 Palmer Lake Rd. Land o' Lakes, WI 54540

Registered Engineer

Waukesha, WI 53186

Wisconsin Department of Natural Resources

107 Sutliff Ave. Rhinelander, WI 54501

Vukovich Construction

N10606 Olson Rd. Ironwood, MI 49938

RC Construction & Inspection

10132 CTH W Winchester, WI 54557

138 Eastwood Dr. Manitowish Waters, WI 54545

G1020 Old Highway O Winchester, WI 54557

13779 Bear Claw Trail Winchester, WI 54557

2346 Black Forest Rd. Winchester, WI 54557

2346 Black Forest Rd. Winchester, WI 54557

7625 E. Birch Lake Rd. Winchester, WI 54557

3678 W. Rock Lake Rd. Winchester, WI 54557

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Mr. Roberts, Chairman, calls the Vilas County Board of Adjustment (The Board) to order at 10:10 am. For the record, this meeting has duly been called to order in accordance with the Wisconsin Open Meeting Law.

Mr. Roberts introduces Mr. Tim Vocke, attorney for the Board, and explains his role in the hearing.

Mr. Roberts explains that the Board has convened today to render a decision on the Administrative Appeal filed by Mr. Ken Eicheberger.

Mr. Huntley reads the Public Notice.

Mr. Roberts explains that the Board conducted an onsite inspection of said property prior to the hearing. He also explains the purpose of, and rules for, conducting the hearing, and the process of appealing any decision made at the hearing.

Mr. Huntley swears in Ms. Bernice Nowak, Agent for the applicant, of Land o' Lakes, WI.

Ms. Nowak explains that much of the testimony must come from the property owner, contractor, and engineer otherwise they amount to hearsay. She states that she did secure the permits for a legal 50% addition to the original structure. She explains the features of the addition that she and Vilas County Deputy Zoning Administrator Jim Janet discussed. She explains that problems were discovered with the septic tank during the permitting process, and that the septic tank was moved in order to receive a permit from the County. She states that when she was notified of the work stoppage she spoke with Mr. Janet and Vilas County Zoning Administrator Dawn Schmidt about the revocation of the permit. She then states that she interprets Vilas County Shoreland Zoning Ordinance (The Ordinance) 6.3 as allowing a wall to be replaced. She also states that Ordinance 6.5, under which the permit was revoked, the amount allowed to be replaced is 50 % of the building. She then asks to what building is this referring. She then states that the additions to the original structure were completed before any work was done to replace parts of the original structure. She states that the source of the controversy is that Ordinance 6.5 does not specify that the 50% refers to the pre-existing building or the building prior to securing the permit.

Mr. Ketterer asks if elevation drawings of the house were included with the original permit.

Ms. Nowak responds that they were not.

Mr. Ketterer states that the original application shows an estimated cost of \$34,000. He then asks what this cost included.

Ms. Nowak responds that it was for the addition.

Mr. Ketterer states that based on the photos of the original building, and the building as he saw it on the site visit he wonders if that is a \$34,000 addition.

Ms. Nowak states that \$34,000 was the estimate of the cost of the project that she was given.

Ms. Hanser asks Ms. Nowak to specify what exactly she is calling the addition. She asks if it is everything that one sees currently at the site.

Ms. Nowak states that everything shown on the permit application is on site. She states that the addition was taken out on the back end of the building, towards the road, and to the right of the building.

A drawing of the footprint of the building as drawn by an engineer is entered as Exhibit A.

Ms. Nowak explains that Exhibit A is a document that was presented to Mr. Janet explaining where the additions would take place and that additions in front of the 75' setback are highlighted in yellow and that additions beyond the 75' setback are highlighted in orange.

Ms. Hanser asks if the change in footprint is the part behind the 75' setback. She then asks Ms. Nowak to show her where the original footprint is on Exhibit A.

Ms. Nowak demonstrates to Ms. Hanser on the site plan drawing where the original footprint is.

Ms. Hanser notes that the survey drawing that Ms. Nowak has provided for the Board does not show the original footprint and explains that this was the reason for her question.

Mr. Huntley notes that the chimney chases attached to the structure are not present on the survey drawing.

Mr. Vocke explains that Vilas County Zoning Committee is being represented at the hearing by Vilas County Corporation Counsel Martha Milanowski and that it is their interpretation that is being appealed. He then states that Ms. Milanowski would like the opportunity to question the witness.

A copy of the Vilas County Shoreland Zoning Ordinance 6.1-6.5 is entered as Exhibit B.

Ms. Milanowski asks if Ms. Nowak has three separate arguments: 1.) The work completed so far is maintenance, repairs, and internal improvements, 2.) The work done constitutes a 50% expansion, and 3.) The work done does not exceed 50% of the value of the structure.

Ms. Nowak answers yes.

Ms. Milanowski asks if what the Board observed at the site earlier constituted maintenance, repairs, and internal improvements under Ordinance 6.3.

Ms. Nowak states that is correct.

Ms. Milanowski asks if Ms. Nowak feels that the construction as completed so far has complied with Ordinance 6.4 which speaks to external alterations and additions with a maximum 50% expansion.

Ms. Nowak states that is correct.

Ms. Milanowski asks if Ms. Nowak also feels that they have not exceeded 50% of the building as described in Ordinance 6.5 which speaks to the replacement of existing structures.

Ms. Nowak states that is correct.

Ms. Milanowski asks if Ms. Nowak made that interpretation based on the house as it exists now that there is an addition on it.

Ms. Nowak states that she is basing her interpretation on what is in the ordinance. In Ordinance 6.5, under replacement of walls, it allows up to 50% of the building.

Ms. Milanowski asks what Ms. Nowak is using as her definition of “the building.”

Ms. Nowak states that is what she would like to know and the Ordinance is ambiguous on this matter.

Ms. Milanowski notes that Ordinance 6.1, which deals with applicability, defines what is considered “the building” and questions Ms. Nowak on the supposed ambiguity of Ordinance 6.1.

Ms. Nowak then states that she feels that the ambiguity is not with Ordinance 6.1 but with Ordinance 6.5A(2) not defining clearly what it means by “the building.”

Ms. Milanowski then questions Ms. Nowak about the ambiguity of Ordinance 6.5A(2) and what she feels it would allow.

Ms. Milanowski asks if Ms. Nowak was ever a Zoning Deputy for Vilas County.

Ms. Nowak responds yes.

Ms. Milanowski asks Ms. Nowak if she would have permitted what was seen at the site today.

Ms. Nowak states that she would have talked with the contractor and property owner in order to resolve the problem. She then states that she feels the Zoning Department does not do this.

Ms. Milanowski asks if Ms. Nowak thinks there was a problem.

Ms. Nowak states that there was something that needed to be resolved. She also states that part of the problem lies with the Ordinance.

Ms. Hanser asks if more than one permit exists for this project.

Ms. Nowak states that there is a sanitary permit and one zoning permit.

Mr. Ketterer asks if a permit exists for the construction beyond 75'.

Ms. Nowak again explains that that construction is included on the Zoning Permit Application.

Ms. Hanser inquires about when the addition was completed and how Ms. Nowak calculated the 50% for the expansion.

Ms. Nowak once again explains that all additions were included on the original permit.

Ms. Hanser asks if the building as it sits now is what was on the permit application.

Ms. Nowak responds yes, and that what is on the application was followed during construction. She again shows the Board what areas of the permit cover what areas of the house.

Mr. Ketterer asks Mr. Roberts why, if this is an administrative appeal of Ordinance 6.3, we are discussing Ordinance 6.5.

Mr. Vocke instructs the Board that the only issue in question is an interpretation of Ordinance 6.3; Ordinance 6.4 and Ordinance 6.5 should not be playing into the presentation of evidence or the deliberations of the Board.

Mr. Huntley asks if the Zoning Deputy referred to Ordinance 6.5 when he stopped the project.

Mr. Vocke states that whether or not it was referred to by the Deputy, Ordinance 6.5 is not being appealed.

Mr. Huntley swears in Mr. Brian Vukovich of Vukovich Construction, contractor for appellant, of Ironwood, MI.

Mr. Vukovich states that he was contracted by Mr. Eichelberger to “roughen” his house according to the blueprint. He states that when construction proceeded to the walls of the original structure there was tremendous dry rot, red ants, and mold. He states that he felt a responsibility as a contractor to repair and replace affected areas to bring it up to state code, and professionally get it done right. He states that he went through the whole building trying to save as much as he could; the walls are still standing,

Mr. Vukovich enters photographs of the construction process as Exhibits C(1) – C(14).

The Board examines Exhibit C.

Mr. Vukovich continues describing the nature of the work that he completed and explains the nature of the work shown in progress in Exhibit C. He also describes the problems discovered in the south and west walls.

Mr. Ketterer asks how much of the foundation of the original structure was replaced.

Mr. Vukovich states nothing except a block or two was replaced, and concrete was poured into the foundation where the 6x6 posts were set. He states that none of the foundation, footings, or decks were replaced and that a crawlspace was built under the addition.

Ms. Hanser states that typically post and beam type construction are not needed when existing walls are intended to be used. She then asks why this post-and beam method is used instead of using the existing wall for support. She states that this shown on Exhibit C(13). She then asks again why the new wall is not bearing on the existing structure wall.

Mr. Vukovich answers that the new beam is to be located 3 ft higher than the height of the existing wall.

Ms. Hanser then asks if Mr. Vukovich was intending to replace the existing wall.

Mr. Vukovich states that he intended to tie the existing wall into the new top plate, which was designed by a licensed engineer.

Ms. Hanser states that in the end the existing wall was never used at all, it was cut out and the floor joists were cut off.

Mr. Vukovich states that this was to remove the rot and other problems noted earlier.

Ms. Hanser states that Exhibit C(3) shows posts sowing through the original wall and roof and bearing on the foundation which means to her that the load of the beam was always going to be bearing on the posts and not the existing wall. She then asks if that was correct.

Mr. Vukovich states that is correct, the beam is the header, and the intent was to frame above the existing walls and tie them into the header.

Mr. Ketterer asks if Mr. Vukovich would consider this a maintenance project or a remodeling project.

Mr. Vukovich states that if new windows are being installed it is partially remodeling, but that replacing the walls and the sills would definitely be maintaining and replacing to state code. He opines that it was a mixture of both.

Ms. Milanowski asks if Mr. Vukovich called the Zoning Department when he discovered the dry rot and mold in the walls.

Mr. Vukovich responds that he did not.

Ms. Milanowski asks if he ever discussed the red ants and mold with Ms. Nowak.

Mr. Vukovich responds that he did.

Ms. Milanowski asks if he ever discussed with Ms. Nowak if an additional permit was needed once the red ants and mold were discovered.

Mr. Vukovich states that this was not discussed. He also states that he talked to Mr. Eichelberger about the ants and mold as well.

Mr. Barron asks if the final intent was to keep the existing walls in place.

Mr. Vukovich states that that is correct. He then states that the front (west) wall was impossible to save because it was mostly made up of windows and the rest was in dry rot.

Ms. Hanser asks if the original construction was 2x4 construction and the new construction was 2x6 construction.

Mr. Vukovich answers yes.

Mr. Huntley swears in Mr. Ken Eichelberger, property owner, of Winchester, WI.

Mr. Eichelberger begins by explaining the process of considering and planning his addition. He states that he hired Ms. Nowak to guide him because of the intricate rules and regulations. He states that Ms. Nowak set him up with Mr. Paul Buchko, an engineer, to assist in this project.

Letter from Mr. Buchko to Mr. Eichelberger regarding his project is entered as Exhibit D.

Mr. Eichelberger reads Exhibit D.

Mr. Eichelberger notes that Exhibit E answers Ms. Hanser's questions to Mr. Vukovich concerning the how the loads would bear on existing walls.

A letter from a Vukovich Construction employee, Mr. Anton Chouminord, regarding the extent of dry rot, mold, and carpenter ant infestation is entered as Exhibit E.

Mr. Eichelberger reads Exhibit E.

Mr. Eichelberger states that ABC Exterminating has been hired each year for the last three to four years to spray for carpenter ants that were found in residence. He also states that the first evidence of ants came from sawdust in the kitchen cabinets.

Mr. Eichelberger states that if his intent was to tear down the existing walls he would not have gone to the extent of erecting 6x6 supports and a new header, he simply would have torn down the existing wall and erected new frame construction.

Letters from Birch Lake residents supporting the work Mr. Eichelberger has completed are entered as Exhibit F.

Mr. Eichelberger reads one of the letters from Exhibit F.

Mr. Eichelberger states that there was no intent to violate or bypass any rules or regulations. He also states that he had no pre-conceived ideas as to what exactly he wanted done to the house, he just wanted an addition and an improvement to the overall structure.

Mr. Vocke asks Mr. Eichelberger the square footage of the original structure.

Mr. Eichelberger responds that it was 946 sq. ft.

Mr. Vocke asks the square footage of the addition.

Mr. Eichelberger states that he does not know.

Ms. Nowak states that answer is on the Zoning Application.

Ms. Milanowski asks if Mr. Eichelberger why the existing cabin is still inside the new home.

Mr. Eichelberger responds that the existing cabin is to be remodeled.

Ms. Milanowski asks if this includes the existing walls.

Mr. Eichelberger responds yes.

Ms. Hanser asks if the condition of the existing structure was assessed prior to starting construction, especially considering the history of carpenter ants and increased weight loads on the existing walls.

Mr. Eichelberger states that he inquired with the engineer about a reasonable way to put and addition on the existing structure but he never had anyone investigate the extent of the damage from the carpenter ants and dry rot. He states that because of the spraying for ants over the course of three to four years it was not expected that the extent of the damage would be as great as it was.

Ms. Hanser asks if the plate lines were ever checked.

Mr. Eichelberger states that they were not.

Ms. Hanser states that in her opinion she sees an entire new home as opposed to an addition. She states that a new home could have been built beyond the 75' mark and the lakeshore mitigated and the hearing would not have been necessary. Ms. Hanser then asks if Mr. Eichelberger ever rethought the project and considered moving his house back behind the 75' mark.

Mr. Eichelberger states he never considered that. He states that he has put so much money into the home that he cannot afford to move his house.

Mr. Huntley states that money is not able to be considered as a hardship.

Ms. Hanser states that it does not matter as the appeal is for an ordinance interpretation as opposed to a variance.

Mr. Barron asks how the window area of the new building compares to the window area of the existing structure in front of the 75' mark.

Mr. Eichelberger states that the window areas are comparable.

Mr. Huntley swears in Mr. Harry Butler, Butler Engineering, of Waukesha, WI.

Mr. Butler states that he is a registered engineer in Wisconsin. He states that he is familiar with the Wisconsin Uniform Dwelling Code (UDC) and has examined the Vilas County Shoreland Zoning Ordinance. He believes that the work as completed so far conforms to Ordinance 6.3. He understands the thoughts of Mr. Clem in seeing what appears to be a new structure but he feels that there are several issues at play: 1.) Whether or not this is work done on the existing structure and 2.) Work done on the addition and alteration. He states that he believes that the work done has been done according to the plans, the repairs that were done were done in accordance with the UDC, and therefore he feels this project is in compliance with both the Ordinance and the UDC.

There are no others who wish to speak in favor of granting the appeal.

There is no additional correspondence to the Board regarding the appeal.

Mr. Roberts swears in Mr. Jim Janet, Vilas County Deputy Zoning Administrator, of Eagle River, WI.

Mr. Janet states that he issued a permit to Ms. Nowak on behalf of Mr. Eichelberger. He states that the sideways expansion at 50 ft is not a problem. He states that he went over all the details of this expansion with Ms. Nowak. He states that the square footage expansion between 50' and 75' is allowable as far as the Zoning Department is concerned as well. He states that he was made aware of the nature of the construction when Town of Winchester UDC inspector Mr. Rick Clem inquired why the home was permitted as an expansion and an addition when he felt it was new construction. He then goes on to explain the nature of the walls that he permitted to be removed and what walls were to remain. He states that Ms. Nowak assured him that Mr. Vukovich was aware of all applicable regulations and restrictions. He states upon his second inspection he noted that the walls that were to be original were brand new. He also notes that the building is completely closed up yet the original walls, roof, and shingles are within the new building envelope. He also notes that no part of the existing structure is actually touching the new structure at any given point. He states that he conferred with Vilas County Zoning Administrator Dawn Schmidt and she gave him approval to halt construction.

Mr. Ketterer asks Mr. Janet if he considers this maintenance or remodeling.

Mr. Janet responds that he considers it an addition and a completely new building envelope. He then states that between the two he considers this remodeling.

Mr. Ketterer states that what he sees is completely new construction but it is allowed to be done based on certain zoning rules and regulations.

Mr. Janet explains that behind 50' line a sideways expansion, consisting of a new addition with 100% new material, is allowed.

Mr. Ketterer asks if Mr. Janet thought that the addition was code compliant when the permit was applied for.

Mr. Janet responds that is correct. He then noted that behind the 75' line there are no restrictions on the scope or size of construction.

The Board discusses with Mr. Janet the chimney chases located on the north and south sides of the home.

Ms. Hanser asks if, in Mr. Janet's experience, when people come across unforeseen problems that completely change the scope of the project they typically consult with the Zoning Office concerning the changes. She also asks what, in his opinion, what the proper procedure in that situation would be.

Mr. Janet responds that some people do come to the office when unexpected changes occur. He states that in his opinion, at the time the extenuating circumstances were discovered the builder should have stopped construction, contacted the Zoning Office. He states that, at that time, the Zoning Office would have notified him of the need to obtain a variance from the Board because the structure would have had 100% new walls.

Mr. Eichelberger asks if the building looks any different from the permit drawing on the outside.

Mr. Janet states that it does not, other than the chimney chase to the south.

The Board continues discussion of the chimney chase on the north and south side of the home.

Mr. Huntley swears in Mr. Rick Clem, UDC Inspector for the Town of Winchester, of Winchester, WI.

Ms. Milanowski questions Mr. Clem as to his experience and credentials.

Ms. Milanowski asks if he issued a UDC permit to Mr. Eichelberger.

Mr. Clem responds that he issued a permit for an addition.

A copy of this permit is entered as Exhibit G.

Mr. Clem explains that he originally issued the permit for an addition to the existing building. He then notes that under the UDC for the Town of Winchester the only thing that he inspects is where the addition touches the original building unless there is to be remodeling within the existing structure. He states that he never considered the existing structure when issuing his permit.

Ms. Milanowski asks if he went out to view the property after issuing the UDC permit.

Mr. Clem states that he visited the site twice after issuing the permit, once to inspect the footings and once to inspect the foundations.

Ms. Milanowski asks if the building as it stands today reflects what he authorized on his permit.

Mr. Clem responds that it does not.

Ms. Milanowski asks what kind of permit would have been needed for the building that stands today.

Mr. Clem states that what he sees at the site is a new home.

Mr. Ketterer asks if the work as completed so far consists of maintenance or remodeling.

Mr. Clem states that he thinks it is neither; that it is a totally new structure.

Mr. Eichelberger asks Mr. Clem if he saw the elevation drawings when he issued his permit.

Mr. Clem states that Ms. Nowak had brought something in with the permit application but he does not remember exactly what those drawings were.

Mr. Eichelberger asks Mr. Clem again if he saw elevation drawings when he issued his permit.

Mr. Clem once again states that he cannot remember.

Mr. Eichelberger states that Mr. Clem then issued his permit from the plot of survey.

Mr. Clem agrees.

Mr. Eichelberger asks Mr. Clem whether or not a permit for a new structure would include the footings and foundation for a new structure.

Mr. Clem answers yes.

Mr. Eichelberger asks if Mr. Clem feels that the original footings and foundations are still in place and have not been changed or modified.

Mr. Clem declines to answer, citing work that may have been done after his inspection, and stating that he only inspected work that had been completed when he was on site.

Mr. Eichelberger asks if Mr. Clem is saying that he feels the house is a new structure even though he does not know if the footings and foundations are new.

Mr. Clem states that he feels the house from the footings up is a new structure.

Pages containing a floor plan and pictures of construction at the residence taken by Mr. Clem are entered as Exhibits G(1)-G(6). There are four pictures on each page, excluding the floor plan.

Mr. Clem explains the pictures in Exhibits G(1) – G(6) and their pertinence to the UDC. He also includes concerns with the existing structure being inside the new structure and how that would affect access to the loft area of the new home.

Mr. Clem also states that generally construction is stopped when a problem is discovered.

Mr. Eichelberger questions Mr. Clem about the extent of the rot in the house.

Ms. Nowak asks Mr. Clem if she called him to set up an appointment to secure a permit.

Mr. Clem responds yes.

Ms. Nowak asks if she asked what to bring with her to that meeting.

Mr. Clem states that he told her to bring a sanitary permit, zoning permit, and plans for the structure.

Ms. Nowak then asks if he accepted what she brought to the meeting.

Mr. Clem answers yes.

Mr. Huntley swears in Tom Blake, Wisconsin Department of Natural Resources (DNR), of Rhinelander, WI.

Mr. Blake states that he was at the onsite visit conducted before the hearing. He also states that Ordinance 6.3 speaks to “within the existing building envelope” and he feels that the new walls are at the same location as the existing walls were. He states that is an important distinction. He states that he feels the key in Ordinance 6.3 is the word “replacing” and at what point repairs become replacement. He states that he feels anything over 50% is replacement. He states that he does not feel that this case is repairing, and therefore it needs to be replacement. He also states that he thinks if the Board feels Ordinance 6.3A, B, and D are ambiguous the Board should go to the intent of the Ordinance and think about what the County Board was intending when they drafted the Ordinance. He feels that Ordinance 6.2 and 1.3 are also applicable sections because they speak to the intent of Ordinance 6.3.

Ms. Milanowski asks the position of the DNR.

Mr. Blake answers that he believes this project is not a repair; that is has stepped over that line. He states the he believes it is replacement of the structure and that the Ordinance supports his opinion.

Mr. Eichelberger asks Mr. Blake to what he is speaking when he refers to 50%.

Mr. Blake answers that, in general, it would be the six sides of a structure, the foundation, the roof, and the four walls.

Mr. Eichelberger asks Mr. Blake to identify the equation that he uses to identify the 50%.

Mr. Blake states that it would be a percentage of the building envelope and reads from the Vilas County General Ordinance 3.2 which defines the building envelope.

Mr. Eichelberger asks how much of the existing structure remains.

Mr. Blake states that he does not know for sure.

Ms. Schmidt declines the opportunity to speak.

Vilas County Assistant Administrator Ms. Mary Greenman declines the opportunity to speak.

The Board decides to review a DVD supplied by the Vilas County Zoning Department of a walk-through of the Eichelberger property.

Ms. Nowak states that she and Mr. Eichelberger have not been given the privilege of viewing the DVD prior to its being shown at the hearing and as such they feel it would be an invasion of privacy on Mr. Eichelberger to show the DVD at the hearing.

Mr. Vocke advises the Board that the DVD does not constitute an invasion of privacy because the Board has the right to go on the premises. He also states that he has discussed the DVD with Mr. Eichelberger and he is aware of it.

Mr. Eichelberger states that he was made aware of the DVD but has not had the opportunity to view it.

The DVD of the Eichelberger property taken and narrated by Vilas County Zoning Administrator Dawn Schmidt is entered as Exhibit H. It is shown to the Board and public without sound.

Mr. Huntley swears in Ms. Dawn Schmidt, Vilas County Zoning Administrator, of Crandon, WI.

Ms. Milanowski asks if Ms. Schmidt watched the DVD.

Ms. Schmidt states yes.

Ms. Milanowski asks if she knows who made the DVD.

Ms. Schmidt states that she does.

Ms. Milanowski asks who made it.

Ms. Schmidt states that she made it.

Ms. Milanowski asks in what capacity Ms. Schmidt made the DVD.

Ms. Schmidt states that she made it as Vilas County Zoning Administrator.

Ms. Milanowski asks if that is one of her duties. She also asks if the Administrator is authorized to do that.

Ms. Schmidt reads Vilas County General Zoning Ordinance 9.2E which gives the Zoning Administrator access to structures or residences for performance of duties.

Ms. Milanowski asks if the DVD was made pursuant to the authority given by Vilas County Zoning Ordinance 9.2E.

Ms. Schmidt states that is correct.

Mr. Eichelberger asks if Vilas County General Ordinance 9.2E gives access to a locked structure.

Ms. Schmidt states that she entered the building with Mr. Janet, who had access to the keys.

Mr. Eichelberger asks if it was her understanding that the structure was locked and had to be unlocked by someone for her to gain access.

Ms. Schmidt responds yes.

Ms. Milanowski asks Mr. Janet to explain how he had access to the structure.

Mr. Janet explains that he asked a man picking up scaffolding to wait around so that he could enter the building with Ms. Schmidt. He then explains that this man showed him where a set of keys were hidden on the property and granted him access. Mr. Janet states that he assumed that the man worked for Mr. Vukovich.

Ms. Nowak asks Mr. Janet if, at the time he took the DVD, he identified himself to the worker.

Mr. Janet states that he had met the man the previous time he had been on site to stop the project. At that time he did not hang a violation card but he did give his business card to a gentleman operating a saw who was to give it to Mr. Vukovich. He states that he assumes the man did forward the card because when Mr. Janet returned to the office he spoke with Mr. Vukovich on the phone.

Ms. Nowak asks if Mr. Janet gave the man his card prior to entering the building.

Mr. Janet responds that he gave his card as he was leaving.

Mr. Vocke advises the board to give Mr. Eichelberger and Ms. Milanowski the opportunity to make closing arguments.

Mr. Eichelberger explains to the Board why he feels the Board should overturn the Vilas County Zoning Department's interpretation of Ordinance 6.3. He states that the addition is not in question, and that the other work consists of repair and replacement of the other two exterior walls. He states that they feel that the repair and replacement of the walls was reasonable, notes that there was no change in the building envelope, the deck towards the lake has remained intact and has not been changed, the walls were built on the existing foundation, and the existing foundation is still in place. He states that only the wood damaged with rot and ants was replaced. He states that he does not feel that they are in violation of Ordinance 6.3 as they understand it.

Ms. Nowak states that she admits that mistakes were made by the contractor in that he should have notified the Zoning Department of the problems. She also states that if she were in the position of the Zoning Department she would have worked with the contractor to resolve the issues and foster a better relationship between all parties involved. She also states that she feels the permit could have been amended to include the replacement of portions of the existing walls because Ordinance 6.3 clearly states that this is allowed.

Ms. Milanowski states that the Zoning Department feels that the work as completed so far exceeds what is allowed in Ordinance 6.3 and that is why the permit was revoked under Ordinance 6.5. She states that Ordinance 6.3 A, B and D cannot be interpreted without looking at Ordinance 6.3C, which enacts Ordinance 6.5. She states that is the crux of the issue for the Zoning Department. She also states that Ms. Nowak refers to what she would have done as a deputy, that mistakes were made, and the Zoning Department should have been contacted but they were not, so reasonable discussion was not possible. She states that if that had that happened another course of action may have been possible, but the Zoning Department was never contacted on this issue. She states that the Zoning Department has no reason to question the intent of Mr. Eichelberger but the Board must look only at what was constructed and what the Ordinance states.

Mr. Roberts closes the public discussion and comment, and closes the presentation of evidence.

Mr. Huntley states that Ordinance 6.3 says clearly that the existing building envelope may not be altered beyond the thickness of new materials. He then states that he sees the envelope has been considerably altered.

Ms. Hanser states that the point is that external alterations are not covered by Ordinance 6.3, but they are covered by Ordinance 6.4 and 6.5. She states that once that wall had to be replaced the structure fell into Ordinance 6.4 and 6.5 automatically. She states that it is very unfortunate that the state of the building and applicable codes were not checked out before erecting \$80,000 worth of construction that was planning on using old plates and old floor joists. She states that once the rot and insect infestation were discovered the project should have been stopped and all parties should have discussed the available options, especially knowing that consent from the county is needed for any construction

within 50' of the water. She states that she feels that is where the mistake was made and she feels the Zoning Department interpreted the Ordinance correctly.

Mr. Barron states that the concern at the county level is to maintain and keep the walls that are encroaching on the 75' mark. He states that often times the roof and floor structures are inadequately built and that those types of things should be included in the original permit. He also states that more conversation back and forth was definitely needed.

Ms. Hanser states that the issue at hand is whether the Zoning Department interpretation is correct. She states that the 75' setback is in place to maintain water quality in the lakes, and when new homes are being built, which has in essence happened here, they need to be behind the 75' mark so that water runoff coming off the roof can be mitigated. She states that there is a considerable amount of runoff coming off the roof of the structure now compared to the original structure, and now that runoff is within 50' of the lake. She states that the original addition was allowed, but things have been changed that were not permitted, so the Board needs to agree with the Zoning Department to say that the work was beyond what was permitted or disagree with them and say the work was allowable. She states again that she thinks the Deputy got the interpretation correct.

Mr. Roberts and Mr. Huntley agree.

Mr. Ketterer states that the appeal is appealing Ordinance 6.3 and its ambiguity and intent. He states that, in his mind, the terms maintenance and remodel have somewhat different intent. He states that Ordinance 6.3 allows considerable latitude in maintenance on a property, however in this particular case the maintenance issue has not been discussed adequately. He states that in his mind the construction that has been completed consists of demolition and replacement, not maintenance. He also states that Ordinance 6.3 is not ambiguous and that the intent of Ordinance 6.3 is to prevent this type of construction from occurring.

Mr. Roberts asks if anyone would like to make a motion on this issue.

Mr. Ketterer motions that the Appeal before the Vilas County Board of Adjustment be denied due to the fact that the construction referred to in the Appeal has not conformed to Vilas County Shoreland Zoning Ordinance 6.3A, B, and D, has not conformed to the intent of those paragraphs, and that Vilas County Shoreland Zoning Ordinance 6.3A, B and D are not ambiguous. Mr. Huntley seconds

Ms. Hanser proposes to amend said motion to include that the Vilas County Board of Adjustment affirms the decision of the Vilas County Deputy Zoning Administrator. Mr. Huntley seconds.

Roll call vote to amend the motion at hand:

Glyn Roberts – Aye  
Donald Huntley – Aye

Joy Hanser – Aye  
Martin Ketterer – Aye  
John Barron – Aye

Amendment passed (5-0).

Roll call vote on the amended motion by Mr. Ketterer to deny Appeal, affirm the clarity of the Ordinance in question, and affirm the decision of the Zoning Department.

Glyn Roberts – Aye  
Donald Huntley – Aye  
Joy Hanser – Aye  
Martin Ketterer – Aye  
John Barron – Aye

Motion carried (5-0). Appeal denied.

Mr. Ketterer motions to adjourn. Mr. Huntley seconds.

Glyn Roberts – Aye  
Donald Huntley – Aye  
Joy Hanser – Aye  
Martin Ketterer – Aye  
John Barron – Aye

Motion carried (5-0). Hearing adjourned at 12:38 pm.