

Vilas County Board of Adjustment
Meeting
July 1, 2009
Lincoln Town Hall



Members Present:

Glyn Roberts – Chair
Don Huntley – Vice-Chair
Joy Hanser
Marty Ketterer
John Barron

Other Present:

Martha Milanowski Vilas County Corporation Counsel	330 Court St. Eagle River, WI 54521
Mary Greenman Vilas County Assistant Zoning Administrator	330 Court St. Eagle River, WI 54521
David Sadenwasser Board of Adjustment Secretary	330 Court St. Eagle River, WI 54521

Agenda Item #1: Call to Order

Mr. Roberts calls meeting to order at 9:00 am.

Agenda Item #2: Approve Agenda

Mr. Roberts reads the meeting agenda and states the order in which he wishes to proceed.

Mr. Huntley moves to approve the agenda and order of discussion. Ms. Hanser seconds.

Glyn Roberts -	In favor
Don Huntley -	In favor
Joy Hanser -	In favor
Marty Ketterer -	In favor
John Barron -	In favor

Motion carried (5-0). Agenda approved.

**Agenda Item # 6: Request for Reconsideration of Natural Lakes Owners
Advancement Association Variance Appeals Number 2, 3, and 4**

Mr. Roberts asks Ms. Milanowski to explain the request for rehearing of variance appeals Number 2, 3, and 4 by the Natural Lakes Owners Advancement Association (NLOAA).

Ms. Milanowski explains that the NLOAA is now being represented by attorney Tom Lawrence and that he is asking for the Board of Adjustment (the Board) to reconsider variance appeals Number 2, 3, and 4 upon which the Board rendered a decision on May 20, 2009. She explains the procedure for reconsideration, stressing that there must be new information presented that was not available at the time of the hearing for that to occur. She explains that since the original hearing Vilas County Deputy Zoning Administrator Jim Janet has determined a wetland area near Bobcat Landing to be lake bed and has marked a new ordinary high water mark (OHWM) which reduces available options for placing a gate at the site. She states that the NLOAA is also asking for a reconsideration of the conditions placed on the variances granted for Mallard and Otter Landings. She advises the Board to decide on the reconsideration request for Bobcat Landing first, explaining that only those who voted to deny the variance can move to reconsider it.

Bobcat Landing Variance

Ms. Greenman discusses the situation at Bobcat Landing with the Board, noting that with the new determination of the OHWM by Mr. Janet the 35 foot setback on either side of the road would cross upon itself. She adds that the Wisconsin Department of Natural Resources (DNR) has been asked to give its opinion on this issue.

The Board discusses the Bobcat Landing variance reconsideration request.

Ms. Hanser states that if the location the Board thought a gate could be placed is not within the newly marked 35 foot setback area then a gate cannot be located there either, and that the availability of that location was the basis for the denial of the variance.

Mr. Ketterer states that he feels the determination of the OHWM should be allowed as new evidence and the Bobcat Landing variance be reconsidered.

Ms. Hanser moves to reconsider the request for variance at Bobcat Landing based on new evidence having been presented. Mr. Roberts seconds.

Glyn Roberts -	In favor
Don Huntley -	In favor
Joy Hanser -	In favor
Marty Ketterer -	In favor
John Barron -	Abstain

Motion carried (4-0). Reconsideration approved.

Ms. Milanowski notes that Mr. Lawrence is unavailable for the public hearing from July 26-August 10 and he requests that the hearing not be scheduled during that time. She then advises the Board to discuss the request for reconsideration on Mallard and Otter Landings.

Mallard and Otter Landings

Mr. Ketterer states that there was no objection to the dates of the conditional approval at the original hearing.

Ms. Hanser states that at the time the motion to approve the variance was made there would have been no opportunity for the applicant to do so.

Mr. Ketterer agrees but states that no opposition to the conditions was voiced at any time during the hearing.

Ms. Greenman states that it was one of the applicants who first offered the dates of Memorial Day and Labor Day as conditions on the variance and that the other applicants were in agreement at that time.

Ms. Hanser quotes from the letter from Mr. Lawrence asking for a reconsideration regarding how the dates of the condition were conceived.

Ms. Hanser states that she does not feel there has been any new evidence presented.

Ms. Hanser notes that Roger Martin of NLOAA clearly mentioned those dates in regards to when the gates would be locked.

Ms. Greenman agrees and notes that he mentioned those dates in regards to the variance request at each landing. She notes that the applicants were very comfortable with those conditions.

Ms. Hanser states that she does not feel there is any new evidence being presented. She notes that the Board went through the variance process three times (one for each landing), and that each time the applicants made the same presentation.

Mr. Ketterer agrees but notes that after the condition to keep the gates unlocked from Labor Day through Memorial Day was placed on the first variance granted, there was opportunity for the NLOAA to object to those dates on the second and third variance requests and they did not.

Mr. Roberts quotes from the sections of the minutes where Mr. Martin speaks to the dates the proposed gates will be locked.

Mr. Ketterer states that if the applicants are saying they misspoke when it comes to the dates then the Board made its decision based on that mistake.

Mr. Ketterer asks if a misstatement is new evidence.

The Board responds that it is not.

Mr. Ketterer moves to deny the request for reconsideration of the variances on the Mallard Landing and Otter Landing parcels due to a lack of new evidence. Mr. Huntley seconds.

Glyn Roberts -	In favor
Don Huntley -	In favor
Joy Hanser -	In favor
Marty Ketterer -	In favor
John Barron -	Abstain

Motion carried (4-0). Reconsideration denied.

Agenda Item # 7: Outside Legal Counsel

Mr. Roberts informs the Board that it has lost the services of Attorney Tim Vocke. He states that the Board must retain a new attorney and that in the past the Board has been criticized for not hiring a local attorney or an attorney with the cheapest fees. He discusses how Mr. Vocke was hired by the Board and the history of the relationship between the two. Mr. Roberts recommends Attorney John Houlihan as a possible replacement. He notes that Mr. Houlihan has been contacted and is willing to work with the Board and quoted a flexible rate of \$195/hr.

Ms. Milanowski also recommends Attorneys John Houlihan and Steve Garbowicz.

Mr. Ketterer asks if the job needs to be advertised to the public.

Ms. Milanowski advises the Board that attorney services are a professional service and are not required to be advertised.

The Board discusses their options for obtaining new legal counsel and what procedure they should use to do so.

Mr. Huntley moves to contact attorneys Steve Garbowicz and John Houlihan for proposals to represent the Board as legal counsel. Ms. Hanser seconds.

Glyn Roberts -	In favor
Don Huntley -	In favor
Joy Hanser -	In favor
Marty Ketterer -	In favor
John Barron -	In favor

Motion passes (5-0). The secretary will contact above named attorneys.

Agenda Item #8: Letters and Communication

Ms. Milanowski briefs the Board on the status of the Eichelberger Administrative Appeal case which appeared before Vilas County Circuit Court Judge Neal A. Nielsen III in early June.

There are no other letters or communications to the Board at this time.

Agenda Item #3: Convene Into Closed Session

Ms. Hanser did not participate in the Trout Lake Cranberry Co. variance hearing and excuses herself from the meeting.

Mr. Ketterer moves to convene into closed session pursuant to Section 19.85(1)(g) Wis. Stats. to confer with legal counsel regarding the Trout River Cranberry Co. court case Number 09CV147. Mr. Huntley seconds.

- Glyn Roberts - In favor
- Don Huntley - In favor
- Marty Ketterer - In favor
- John Barron - In favor

Motion passes (4-0). The Board convenes into closed session at 9:52 am.

Agenda Item #4: Adjournment of Closed Session

Mr. Huntley moves to return to open session. Mr. Ketterer seconds.

- Glyn Roberts - In favor
- Don Huntley - In favor
- Marty Ketterer - In favor
- John Barron - In favor

Motion passes (4-0). The Board reconvenes into open session pursuant to Section 19.85(1)(g) Wis. Stats. at 10:34 am.

Agenda Item #5: Ratification of Action Taken in Closed Session

Mr. Huntley moves to authorize the Corporation Counsel to settle the Trout River Cranberry Co. claim pursuant to the guidelines set by the Board of Adjustment. Mr. Ketterer seconds.

- Glyn Roberts - In favor
- Don Huntley - In favor
- Marty Ketterer - In favor
- John Barron - In favor

Motion passes (4-0). Ms. Milanowski will respond in kind to the above referenced lawsuit.

Agenda Item #9: Adjournment

Mr. Ketterer moves to adjourn. Mr. Huntley seconds.

- Glyn Roberts - In favor
- Don Huntley - In favor
- Marty Ketterer - In favor
- John Barron - In favor

Motion passes (4-0). Meeting adjourned at 10:37 am.