

BOARD OF ADJUSTMENT PUBLIC HEARING

Monday, February 13, 2012
Administrative Center – County Board Room
6:00 p.m. – 7:05 p.m.

MEMBERS PRESENT: Mark Huesmann, Thomas Thompson
MEMBERS EXCUSED: None
MEMBERS ABSENT: Barbara Frank
OTHERS PRESENT: Nathan Sampson, Jonathan Kaatz (minutes), Michael Harding

CALL TO ORDER

Mark Huesmann, Acting Chair, called the meeting to order at 6:00 p.m. Let the record show that this meeting is called in full compliance with the requirements of Wisconsin Open Meetings Law.

APPEAL NO. 2012-5 Terry A. and Susan L. Arentz, 5271 Magnolia Avenue, Rockland, WI 54653. Permit denied to retain four existing detached accessory buildings on a proposed 12.09 acre parcel that will result in exceeding the 5,000 square foot area limit and number limit, and some of which exceed the 17.33-ft height limit for such buildings on said parcel. Property is described as the North 400-ft of the SE/NW, Section 3, T15N, R5W, Town of Washington. Tax parcel is 12-76-1. Property address is N2381 Antony Rd.

Appearing in favor: Terry A. Arentz, 5271 Magnolia Avenue, Rockland, WI 54653.

REMARK Arentz: All we're doing here is splitting that off. What we're doing is, we purchased the property with the intent of my daughter and my son-in-law buying that small parcel. We're just breaking off that small part so they can afford it; afford to buy that parcel of the property. Those are just old barn buildings, existing buildings. We have no plans of changing them or doing anything. They're structurally sound. It just doesn't really pay to tear them down or nothing. I mean, it's an option, but.

QUESTION Huesmann: Any new proposed construction on that split off lot?

ANSWER Arentz: No.

QUESTION Huesmann: You're splitting off from the lot that also runs to the south. Is that accurate?

ANSWER Arentz: Yup.

QUESTION Huesmann: It appears there are no structures on the southern part of that lot. Right?

ANSWER Arentz: Nope.

QUESTION Huesmann: And can I ask, prior to the split there were no issues with this property in terms of conforming with the number of structures based on the size of the lot?

ANSWER Sampson: That's correct Mr. Chair. This parcel exceeded 35 acres prior to the split which exceeded the minimum acreage requirement in order to meet the definition of a farm. So any time there's a split, that split parcel needs to conform, or comply with the area requirements for detached accessory buildings. And that's the reason the appeal is being made.

QUESTION Huesmann: And you are retaining ownership of the southern part of that lot?

ANSWER Arentz: Yup. That's all open cropland.

QUESTION Huesmann: Open cropland. Any intention of building on that at all?

ANSWER Arentz: No. That was actually a condition they talked about at the last meeting. We agreed there'd be no building on that property.

REMARK Thompson: Well it's Exclusive Ag. You can't. It's less than 35 acres.

REMARK Arentz: Right.

REMARK Sampson: If I could clarify. Mr. Arentz spoke somewhat about the prior hearing. That was the Planning, Resources and Development Committee hearing that was held January 30th. Report and recommendation was made by the Committee to the full County Board. The full County Board will hear that recommendation this coming Thursday of approval of this parcel split and the rezone of the north 400' of this section where the buildings will remain. That approval is contingent upon Mr. Arentz recording deed restrictions that would allow no further subdividing of that parcel and only one single family residence except upon lifting of the conditions by the County Board.

QUESTION Thompson: It's on the south parcel?

ANSWER Sampson: North.

QUESTION Huesmann: Thank you. That was sort of my next question. As we know in La Crosse County, with all the development of farmland and such, that there are some restrictions. I don't want to use the word moratorium, because that's not probably appropriate. We do know that there are restrictions based upon subdividing ag land, so no question, there is no intent to develop anything further to the south of that?

ANSWER Arentz: No.

QUESTION Huesmann: Any questions from any other Board members? Anything further Mr. Arentz?

QUESTION Arentz: Nate, did you get a correspondence from Danny then?

ANSWER Sampson: Yes.

Appearing in opposition: None.

Correspondence: Email received on February 13, 2012 from Dan Korn, Town of Washington Chairman. Email states the Town of Washington has no objections to the limits.

Discussion: None.

Motion Huesmann/Thompson to approve.

2 Aye, 0 No, 1 Absent (Frank). Motion carried unanimously.

APPEAL NO. 2012-6 Chad M. Niegelsen, 1646 Bainbridge St, La Crosse, WI 54603. Permit denied to construct a 12-ft x 17-ft attached covered deck and a 45-ft x 63-ft attached garage to an existing non-conforming residence that will exceed 50% of the current local assessed value allowed for structural repairs and alterations to non-conforming structures. Property is described as Lots 20 & 21, Block 3, Resurvey of Blocks 2 & 3 of Plat of West La Crosse, Town of Campbell. Tax parcel is 4-1348-0. Property address is 1646 Bainbridge St.

Appearing in favor: Chad M. Niegelsen, 1646 Bainbridge St, La Crosse, WI 54603.

REMARK Niegelsen: Chad Niegelsen, owner of 117 Walnut Street. I just have three pictures to pass out. I thought that these pictures might help a little bit to identify what I've got going here. There's a uniqueness to this property. You'll see in picture one, it is the south facing side of the property which is where the attachment would occur. There's a door obviously that walks out with three steps down to that patio block area. And then you'll see down low to the bottom right a door that goes into the basement. I think just flip quickly one page back to picture number two; you'll see how the staircase looks going down into that basement. What I've got, I've got a single occupant in her 70's that lives there. So her laundry is in the lower level. So she kind of has to traverse this whole situation to do that. So what I would like to do is have an attached covered deck that starts, back to picture one, immediately at the left side of that screen door, which would be about three feet in from the edge of the property. Just enough where that door can make a proper swing on the deck. I already met with Onalaska just to get all my specs for staircase, rise/run, landing distances, all that sort of thing. If the deck came 12 feet south it would allow for all the proper landings, incorporate handrails, etc. to come around and build a permanent style staircase to the lower level at the right rise/run, distance, everything conforming and then I would cover that. Because right now that fills with snow. Snow melts. It's always slippery. It's always a hazard. It never stops being a hazard. And then off that deck I wish to build an attached garage that would be conforming in every way, in terms of lot line setback, roadway setback. So that would have no issues with conformity other than my 50% rule, which my argument there is just the unique characteristics of this house. It is a very small house. Why it was built at that extreme corner of two lots, probably none of us in this room are aware of that. But that's the case. So my uniqueness is that I'm tight on the lot line, the west line. My value is low on the property strictly because it's of minimal square footage. The attached garage would be well within all the confines of zoning for setbacks and so forth. I'm asking the board to grant me the ability to have that attached deck, the west side of the attached deck would be within five feet of the lot line, and incorporate that door. And asking them to allow me to exceed the 50% rule slightly for the building.

QUESTION Thompson: Does that covered deck meet the side yard?

ANSWER Sampson: The deck would actually encroach somewhat on the side yard also. But it's further setback from the existing wall line of the home.

QUESTION Thompson: But the garage itself is way more than setback?

ANSWER Niegelsen: Correct.

QUESTION Thompson: Off of Walnut Street, is that considered the front yard?

ANSWER Niegelsen: The address to that property is off Walnut Street. They're long lots and there's an alley between them.

QUESTION Thompson: Do we meet the setback off of Walnut Street?

ANSWER Sampson: Yes, in fact we have to meet a minimum of 60 feet and I think we have...

REMARK Niegelsen: Yeah, Chad drew it all out at the office. Chad VandenLangenberg. And we have no problem staying behind that 63 foot from center of roadway.

REMARK Sampson: It's approximately 66.

QUESTION Huesmann: I guess I ask for Board opinion on this or anybody else at the table that has knowledge. I went out there, this is a corner lot, but I didn't see how this would impinge at all on being able to view anything either from Walnut or Bainbridge in terms of visibility on a corner. Everybody agree with that?

ANSWER Thompson: Yeah, it's setback far enough.

REMARK Huesmann: That's sort of what I saw too.

REMARK Huesmann: I just have to ask an unusual question. I mean this thing is going to be like four times the size of your house.

REMARK Niegelsen: Yeah, the house is very small. I'm just looking at trying to give the occupant of the home some other storage as well.

QUESTION Huesmann: The house is a rental?

ANSWER Niegelsen: I do have a tenant in there. A 70 year old gal in the house, long time tenant. Her goal is to be there as long as she's here. There'll be a door coming off that deck so it'll allow her access at a reasonable height and number of steps to that building. I have other rental properties on the island. It will allow me a place to put some equipment, water heaters, washing machines, your spare things as your doing that.

QUESTION Thompson: You're not turning it into a rentable storage warehouse?

ANSWER Niegelsen: Absolutely not.

QUESTION Huesmann: How many doors are you going to have off that garage?

ANSWER Niegelsen: One. There's going to be service door to the deck. A service door and an overhead door to Walnut Street.

REMARK Huesmann: I think that takes care of our storage issue.

REMARK Niegelsen: Personal only.

REMARK Thompson: A nice personal garage.

QUESTION Huesmann: So you are basically asking for this variance based on the uniqueness of the property?

ANSWER Niegelsen: Correct.

REMARK Thompson: That and the value of the existing house. The assessed value on this is pretty low.

Appearing in opposition: Shane Berger, 121 Walnut St, La Crosse, WI 54603.

REMARK Berger: I have the lot at 121 Walnut Street right next to it. I'm just concerned, mainly a safety issue with the size of the garage for now. At the corner, right at Bainbridge and Walnut, there's a little bush that's like four foot by four foot. It's hard enough to see around that just getting onto Bainbridge as it is now with just that little bush for visibility.

(Referring to aerial on overhead)

QUESTION Huesmann: Can you sort of put that mouse on what bush you think he's talking about? Use the laser pointer there please and point out what you're talking about.

REMARK Thompson: He's going to be 30 some feet off the lot line, right?

ANSWER Berger: Basically right there. Like that and just the bushes along Bainbridge Street there.

Coming out there and turning on there with all the heavy traffic from the semis and stuff going down to the industrial park, that's hard enough to see down there just as it is, not including a gigantic building or a garage.

QUESTION Huesmann: Would you feel any better if that bush was removed?

ANSWER Berger: Oh no, I'm just saying I think the garage is going to be more of a hazard.

REMARK Thompson: The garage is going to be back 30 some feet off that property line.

REMARK Berger: I don't see how that would fit because I measured my house from the inside of my house. The length is 47 feet.

REMARK Huesmann: Go ahead and point out your house.

QUESTION Thompson: Is that black line...is the actual property line right?

REMARK Berger: That's the inside of the house, it's 47 feet long. So 45 feet wide is his minimum width by 63. That just doesn't seem like it would fit. And also if the garage is entering onto Walnut Street, I don't see how you couldn't be commercializing this having that big of garage. All the excess traffic. We're going to want to have kids one day. All the extra traffic going in and out of there will be big equipment, most likely, is what I'm thinking.

QUESTION Huesmann: Do you know whether there's any commercial intention with this?

ANSWER Berger: With that big of a garage, what else are you going to do?

REMARK Thompson: I've got a six car garage, so I can't...

REMARK Berger: And it's rental property on top of it.

REMARK Thompson: I got a lot of toys.

QUESTION Huesmann: You did hear the testimony earlier though. And that's why I asked about the number of doors on this. I think that's sort of critical. Does that help you at all to see there may not be a commercial usage to it?

ANSWER Berger: I don't know. You could probably add doors later, can't you? I don't know much about building stuff.

REMARK Thompson: You'd have to get a Conditional Use Permit because you're not using the property as it's intended to be used.

QUESTION Berger: What does that mean?

ANSWER Thompson: It's zoned residential and if you use this for other than residential, then he'd have to go for a Conditional Use Permit.

REMARK Berger: But then you already have the structure built. Then you'd just be changing it from there.

REMARK Huesmann: Yeah but that could be infinitely more difficult, without going either way where the Board would go on that, that would be a significant change to the usage of the property.

QUESTION Huesmann: Is that your main concern? That it could be changed to commercial use?

ANSWER Berger: Yeah. And I wonder how it would affect my property value too, having a big garage right there.

QUESTION Thompson: Has he got plans on that that you were able to look at?

ANSWER Berger: No, I just got it in the mail last week.

QUESTION Huesmann: Have you talked to him?

ANSWER Berger: No I have not.

QUESTION Huesmann: Anything else?

ANSWER Berger: No that's it.

Appearing in opposition: Gary Simenson, 128 Locust St, La Crosse, WI 54603.

REMARK Simenson: I, like Shane, have a little problem with the size of it I guess too and the visibility. I live up the alley as you can see on the diagram.

QUESTION Huesmann: Can you show me where you live?

REMARK Simenson: Right there.

REMARK Huesmann: Swenson Trust.

REMARK Simenson: Simenson.

REMARK Huesmann: Simenson, excuse me. Okay, thank you. Go ahead.

REMARK Simenson: I'm in and out of the alley a number of times every day as are quite a few of us there. We went through this, making these lots a few years ago, with the marina wanting to go commercial, parking boats and stuff there and visibility was down to zero the way they had proposed it. So now I'm worried about if this is going to be another problem here. The trees on the north end of that lot are a problem for visibility. There are a couple of lilac bushes or something are in there and some other stuff. Anyway, with the high number of trucks that go by there, and hundreds of trucks go by there every day, it's a major problem as far as visibility. I too have the same concerns as far as it being rezoned to commercial or something. It's an every man's dream garage but I guess I'm concerned more about the visibility of in and out. Because the alley drops off, down into, off of Bainbridge. When it's slippery you literally can't get out of it sometimes because of it. When traffic is coming, you're done. I don't have a problem with the deck. I lived over there for 65, 67 years, somewhere in that range. And that house, I think, was moved in from somewhere down by the railroad tracks on the far south end of Bainbridge Street years ago. That's why it's so small.

REMARK Huesmann: So main concern again, similar to the last witness, is based more or less on fear of commercialization of that lot?

REMARK Simenson: Yeah. That and visibility.

QUESTION Huesmann: Okay and I want to hear more about that. When you say visibility, what are you referring to when you say visibility?

ANSWER Simenson: High number of truck traffic, garbage trucks, grain trucks. There's a lot more industry down there now. There's a lot of car traffic up and down Bainbridge Street. I don't know what the last count was but it's very high. Basically just trying to get out there sometimes is a problem. And not being able to see makes the problem worse.

(Referring to map on overhead.)

QUESTION Huesmann: Okay and I just have to ask this sort of as a devil's advocate. Now if I understand it you are to the upper left. And I'm guessing that you take Bainbridge Street down, if you are going south, you are going to take a right. And as you leave that alley you are going to take a left. Right? To get to and fro from your house.

ANSWER Simenson: From the alley, turn left to go up Bainbridge, turn on Bainbridge.

REMARK Huesmann: So I'm trying to figure out how this visibility thing impacts you.

REMARK Simenson: Well, when I'm looking south to try and catch traffic, between the garage and trees that are going to be there, that are still there, what kind of problem do I have right then and there? You just can't see good.

QUESTION Huesmann: Aren't you sort of already to the edge of Bainbridge Street which would be well beyond where the edge of the garage would be? In other words, if you're going up to Bainbridge Street, which you acknowledged you need to do, you need to look left to right. Right? Well don't these plans call for the garage to be considerably setback from that? In other words, you wouldn't have an obstructed view looking left to right on Bainbridge.

ANSWER Simenson: Well that was my question on this.

QUESTION Thompson: Is there any way to transpose that? Is there any way to transpose the garage on that?

QUESTION Huesmann: Is there a way to do that?

ANSWER Sampson: It's difficult to scale in and out but what I can try to do is put this photograph, this aerial photo on the overhead.

REMARK Simenson: It's a 94 foot lot right there and the garage is 45, so that's half the lot right there.

REMARK Sampson: Let's see if I can zoom in.

REMARK Huesmann: How did we do this 20 years ago?

REMARK Sampson: The black line is very faint here but you can see the lot corner.

REMARK Huesmann: I don't know, I just have a hard time seeing it. If you got up actually to the edge of Bainbridge, which you'd have to do. Because Bainbridge is a busy street, I'm going to acknowledge you have to stop there to go left or right. I'm just having trouble envisioning how your view is obstructed in a stopped position at the corner of that alley and Bainbridge where you can't see to the left or the right.

REMARK Simenson: Well as you're coming out of there you're moving along because this time of the year when it's slippery you kind of keep moving because you can't stop at the end because you won't go anyplace. I'm getting an advanced look as you're coming down the alley adjacent to the garage there.

Because you're either going to go or you're not going to go by the time you get to that point.

QUESTION Huesmann: Any further questions from the Board?

Correspondence: A letter received via fax on February 13, 2012, from Patricia Post, Town of Campbell Planning and Zoning Commission Chairperson. Letter states the Planning and Zoning Commission is not in favor of the proposed construction.

Discussion: REMARK Huesmann: Alright, at this point, unless there is anything further, I would entertain a motion to either approve or deny the appeal as presented.

REMARK Sampson: Mr. Chair if I could. The option would be to approve or deny, approve with a lesser variance, or to recommend deferral also. Now if a decision is made by the Board to defer this to a month out, then the appellant is charged with paying the appeal fee again.

QUESTION Huesmann: How much is that appeal fee?

ANSWER Sampson: This appeal fee was \$270.

REMARK Huesmann: Well the appeal fee is \$270 but I have to acknowledge, I also have some concerns about the size of the structure. My comments aren't to imply that I think there's a commercial usage with it. Flat out, I'm going to be blunt, I drove by the property and I thought, holy cow this thing is way outside...I shouldn't say outside, it just seemed a little unusually large considering the residential structure. And that was the thing that just sort of jumped out at me. My colleague here, I agree with what he said as well. We live in Wisconsin, this is a cold weather climate, and we like to do things. So I

understand the concept of a large garage with toys. I would make a motion at this point to defer for the purpose of coming up with perhaps a revised plan for a slightly smaller structure. That would be my motion at this point.

REMARK Thompson: I'd like to see the township agree to it.

REMARK Huesmann: That would be fine as well. And I would be willing to amend my motion that the appellant come forward with a proposition that the township accepts as well.

Motion Huesmann/Thompson to defer with the condition that the appellant submits a plan for a smaller structure and seeks town recommendation on the appeal.

2 Aye, 0 No, 1 Absent (Frank). Motion carried unanimously.

APPEAL NO. 2012-7 Michael Swinghamer, River Architects Inc, 740 7th St N, La Crosse, WI 54601-3308, acting on behalf of JF Brennan Company Inc, 820 Bainbridge St, La Crosse, WI 54603. Permit denied to construct a three-story commercial building that will lie within the required 75-ft setback from the ordinary high-water mark of the Black River and will lie within the required 60-ft setback from the centerline of Bainbridge St. This appeal seeks to modify the conditions as approved under Appeal No. 2011-34. Property is described as Part of Gov't Lot 6, Section 30, T16N, R7W, Town of Campbell. Tax parcel is 4-1282-0. Property address is 816 Bainbridge St.

Appearing in favor: Michael Swinghamer, 1008 Sunrise Ct, Onalaska, WI 54650.

REMARK Swinghamer: I'm an architect, been working with JF Brennan Company for...started working on the project last summer. This is actually the second time that we've gone for a variance on this. When we were here in August we were looking at very simple plan. It was a two story building. We were looking at that site and we realized quickly that the site wasn't big enough to even put a building on it when you have the 75 foot setback off the ordinary high-water mark and the 60 foot setback off the centerline of the road. The site was just extremely tight to put a structure on it. So we came to the board and we were granted approval for a building print that you see on there. (*Referring to public hearing map.*) It's noted the two-story building approved in appeal number. We started with that. We felt comfortable that we could put a building in there and get things done the way we wanted to. But as we developed a plan, the square footage of the building actually increased a little bit and we decided to change the concept from a two-story building to a three-story building. It would actually lessen the footprint of the building on the site. One important thing, and I have site plan I'd like to hand out if I may.

REMARK Huesmann: Our record will reflect that we have received a document from River Architects. It is some sort of schematic for architectural blueprint.

REMARK Swinghamer: Yeah that's correct. The footprint that you see on the site plan is exactly what you see up on the diagram up on the screen. One of the things that we feel that's important is we want to push the building a little bit further to the north. This will allow us future expansion to the south. Our thought is we'd end up putting a three-story addition to the south. That's why that little vacant land that you see on our site plan is between our building and the site plan. It gives us a little bit more room. We have not moved the building any closer to the water line or any closer to the centerline of the road. Actually we pulled it away from the road just a little bit to get our overhangs and stuff in there. We're not encroaching. We've had approval from the DNR and the Town of Campbell. The only thing that we're purposing is really sliding the building directly to the north and keeping it in line with where we were originally thinking of, within those setbacks. That's basically it. That's what we're here for.

QUESTION Huesmann: Anything further?

ANSWER Swinghamer: No sir.

QUESTION Huesmann: So when we were out there last week, why was there grading or excavation operations going on out there?

ANSWER Swinghamer: Well, there was some dredging that was done out there and there was some material that was brought up on the bank and permits for that. And then we felt we had all the permits in hand. We got a grading permit to bring the sand in and get it compacted. We found out later that we didn't have a Chapter 30 permit from the County, or from the DNR. We were instructed to stop work out there, which we have. Currently we're going after the Chapter 30 permit. Special condition permit is done, the erosion control permit, the water management control and DNR 216. All those applications have been filled out and are in process and we're waiting for approval for that prior to anymore construction. So it was a misunderstanding really.

REMARK Thompson: Well they had approval for a two-story building there.

REMARK Huesmann: They did but it always wrinkles my feathers a little bit when I see excavation going before anything is approved.

REMARK Swinghamer: It was truly a misunderstanding. We were working with Paragon, Jeff Moorhouse. And we thought we had the approvals in, a fill permit and such. But kind of a long story short, some things fell through the cracks. And apologize for that.

REMARK Huesmann: Happens. Just more curious than anything.

QUESTION Huesmann: Any other questions from the Board? Anything else sir?

ANSWER Swinghamer: No.

Appearing in opposition: None.

REMARK Sampson: I do not have anything from the Town of Campbell on this. They had approved the previous appeal that was granted in 2011. Mr. Swinghamer had written a note that was part of the file that states, Scott Johnson, Town Chairman, will write a letter to the County of La Crosse stating we will not have to appear in front of the Town Board prior to the January 20th meeting. And I'm assuming that would have been a Town Board meeting date.

REMARK Swinghamer: Right. I called the City of Campbell and asked if they wanted to see the project and I explained what we were doing. We were actually lessening the footprint. We were just moving it to the north. Actually I talked to Scott Johnson at his house. He said that was fine and that we didn't have to do it. He told me, and I don't know if he's done it or not, that he would write a letter at that time and submit it. But that was just my phone message, my note. I just wanted to document it to make sure that I was covering my base there. He told me he didn't have an issue. Apparently there's a Town Chair or something that they don't have any more. I didn't understand all of it, but that's what he told me.

Correspondence: A letter received via email from Michael Wenzholz, Regional Shoreland Specialist, dated and received on February 8, 2012. Letter states the Wisconsin DNR does not support the appeal request, unless some mitigation-based conditions are included as part of an approval. Letter states the Wisconsin DNR is willing to support an alternative to the proposal if the following conditions are met:

1. The proposed building cannot be any closer to the OHWM than 70 feet.
2. The applicant agrees to improve existing shoreline by removing weedy shrubs and replacing them with a native shoreland buffer designed by a landscape architect.
3. The applicant agrees to include on the site rain garden infiltration areas designed to capture stormwater runoff from impervious roof and parking lot areas.
4. The department recommends following the Natural Resources Conservation Service (NRCS) Shoreland Habitat Code (643A) and *Wisconsin Biology Technical Note 1: Shoreland Habitat* as much as possible. The department also recommends a mitigation plan be submitted to the La Crosse County Zoning Department and/or Department of Land Conservation for review and approval, and that some maintenance requirements be established.

Discussion: QUESTION Huesmann: Any further comments by the Board?

ANSWER Thompson: No.

REMARK Huesmann: Well, I will say this, having dealt with some issues pertaining to ordinary high-water mark, 75 foot setback as well as a Board of Adjustment in another county, as well as the DNR, I can tell you matters like this somewhat put a board like ours caught betwixt and between. And if we take negative action, it may end there. But if we take positive action in your favor, it may bring a whole other problem with the DNR. So I'm sort of inclined to do what I did with the last matter, which is to do a motion to defer with regards to you coming back with a plan that meets the criteria that the DNR is setting forth. I'm assuming you know sir that it's a pretty big deal to get the DNR to come off of the 75 foot setback.

REMARK Swinghamer: The first time we were here, it was less than 65 and they gave us the 65. So I'm totally baffled why they wouldn't give us the 65 again since they did at one time. So we're not asking for anything more than what they approved last August. We're extremely far along with construction documents of this plan and we're ready to start. This is a huge, huge deal for us.

REMARK Huesmann: My understanding is that the DNR is not necessarily requesting any structural changes. They are really asking for things that are outside of the structure. Am I accurate in my understanding of that?

REMARK Sampson: If I could clarify. These are the same exact conditions that the DNR recommended on approval of the first appeal except, in fact, this structure will be setback five feet further than what was

originally proposed. At that time, when the appeal was approved in 2011, it was basically conditional upon the applicants following those conditions that were requested by the DNR. And in fact, this letter reads that they support the appeal if those conditions are met.

QUESTION Huesmann: So is it? You got to help me with this. Is the DNR asking for something more than they did last time?

ANSWER Sampson: No.

ANSWER Thompson: Actually the only thing they're asking for now is five more feet. They gave them 65 and now they're saying 70. Basically he's losing five feet.

REMARK Swinghamer: I don't know why they're doing that. That just floors me.

REMARK Huesmann: I have a theory on why but I'm not sure I want to state it publicly.

REMARK Thompson: Your new footprint is basically 70 feet instead of 65 feet.

REMARK Huesmann: And you're increasing the size of the structure.

REMARK Thompson: Well, up not out.

REMARK Huesmann: But you have to remember what the goal of this is. It's not just the idea of setting it back, it is also, there's an aesthetic...I don't want to speak for the DNR here. I'm not taking their position. I'm trying to explain where I think they're going with it. Which is I think, the fact that you decided to build up also does impact on what the whole purpose of what the Shoreland Zoning Ordinance is. Which is we're trying to keep as much of an aesthetic look as possible. And I suspect if you were to take this 10 floors up, you can imagine what the push back might be. I don't know if I'm making myself clear on that. I think what they're saying is, you are now somewhat degrading the aesthetics of it even more by building up and so basically we're looking for some consideration on the other side. And I am not speaking for them, let the record reflect, I'm only making an assumption.

REMARK Swinghamer: We're trying actually to do just the opposite by lessening the footprint of the structure to lessen the impact to the environment around the land. We could have filled out that big square and took up the entire site but decided that was just too much of an impact and went to three-stories to try to help that scenario.

REMARK Huesmann: I'm not attempting to comment on it either way other than to say I think there's more to it than just getting within the setback area. It's also the aesthetics of what is immediately in that area. Again, please take that for what it's worth.

QUESTION Thompson: What is the height going to be?

ANSWER Swinghamer: It is 52 feet to the peak.

QUESTION Thompson: Fifty-two feet?

ANSWER Swinghamer: Fifty-two feet, yeah. It's a prairie style, extremely nice building with the overhangs.

REMARK Huesmann: I'll entertain a motion at this point if you have one.

REMARK Sampson: If I could just clarify. Mr. Wenholz understanding from the site drawing was that the proposed location of the new building would be 70 feet from the ordinary high-water mark. And that's why he's making that recommendation. He's recommending approval, if. And that's with the appeal as presented. If those five conditions could be met which are the same conditions that are on the original appeal that was approved.

REMARK Swinghamer: I really think there's a misunderstanding on his part. All those other things we have no problem with, we're already in the process of doing that. I don't think that's their intent.

REMARK Huesmann: We're probably going way out of order on how we're supposed to do this. But maybe you could help us with this because what I'm hearing is, that is sort of the conditions they're talking about, in terms of giving the thumbs up on this for you folks with this appeal, aren't any different from what they previously requested when the appeal was granted last year.

REMARK Thompson: Expect for the 70 feet instead of the 65 feet.

REMARK Swinghamer: Instead of 65 feet, they're saying 70 feet. And that cuts right into our building.

REMARK Huesmann: But I thought you were at 70 feet.

REMARK Swinghamer: No, the drawing clearly shows a footprint on here. What we want to do is we really want to build what's up there.

REMARK Sampson: And that is, I'm sorry, I'm out of order here.

REMARK Huesmann: No, go ahead.

REMARK Sampson: And that's what Mr. Wenholz is commenting on, is that overhang of that building extending into that 75 feet and exactly as it's proposed up here.

(Referring to map on overhead.)

QUESTION Huesmann: Okay, what is the dashed line represent? Seventy-five, right?

ANSWER Sampson: That's correct. The previous envelope, you can see kind of a hatched area that was approved as part of that previous building envelope.

QUESTION Huesmann: So what are we arguing about, five feet then?

ANSWER Sampson: Well, in my opinion, the way it's depicted meets what they're recommending here. The 70 feet is the way it's been depicted on the appeal.

QUESTION Huesmann: Mr. Swinghamer, you have anything to add on that?

ANSWER Swinghamer: I'd have to go back and check.

REMARK Sampson: It appears to me that 75 foot line just barely catches the...

REMARK Thompson: ...the inside of that one part.

REMARK Sampson: Correct.

REMARK Huesmann: But they're saying, hey listen, we'll give you 70.

REMARK Sampson: And that's what their understanding was, was that the building would be setback 70 feet from the ordinary high.

QUESTION Huesmann: Are you saying it needs to be setback less than 70 feet?

ANSWER Swinghamer: We needed the 65 foot setback to get our building and overhangs in there to make that happen.

REMARK Thompson: It's the overhang that's...

REMARK Swinghamer: It's the overhang.

REMARK Thompson: That would be inside the setback, the overhang.

REMARK Swinghamer: The overhang actually would extend over slightly.

REMARK Thompson: They usually don't count overhangs.

REMARK Sampson: Jon may be able to clarify this better than I can.

REMARK Huesmann: I'm inclined to go with a deferral on this. I don't want to outright deny it or grant it, because if we grant it, I don't want to put these folks in a position where the DNR is going to do a writ of certiorari to the circuit court. You don't want that.

REMARK Swinghamer: No.

REMARK Thompson: We could grant it that it meets the 70 foot the DNR wants.

REMARK Huesmann: Yeah, but that's also saying it's a denial as well. Because if we grant it at the 70 and he's saying...

REMARK Thompson: The building is bigger than the 70.

REMARK Huesmann: Then we're not helping.

QUESTION Thompson: How wide is your building? I don't see measurements on your plan.

REMARK Huesmann: You have thought on this. Go ahead sir.

REMARK Kaatz: Mr. Chair, when I drew this, this building actually meets the 75 foot setback. So the building is drawn at the 75 foot setback line.

REMARK Thompson: But this drawing here.

REMARK Kaatz: The one that they submitted, I think that the ordinary high is off a little bit. The building meets the 75 foot setback line. I believe the overhang is five or six feet. And what the DNR is recommending is approval subject to those conditions that they list there, that the building meets the 70 foot setback line. But it sits back further than what they're even recommending.

REMARK Huesmann: Mr. Swinghamer, part of what I understood was that they want some mediation done on some of the ecological things and they didn't really have a beef with the structural part of it. Am I hearing something incorrectly there?

REMARK Sampson: That's correct. And as depicted on Mr. Swinghamer's drawing, I think what he's measuring from and what we're required to measure from are two different things. We measure from a Lidar contour. What I believe he's depicting as a 65 foot setback is probably actually a 70 foot setback.

QUESTION Huesmann: Well let me ask this. Again, this is probably way out of bounds for how formal this needs to be. If this was granted according to what the DNR is saying, is there any question, leaving the structure aside, is there any question you guys are going to do the ecological remediation that needs to be done?

ANSWER Swinghamer: We're doing all that.

REMARK Thompson: They have to do that to get their permit.

REMARK Huesmann: Then I tend to think we're sort of talking in circles. I think they're blessing off on it to be quite honest.

REMARK Swinghamer: If that drawing is correct, and it only nips the building like that, we're okay

REMARK Huesmann: Well at this point I'm going to make a motion to approve in line with the correspondence from the DNR regarding the remediation pertaining to the ecological aspects. And it

appears that they do not oppose the appeal going through with regard to the structure and so I would also approve along those lines.

Motion Huesmann/Thompson to approve with the condition that the appellant meet the 4 conditions recommended by the Wisconsin DNR.

2 Aye, 0 No, 1 Absent (Frank). Motion carried unanimously.

Motion Huesmann/Thompson to adjourn at 7:05.

2 Aye, 0 No, 1 Absent (Frank). Motion carried unanimously.