Lincoln County Board of Adjustment
Minutes of Thursday September 27, 2007 at 9:30 a.m.
Land Resource Center Meeting Room

1. Open meeting and Call to Order – Meeting was called to order at 9:30 a.m. in the Zoning Office. Members present: Lamer, Jach-Richards, Steffenhagen, Priebe, Hornischer, Schmidt, Brixius, Dan Miller; Zoning Administrator & Dan Bowers; Zoning Specialist.

2. The Board, Miller & Bowers left to tour the sites for the Public Hearing that would be held at 1:00 p.m. The Board returned at approximately 11:50 and broke for lunch at 3's Company, 3201 E. Main St., Merrill.

   Meeting was called to order by Chairman Lamer at 1:00 p.m. in the Land Resource Center meeting room at 1106 E. Eighth St, Merrill, WI 54452.

   Members present for the public hearing: Lamer, Jach-Richards, Steffenhagen, Priebe, Hornischer, and Schmidt (Alternate) (Alternates will be present for discussion but will not be voting). Visitors: Dan Miller; Zoning Administrator, Dan Bowers; Zoning Specialist, June Winters; Program Assistant, Ray Kraemer; Court reporter and 11others. Board member Brixius was absent from the hearing.

3. Approve minutes from August 23, 2007 meeting - Motion by Jach-Richards, seconded by Hornischer to approve the minutes from August 23, 2007. Motion carried 5-0.

4. Public Hearing – The public hearing was opened for the requests listed below.

Variance

1. Lonn and Stacia Roesel for an after the fact variance from Sections 21.07(1) and 21.13(2)(a) of Lincoln County Ordinances to allow for a deck less than 75' to the lake and additions to a home which is less than 40' to Lake Alice. The property is located in part of Section 32, T35N, R07E in the Town of King; having a tax parcel number of 12.323507.004.009.00.00 and an address of N9946 Steep Drive.

   Lonn Roesel was present and sworn in. He explained their request for the committee. Roesel clarified the layout, use and construction date of the area added for questions posed by Lamer and Priebe. Priebe asked if Roesel had consulted with any professionals regarding the water runoff from the property. Roesel said that he had spoken to Tomahawk Sand & Gravel for suggestions but it was cost prohibitive and they have not come up with another solution yet. Jach-Richards asked when they started the new construction. Roesel stated mid-July of this year. After he started construction was when he found out he should have contacted the Zoning department. Priebe asked how far back the lot goes and Lamer asked how many share the driveway. Roesel explained.

   Dan Bowers was present and sworn in. He reviewed the staff report for the Board. Runoff is a concern of staff and he stated the importance of erosion control solutions on the property. He said that staff is recommending removal of the deck and anything else added outside the original footprint if the variance for the 2nd story is granted. Jach-Richards asked if an affidavit is required is it recorded with the deed. Bowers said it would be. Hornischer asked for clarification if the recommendation would be different had the deck not already been in existence. Bowers said he thought the recommendation would have been the same. Hornischer asked how long the 11x12 deck has been there. Roesel said 5 years. Hornischer asked if it had been placed there with permits. Roesel said he had not obtained a permit.

   Chairman Lamer read into record letters of support received from Robert Hall and Jon Wendland. Chairman Lamer closed the public hearing for Lonn & Stacia Roesel.

The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination.

Motion by Hornischer, seconded by Steffenhagen to APPROVE ON CONDITION.
CONDITIONS:

1) The 11' x 12' deck that was added on the front extends no further towards the shoreline than the existing deck to the west (removing anything extending beyond that point).
2) The gravel fire pit and retaining wall be removed and the shoreline be re-vegetated.
3) No further additions to this structure will be allowed after this 2nd story addition.
4) A deed affidavit is signed and recorded with these conditions.
5) Work with Land conservation to address and resolve the erosion control problem.

Motion carried 5-0.

2. The unit owners of Viking Condominium for an after the fact variance from Sections 17.4.10(1), 21.07(1), and 21.13 (2)(d) of Lincoln County Ordinances to allow for various unauthorized additions constructed onto units within the condominium that don't meet setbacks to Heafford Road and Lake Nokomis and that result in unequal distribution of available impervious surfaces. The property is located in part of Section 02, T35N, R06E in the Town of Bradley; having an address of N12096 Heafford Road.

Andre Galella was present and sworn in. He is the owner of 1-2 of the Condominium. He explained how the house was originally built and he has since built an entry into the house that is closer to the lot line. He said that if they would have stopped construction to meet the setback he would not be able to get from his kitchen to the deck without going around the entire house. Priebe asked when the deck was built. Galella said that it was built in 2000 and that he wasn't aware of the lot line requirements at the time. Lamer asked for the history of the unit. Galella stated that it was 1 unit and the bar next to it when it was a resort but he had purchased both units at different times and has since joined them together into one dwelling unit. Priebe asked if the condominium plat has been amended to reflect the changes that have been made. Galella said that it has always been shown as a connected unit. Lamer asked for clarification on access to the deck from the kitchen. Galella said that there used to be a "short" sliding door that he has changed to be a window. Priebe commented that he believes that the condo plat should really be amended.

Dan Miller, Zoning Administrator, was present and sworn in. He reviewed the staff report regarding Unit 1-2. He explained that the impervious surface limitations have to be divided equally amongst the unit owners and how they arrived at their calculations. He stated that the deck built in 2000 was built without a permit and would have not been permitted at the setback that it is built. He stated that he felt that there is not reason to grant the reduction of the 10 ft setback for the deck and supported changing the access to the deck from the kitchen. Hornischer asked for clarification on what Miller was recommending removal on the deck. Miller recommended that a 6'x14'portion of the deck plus the 4'x10' connection should be removed. Priebe asked Miller if the plat needed to be amended. Miller stated yes because of the additions that have been done and whatever is granted today would require that the plat be amended. We can't force them to comply with density standards but we do have regulation over other aspects of the condominiums. Priebe wondered if this Board is going to be creating more of a problem than solving one with requiring that amended plat. Miller did not think that would be a problem. Miller said that whatever is allowed to stay or be removed should be done before the amended plat is done to reflect an accurate portrayal of what legally is in existence.

Robert L. Galella was present and sworn in. He is the owner of Unit 3. Hornischer asked why Galella built the structure larger than the original footprint. Galella referenced the 59.692 portion of the statutes stating that he could replace a burned down structure with a structure the exact same footprint and use if destroyed by natural causes. Galella stated that he only replaced what was there immediately before it was destroyed by fire. Galella stated that it was enlarged by the man he had sold it to 1997. He got it back from him in 1999 and then the structure burned. He stated that he felt he was forced into rebuilding

because of the town assessor, county clerk and zoning because he was still being taxed on full value. He rebuilt so that he wasn't paying $700 a year for taxes on a burnt out structure. They rebuilt it so that at least it is worth something for resale. Galella showed the Board a picture that had been taken of it as a larger structure prior to the fire. Hornischer asked about the property tax issue. Galella stated that this went on for 4 years. Hornischer asked if he went through the proper steps for a board of review for the taxes. Galella stated that he did not. Priebe asked when the plat had been recorded. It was recorded in April 25. 1997. Priebe asked for the history of the plat. Galella bought the entire Viking Resort and Galella recorded the condominium plat. Galella sold Unit 3 in 1997 to another party. That individual enlarged it. Galella got it back in 1999 and after that it burned down. Priebe asked about the septic. Galella said he had a plumber working on permits. Priebe asked if the structure was built on site or pre-built and brought in. Galella stated that it was built on site. Priebe asked about the request to add a new deck. Galella stated that he has applied for a deck and he understands that his permit depends on this variance. Galella said that the sanitary permit application for the holding tank is forthcoming from his plumber. Priebe asked the location of the proposed HT. Galella indicated where it would be. Galella questioned why it is a problem to have a deck on the opposite side from the road if the structure does not meet the road setback. Miller stated that he will explain that when he comes to the podium. He showed the Board soils information for the property. Galella stated that he doesn't understand why there are impervious restrictions in Lincoln County when so close to Oneida County and there are no restrictions there.

Dan Miller was present and acknowledged being sworn in. He explained statute 59.692 that affords an opportunity to rebuild after a natural disaster. He answered Galella's question about the deck on the opposite side of a non-conforming structure. Miller stated that there are limitations because otherwise non-conforming structures would just grow with no limits further reducing hope that someday such properties might conform with the zoning standards. He reviewed the staff report. He shared with the Board the permit that was issued after the fire to re-build the structure in 2004. Miller said that Galella was told at the time there were issues with the septic and the structure was approved for only the size shown on the permit (12.4'x18.5'). Miller said that the septic issues were never completely resolved and the structure was rebuilt 113 sq. ft. larger than had been authorized. Hornischer questioned the size discrepancy between Galella's and Miller's testimony. Miller stated he only had information regarding the size that had been authorized. Miller stated that staff is not even recommending that the unauthorized portion of the building is removed but that part that was enlarged plays into the equation as a whole.

Board took a 5 minute break at this time.

Andrea Galella was present and sworn in. She is the owner of Unit 4. When she first received the letter regarding the violation for building the deck she was going to tear down what was in violation but was told to leave it until after the hearing. Steffenhagen brought up that this part of the variance is also for an addition that had been made to the garage. Galella stated that the addition to the garage had been done by her ex-husband but now and because of how it was attached to the roof of the rest of the garage it would be very costly to remove the addition to the garage. Steffenhagen asked when the garage was built. Galella stated it was approximately 2 years ago. Hornischer asked for clarification of the age of the deck. Galella stated that the deck was built in 1997.

Dan Miller acknowledged being previously sworn in. He stated that he did not believe that the age of the deck was as old as 1997 as it is not shown on the original plat recorded in 1997. He said that she would be afforded a 40 sq. ft. landing even without the deck. It is his understanding that the Condo Association met and agreed that she could have the garage addition, but permits were never obtained and the plat never amended and it does not meet the required setbacks. Miller stated that staff recommendation does not require she remove either the deck or the garage addition. Lamer read into record a letter from the HB Condominium which is an adjoining landowner.

Patricia Uridel was present and sworn in. She is the owner of Unit 5. She stated that she and her husband bought their unit in 2004. The deck was built in 1996 or 1997 from what Mr. Galella had told her as it was on there when they purchased it. As far as she knows the deck meets the setback

requirements. She stated that the deck is their primary entrance on the lake side of the house. Jach-Richards asked if they added anything since they have owned the property. Uridel stated that they have added the back sun porch and landing there. They added pea gravel to the parking area to minimize erosion. She showed the board documentation from a previous owner regarding the kitchen addition.

Dan Miller acknowledged still being sworn in. He discussed the additions and the fact that in 2003 he had spoken to the previous owner and the deck was supposed to be reduced and was not taken care of at that time. He discussed the impervious surface issues and stated that the deck is the only structure that is out of compliance because of the water setback. Patricia Uridel returned to the podium. She questioned the reason for requiring removal the deck. Miller stated that it was still up to the Board to make the decision.

Dennis Betro was present and sworn in. He is the owner of Unit 6. He purchased it in 1997 and he had asked Mr. Galella about adding on and was told that the Condo Association would not have a problem with it. Permits were never obtained from the county. He did a 12'x 20' addition to the back of the house. He explained also about an addition of a "pump room" which services Units 5, 6, 7& 8. He did a 6'x20' roofed porch addition July of this year over an existing slab. He did not think that required a permit. He did landscaping on the common ground to make a safer walkway. Jach-Richards questioned if he obtained permits for any of the additions. Betro stated that he did not. The 12'x20' addition and "pump room" was built in 1999-2000.

Dan Miller acknowledged being sworn in. He stated that staff was recommending he remove hard surface walkway and replace with pea gravel or slotted boardwalk but the additions may be left.

Larry & Pam Schindler were present and sworn in. They are the owners of Unit 7. They explained their request. They would like to be able to keep their 10'x 12' foot deck instead of the staff recommendation of reducing it 60 sq. ft. In 2002 they purchased the unit. The deck was in existence at that time and Mr. Galella stated that it had been built in approximately 1996. They provided a document from an appraiser when they bought the property stating that it was compliant as far as Zoning. They have not made any additions except a walkway. Ms. Schindler read what each unit is allowed for impervious surface limitations according to Zoning staff and they believe they are still below that figure. Mr. Schindler stated that they share a drywell system with Unit 8. Hornischer clarified to the Schindlers that he thought Zoning staff couldn't deny some method of access to the cabin and that reducing the size of the deck would still allow for that. The Schindlers clarified that the deck was on there when they purchased the property.

Andre Galella returned to the podium. He stated he was the first person to buy one of the condo units from his father and that the decks on Units 7, 5 and 4 were all in existence when he bought his unit in 1997. His deck was built a couple of years later. He stated that the removal recommended by Zoning staff seems to be very inconsistent between units and he did not understand why.

Dan Miller acknowledged being sworn in. He agreed that the Schindler's "inherited" the problem when they purchased the property. He tried to explain the disparity of treatment between the units. He stated that he also had to look at the problem as a whole and still be pragmatic and sensible in what needed to be removed as far as cost and being burdensome. The entire property has to be under the impervious surface cap. He thought through other options for making the resolution equitable and what he wrote in the staff report is what he settled on recommending. His recommendation for removing Unit #8 was based upon the shape it was in and the fact that it at one time had been for sale and the removal of that would "cure" some of the impervious surface issues. He also recommended that the vegetative buffer zone be restored to ordinance standards, removal of some of the structures that had been built without permits, that all of the septic systems be evaluated by a licensed plumber and brought up to code, the plat amended, no further additions in the future, and an affidavit recorded with these condition for notice to future owners. Priebe pointed out the fact that the Condo Plat is not a true representation of what is out there and even if we grant this request with restrictions we have no guarantee in the future that structures won't continue to be added on to. He is concerned that the realtors, potential buyers, appraisers and

Zoning are relying on the recorded plat as fact. Miller said that he had held off on citations pending this group variance. Miller stated that even if a new buyer should get involved if there are violations that new owner would be responsible for whatever remedy is decided upon. Priebe wondered if this request shouldn't be held over until all issues are resolved. Miller stated that due to the complexity of this he did not believe that it is something that could be resolved solely by the Condo Association to Zoning's standards. Lamer commented on the fact that Unit 7 is partially built on WVIC property. There was discussion regarding that. Jach-Richards had questions regarding amending the plat. Miller stated that we could proceed with whatever changes the Board decides and then amend the plat after all changes have taken place. Dennis Betro returned to the podium and clarified that when there was an offer previously for Unit 8, Andre Galella, not the entire association, was planning on buying Unit 8. That deal did not go through and it has since been taken off the market.

Chairman Lamer closed the public hearing for Viking Condominium.

Hornischer commented on the process for making this determination and how they should go about that as there are so many individual issues but the decision must be made as a whole. Priebe commented that in his opinion most of the structures that make the condo exceed the impervious surface limitations are decks and he does not see that as a real problem. He has more issue with the fact that all of these structures were built without permits and if everything is allowed to stay with no penalty we are not sending a very good message to the public except build illegally and there won't be any consequences. Hornischer commented that he thought that Zoning staff put a lot of thought into their recommendations because there are so many aspects to the request. He agreed with Priebe about the message being sent to the community. The Board reviewed and completed the Findings of Fact, Conclusions of Law for each individual unit. There was lengthy discussion just on the process for making their decision then the Board decided on the Order and Determination for the condo as a whole. They deliberated at length on the request because it was so complex.

Motion by Hornischer, seconded by Lamer to DENY as requested but APPROVE ON CONDITION based on all conditions as outlined on staff report recommendations.
CONDITIONS:

1) Unit 1-2 must remove a portion of the deck to comply with the 10 foot setback standard from the lot line. A variance to the equal distribution standard would be granted for the remaining.
2) Unit 3 cannot have the 6' X 19' deck as proposed. The structure as built may remain. The legal alternative for a 40 square foot landing affords a safe entrance into the structure.
3) Unit 4 may keep the garage and the deck as it exists.
4) Unit 5 must reduce the deck in front of the cabin to a 40 square foot landing and completely remove the deck on the side. A variance to the equal distribution standard would be granted for the remaining.
5) Unit 6 must remove the hard surface walkway and replace it with a slotted boardwalk or pea gravel pathway. The existing additions can remain.
6) Unit 7 must convert the 10' X 12' deck to a 60 square foot deck of the dimensions of his choice.
7) The condo association must buyout and remove one of the units from the property. (In the opinion of the Department staff unit 8 is the most logical choice but any unit may be removed.) (Unit 1-2 is considered one unit for the sake of argument by Zoning and the whole structure would have to be removed to meet this condition in the unlikely event that it is chosen as the candidate to meet this requirement.)
8) The vegetative buffer zone must be restored to ordinance standards in accordance with a plan submitted by the association and approved by the Department.
9) All of the septic systems shall be evaluated by a master plumber and the association shall bring them up to code if they are found non-compliant. Each unit with plumbing must be hooked up to a compliant septic system.
10) The condominium plat must be amended to reflect approved conditions and new unit boundaries.
11) Impervious surfaces must be removed to meet the impervious surface cap for the condo as a whole of 9,850 square feet.

12) No further additions will be allowed to any of the units within the condominium unless the property is brought into full compliance with the ordinances.

Motion carried 5-0. Zoning staff will work with the applicants as far as the timeframe in which these conditions need to be complete.

3. Robert Wulf ETAL and Edmund & Bernadette O'Conner for a variance from Section 21.13(2)(a) of Lincoln County Ordinances to allow for an addition to a home which is less than 40' to Muskellunge Lake. The property is located in part of Section 12, T35N, R06E in the Town of Bradley; having a tax parcel number of 04.123506.014.005.00.00 and an address of N11467 Schmidtbauer Road.

Chairman Lamer read into record a letter from Keri Wulf who is one of the owners of the property. He also read into record two e-mails from John and Ann Eckman who are adjoining neighbors.

David Campbell who is the contractor was present to represent Wulf/O'Conner and sworn in. He explained the request for the committee.

Dan Bower was present and acknowledged being sworn in. He was just standing in for Dan Miller who wrote the staff report. The Board did not have any questions for him. Harry Gladwin, resident of the Town of Bradley, was present and sworn in. In his opinion he did not see a problem with this request being granted.

Chairman Lamer closed the public hearing for Robert Wulf ETAL and Edmund & Bernadette O'Conner.

The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination.

Motion by Steffenhagen, to APPROVE ON CONDITION. CONDITION: Work with the zoning office regarding the re-vegetation of the buffer. No second. There was discussion by the Board on the motion. Motion by Priebe, seconded by Jach-Richards to APPROVE the request with no conditions. Motion carried 5–0.

Harry Gladwin commented as a Plan Commission member that one of the things that they hear is that people just do their construction and worry about the consequences later because in Lincoln County it is usually no more than a slap on the hand before they go ahead and grant the variance if they are caught. He is glad to see that the decisions made by the Board may squelch that message.

5. Adjourn – Motion by Jach-Richards, seconded by Steffenhagen to adjourn at 4:00 p.m. Motion carried all ayes.