

**Lincoln County Board of Adjustment  
Minutes of Thursday, September 22, 2011 at 8:30a.m.  
Lincoln County Service Center, Meeting room #156**

1. Open meeting and Call to Order – Meeting was called to order at 8:30 a.m. in the Zoning Office. Members present: Lamer, Hornischer, Brixius, Adams, Prain & Rausch. Also present were Diane Hanson; Land Services Administrator, Dan Bowers; Zoning Specialist and June Winters; Program Assistant. Steffenhagen was excused.
2. Tour the sites for the Public Hearing to be held at 10:00 a.m. – The Board, Hanson & Bowers left to tour the sites.

Members present for the public hearing: Lamer, Hornischer, Brixius, Adams, Prain & Rausch. Visitors: Diane Hanson; Interim Zoning Director, Dan Bowers; Zoning Specialist, June Winters; Program Assistant and 5 others. Steffenhagen was excused.

The Board returned from the tours at 9:45 a.m. and proceeded with the meeting.

3. Approve minutes from the August 25, 2011 meeting - Motion by Adams, seconded by Hornischer to approve the minutes from August 25, 2011 meeting. Motion carried all ayes.
4. “Old Business” - (Held over from 8/25/11) A request for a variance by Larry Krause to allow for the tear down and rebuild of a boathouse on Somo Lake a moderate sensitivity waterbody. The property is located in Section 21, T35N, R05E, in the Town of Wilson and has an address of N10794 Somo Lake Drive.

Diane Hanson was present and sworn in. She gave an update on the Krause variance request and the conversations that had taken place between Zoning staff, Krause & his attorney.

Hornischer stated that at the last meeting part of the conclusions of law were discussed. Lamer read the conclusions from the 8/25/11 hearing and the Board concurred with their discussion at that time. They discussed the last question. Hornischer said that it would have minor negative impact that may be lessened with mitigation.

Motion by Adams, seconded by Hornischer to GRANT the variance on Conditions:

- 1) 1000 square feet of impervious surface shall be removed by July 1, 2012. The areas to be removed will be mutually agreed upon by Lincoln County staff and Mr. Krause.
- 2) The Shoreland Buffer Affidavit remains in effect. Lincoln County staff will work with Mr. Krause to ensure compliance with the shoreland buffer requirements.
- 3) The boathouse shall be no larger than 8' x 10' in size and must be located within the allowed 30' view corridor. Vegetation shall be planted in between the boathouse and the water to effectively screen the boathouse and stabilize the shoreline.

Motion carried all ayes. Krause complemented the Board on their handling of the process.

5. “Old Business” - (Held over from 8/25/11) A request for a variance by Rick Tjugum to allow for a patio greater than 200 square feet in area, retaining walls & stairs that are closer than 35 feet to Lake Nokomis. The property is located in Section 4, T35N, R06E, in the Town of Bradley and has an address of W6417 Camp Rice Point Road.

Dan Bowers was present and sworn in and updated the Board on the Tjugum request. He stated we are waiting for information and recommends holding over the request. He said that there is a representative from WVIC here today and he believes that the Board should hear what they have to say.

Lon Hoerter, WVIC representative, was present and sworn in. He said he just wanted to answer questions that the Board may have. He said that Tjugum's property does have a lease agreement with WVIC but they did not have permission to do the work in this variance request. Adams asked if WVIC has ownership on all lakes. Hoerter replied only on Nokomis, Deer & Bridge Lakes. Hornischer asked if this ownership is part of title record and Hoerter said that it is. Brixius asked if permits are required for "anything" in that 30' strip. Hoerter said that owners need to comply with County Zoning requirements with WVIC approval. He said that the minutes from 8/25/11 reflected a question by Tjugum's attorney questioning why if the "wall" was previously approved by WVIC, why would its replacement not be. Hoerter said that there was never permission given for the items under this variance request. What was approved previously was the "seawall" sometime between 1992-1995. Many of the landowners put seawalls in at that time with a state permit.

Motion by Hornischer, seconded by Prain, per staff recommendation, to HOLD OVER a decision on this request until next month's meeting. Motion carried all ayes.

Before Chairman Lamer proceeded with the public hearing, Hornischer asked to be recused from item #1 on the public hearing. Board Member Rausch took his place.

6. Public Hearing – The public hearing was opened for the request listed below.

#### **Variance**

1. A request for variance by Margaret Schulz Family Trust and Daniel Schulz from sections 21.07(1), 21.08(1) and 21.08(6) of Lincoln County Ordinances to allow for retaining walls, a patio, and steps greater than 4' wide all less than 75' to Lake Alexander. The property is located in Section 31, T32N, R06E, in the Town of Harding and has an address of N2688 Alexander Lake Road.

Steve Schulz was present and sworn in. He is the applicant and he explained his request to the Board. He stated that the railroad ties that were previously in place were rotting. In 2001 or 2002 there was some roadwork being done and he acquired some large boulders to fix the wall. Due to family health problems, the project was delayed until this year. He wasn't aware that the repairs that he was making were against the rules. He said that they made the changes to prevent erosion. They are planning to plant vegetation in the planters that were made by the wall. He explained to the Board how and why they designed the steps, and walls. He said that they have always tried to be environmentally conscious. He stated that he thought the project was approved by the Town of Harding. Schulz gave the Board some photos of what was in place previously and drew a diagram of how they have designed support and drainage of the wall and boathouse structure. He disagreed that another method of erosion control would work as well as how they have done it. He addressed the deck and the boathouse and said that it is in the buffer area and the patio is behind that. He said that the original walls were there prior to changes in the Shoreland ordinance. He agreed that there could be something done to "camouflage" the retaining wall but the patio is not really visible from the water. He stated that the slopes are so steep that the wider steps are necessary for safety.

Brixius asked Schulz if he only replaced existing walls or did he enlarge them. Schulz said that they may be wider but they actually eliminated some of them. Brixius also asked if the patio was there before and Schulz said that it was there but was gravel not concrete. Brixius asked if the driveway was new and Schulz said that it previously existed. Brixius asked Schulz if he was willing to screen the retaining walls and he said that originally it was their intention to plant vegetation but only really in the buffer area (first 35' back from the OHWM). Adams asked if the walls were higher than the

previous ones and Schulz said that they were somewhat higher. Adams asked when this new work was done and Schulz stated that the work was done from Memorial Day to the 4<sup>th</sup> of July of this year. Adams questioned why neither Schulz nor his contractor checked with Zoning to see what permits were required. Schulz said that because they were replacing and repairing the existing wall they didn't believe they needed anything. He said that he has received many compliments on the new wall. Prain questioned Schulz about the "slope" from the OHWM to the 75' setback.

Dan Bowers, Zoning Specialist was present and acknowledged being sworn in. He explained what would have been allowed if Schulz would have come to Zoning to replace/repair the wall but because this is an after-the-fact request they have to treat it as if there were never retaining walls there. He said that according to the current ordinance, retaining walls are for erosion control purposes only. He explained what would have been allowed for the driveway, walls, patio & walkway and that this is no longer a repair situation but a replacement situation. He explained that the 75' setback is in place to protect water quality. Impervious surfaces currently are not an issue but will be if Schulz should decide to build a home on this property.

Bowers reviewed the staff report and recommendations for the request. Lamer questioned what he would replace the patio with. Bowers stated that it should be replaced with grass/vegetation. Brixius asked if Bowers agreed that what is currently in place controlled erosion and Bowers agreed that it did but may not have been necessary stating that manmade or engineered solutions should be kept to a minimum. Adams asked if the patio had to be removed where could he legally put it and Bowers said that it would have to be at the 75' setback. Brixius questioned that if they granted any part of this variance would it come back to be a problem if Schulz ever decides to build a home. Bowers stated that the potential is there. Prain stated that he still had a problem with the slopes. Lamer agreed that the retaining was the best way to control erosion on the steep slopes and it may be tougher to maintain vegetation. Brixius asked Bowers if he had a comment on the drainage around the boathouse that Schulz had explained earlier. Bowers agreed that it was a very good way to direct runoff and control erosion. Bowers said that they also needed to take into consideration the runoff that is coming from higher up on the property instead of dealing with it at the retaining wall & boathouse locations. Adams questioned whether vegetation would work as well as the walls because it would take so long to get established.

Lamer read into record a letter from Thomas Blake at the DNR in opposition to the request stating that a legitimate hardship is not present.

Brixius asked Bowers again about the option available if the patio had to be removed. Bowers tried explain to the Board what a legal option may be and what staff would be willing to compromise with Schulz on. Schulz stated to disturb something that is functional doesn't seem reasonable and also questioned the slopes. Schulz stated that they sodded the area right away in their construction to prevent erosion control also.

Lamer closed the public hearing for the Schulz request. The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination with lengthy discussion on each question.

Motion by Rausch, seconded by Brixius to GRANT the variance to allow steps greater than 4 feet wide; DENY the variance to allow the patio less than 75 feet to the water (removing the patio and replacing with grassy area), and; GRANT the variance to allow the retaining walls subject to the following condition:

- 1) The retaining walls be fully screened by vegetation even within the allowable view corridor.

Motion carried all ayes.

7. Adjourn – Motion by Adams, seconded by Rausch to adjourn at 11:30 a.m. Motion carried all ayes.