

Minutes of the Todd County Board of Adjustment Meeting

August 25, 2022

Completed by: Sue Bertrand P&Z Staff

Site visit conducted by: Adam Ossefoort and Danny Peyton on July 21, 2022 for the Huhta site.

Site visit conducted by: Adam Ossefoort and Russ Vandenhuevel on August 19, 2022 for the Sylvan Shores site.

Meeting attended by board members: Chair: Rick Johnson, Vice Chair: Bill Berscheit, Mike Soukup, Danny Payton, Russ Vandenneuvel, and Planning Commission Liaison: Ken Hovet.

Staff members: Adam Ossefoort and Sue Bertrand.

Other members of the public: Sign-in Sheet is available for viewing upon request.

Rick called the meeting to order at 6:00 p.m. Each board member introduced themselves and Rick explained the meeting process for those attending, and etiquette.

Rick stated the first order of business was to approve the agenda, and asked if there was anyone who wanted to amend, approve or disapprove. Adam announced the #2 Item: Mundahl application had been tabled for the time being, and thus move Item #3 to Item #2. Rick also asked the Board if they are willing to have a discussion on the communication Tower setbacks in reference to our Ordinance, either before the close of tonight's meeting or possibly next month. He received support to discuss the issue tonight, rather than later.

Ken made a motion to approve the amended agenda with Mundahl tabled and time at the end of tonight's meeting to have the discussion regarding communication tower setbacks and our Ordinance. Danny seconded the motion. Voice vote, no dissent heard. Motion carried.

Second order of business is last month's meeting minutes to which Danny motioned to have the July 28, 2022 meeting minutes approved. Mike seconded the motion. Voice vote, no dissent heard. Motion carried, minutes approved.

Rick went over the process when we review the applicants.

AGENDA ITEM 1: Ernest Huhta – PID 18-0050800 Long Prairie Township

Request:

1. Variance request to reduce the 50' right-of-way setback from Hwy 71 to 21' for an after the fact building addition in Shoreland zoning.

Ernest Huhta was present as the applicant.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Proposed Conditions:

1. Unpermitted structure must be permitted and paid at after-the-fact rates of 2 times the permitting fee.

Ernest confirmed the staff report was very accurate and declined to add anything. Danny Peyton recapped his findings during the site visit with Adam. This report is on file and available for review upon request, at the Planning and Zoning Office.

Correspondence received: None

Public comment: None.

Board discussion:

Mike asked for clarification on the setback distances from Hwy. 71. He inquired if the structure is a compliant building. Adam responded, over time the road right of way setbacks have changed as it used to take a different path. Adam also added they checked with DOT and received updated accurate information on what it is now, to determine the setback distances. He confirmed the building is a conforming structure, as a permit from the County was issued in the past.

Mike questioned if the building needed a Variance at the time of permitting in the first place, and commented that State of MN must have changed the setback distance as the numbers did not look right to him, to which Adam stressed it is a very wide road right of way and since, has expanded.

Danny asked Adam for clarification on the frontage road as it seems the frontage road was built in the road right of way of Hwy. 71 to which Adam confirmed, and added the frontage road was not taken into consideration when measuring the setback from Hwy 71 to the structure.

Rick pointed out due to the lack of board questions, what is found in the application and the staff report makes the facts and circumstances very clear, however it is an after the fact variance, and stated we have considerations to review.

Rick asked Ernest to explain one of the considerations, if there was any attempt to comply with the applicable official controls?

Ernest explained, originally the building was a pole structure and it did not have a concrete floor and when it was poured, the floor for the building was lower inside than the outside concrete, that is visible, and still is. There is a wetland behind the building that floods the SE corner of the building, the water actually pools up to 3" on the inside, in that corner. The water from the wetland goes under and around the building so they had tiling put in to route it into the ditch to help compensate. It was not expected to fix the problem but it would help, and they were stuck with it the way it is. His contractor recommended some type of awning to prevent water accumulation right next to the building and keep it further out. At that point, Ernest had questioned his contractor if it would require a permit, and the contractor informed him he didn't think so, as it will not be changing the footprint of the building. Ernest said he was not trying to blame his contractor for not seeking a permit, however, the contractor seemed confident it was not necessary.

Rick thanked him, and stated they will go through the criteria questions, and if all are "yes" they will go through the after-the-fact questions, as well.

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Rick stated being there is a majority “yes” on all seven criteria questions, we must go through the after-the-fact criteria questions, as well.

After-the-Fact Variance Consideration questions:

After-the-Fact Question #1: Was there any attempt to comply with the official controls:	
Board Member	Vote and Comments
Mike Soukup	Yes, he has told us he had asked the question to the contractor if he needed a permit and was informed he did not.
Bill Berscheidt	No, as it does not meet the standards for me.
Ken Hovet	Yes, he did inquire, got the wrong information, but made some attempt.
Rick Johnson	No. Agreed with Bill and expect more due diligence.
Danny Peyton	No. Should have definitely checked before working on site.
Russ Vandenhuevel	No. There was no application from the applicant for the Board to grant a variance prior to.

Majority response No.

After-the-Fact Question #2: Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?	
Board Member	Vote and Comments
Bill Berscheidt	Yes
Ken Hovet	Yes
Rick Johnson	Yes
Danny Peyton	Yes
Russ Vandenhuevel	Yes
Mike Soukup	Yes

Majority response- Yes.

After-the-Fact Question #3: Did the applicant complete the work before being informed of the violation of applicable official controls?	
Board Member	Vote and Comments
Ken Hovet	Yes
Rick Johnson	Yes, it appears. Essentially giving weight to the applicant.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes, I do not know anything different.
Mike Soukup	Yes
Bill Berscheidt	Yes

Majority response- Yes.

After-the-Fact Question #4: Are there similar structures in the area?	
Board Member	Vote and Comments
Rick Johnson	Yes
Danny Peyton	Yes, and also the same issues.
Bill Bercheidt	Yes
Mike Soukup	Yes
Russ Vandenhuevel	Yes
Ken Hovet	Yes

Majority response- Yes.

After-the-Fact Question #5: Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?	
Board Member	Vote and Comments
Danny Peyton	Yes, as a judgement call, it appears he acted in good faith.
Rick Johnson	Yes, a judgment call on the character of the applicant.
Russ Vandenhuevel	Yes
Mike Soukup	Yes
Ken Hovet	Yes
Bill Berscheidt	Yes

Majority response- Yes

After-the-Fact Question #6: Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?	
Board Member	Vote and Comments
Russ Vandenhuevel	Yes, it would be quite the detriment on the applicant to remove it.
Mike Soukup	No
Bill Berscheidt	No
Ken Hovet	Yes
Rick Johnson	Yes, another difficult question.
Danny Peyton	Yes

Majority response- Yes.

Summary of criteria question majority responses as follows:

#1	No
#2	Yes
#3	Yes
#4	Yes
#5	Yes
#6	Yes

Rick addressed the board, and quoted the After-the Fact Variance Considerations worksheet, “these questions may be considered and weighted by the Board of Adjustment in determining whether to grant or deny a request for the after-the- fact variance”.

Rick announced there were seven yes’s for criteria questions and summarized the after-fact questions and asked for a motion to either grant or deny.

Ken motioned to approve the Variance and Russ seconded, roll call vote commenced as follows:

Board member	Vote (yes or no)
Mike Soukup	Yes
Bill Berscheidt	No
Danny Peyton	No
Ken Hovet	Yes

Rick Johnson	Yes
Russ Vandenhuevel	Yes

Motion carried, to approve.

Rick addressed Earnest and said his Variance has been granted.

Original Agenda Item 2: Item has been tabled to the September Meeting and removed from agenda

Cynthia Mundahl – PID 11-0062800 Grey Eagle

Request:

1. Request to reduce the ordinary high-water level setback from 100' to 60' in Shoreland-RD zoning (Big Birch Lake) for a new dwelling and attached garage.
2. Request to increase the maximum dwelling height for structures not meeting all setbacks from 18' to 24' 3 3/8" in Shoreland-RD zoning (Big Birch Lake) for a new dwelling and attached garage.
3. Request to reduce the road right of way setback from 35' to 16' for a new dwelling and attached garage.

Agenda Item 2: Sylvan Shores Association, Inc. – 19-0121400 & 19-0117300 Moran Township

Request:

1. Request to increase the density of a Planned Unit Development in Shoreland – NE Zoning

Betsy Berglund and Ed Thull, Vice President of the association were present as the applicant.

Staff Findings: Adam read the staff report adding this is an after-the-fact variance, as well. The staff report is available for viewing upon request in the Planning & Zoning Office.

Proposed Conditions:

1. Additional 15 campsites must meet all other requirements of Section 7.16 and 7.17 of the Todd County Planning and Zoning Ordinance.
2. Applicant must apply for and be granted a Conditional Use Permit as a Commercial Planned Unit Development.

Russ presented his onsite findings from the site visit with Adam. These are on file and available upon request at the Planning and Zoning Office.

Betsy confirmed the staff report was accurate. She also added you must be a Sylvan Shores property owner to use the campground unless you are a guest. The additional site would be for the members of the association only. The expansion is at the request of the members for additional space. It is a different type campground. Some of the campers with the longer grass are people who pay to store their campers all winter, and they are not moved. They are there from year to year, for years.

Ed also added, in reference to grass around the campers, that maintenance people are not allowed to trim or take care of weeds next to the units, for safety reasons and to avoid damage to personal property. Each unit is responsible for upkeep of their own areas, and it does present a concern when units are left year-round with no one to take care of the grass. There are 2,200 lots in Sylvan Shores, plus. Ed said they have a very small campground. The covenants and by-laws of the Sylvan Shores Association prohibit any tents, RV's or campers in Sylvan Shores, even on their own land, so this is their only option locally for that sort of availability. Also, for new home builder's, a temporary place during construction. Not your normal campground.

Written correspondence:

Adam stated yes and read aloud the e-mail.

An e-mail from Lloyed Allen on Aug 22, 2022 who owns two neighboring lots to the campground, stating he is not in support of the increase of units due to safety issues with traffic, garbage, vandalism, stolen road signs and felt it is overcrowded already, little or no supervision and too large for the association to handle the full responsibility. Maybe in the future he would support an addition, if these issues are addressed, he would be willing to look at this again in the future. He recommended denial at this time. A copy of the letter is on file at the Planning and Zoning Office, and viewable upon request.

Public comment:

Carlos Ramirez, Moran Township Supervisor: Two things: Carlos pointed out they have records that show only one access to the said property, Little Pine shores, and now 911 shows two driveways and a campground and so do all updated maps. The replacement of the culvert must be discussed and addressed with Sylvan Shores. Second: With the expansion of the campsite, will the septic system accommodate the new sites? Carlos did not see the dumping station, he noticed the section now has plumbed water, and would like to know where the discharge is going. As supervisor of Moran township, he cannot see supporting this until he gets more information.

Rick asked Carlos for extra copies of what he was referring to in support of his reasoning and documentation he presented. Carlos gave an extra copy for Rick and Planning & Zoning.

Alan Halbersma, Chairman for Moran township, has been on the twp. board for six years, Sylvan Shores paid Moran twp. to maintain the road and it is the township's responsibility for the safety of the road. He said the township adopted a driveway permit policy, in place within Sylvan Shores for existing and new. He said for the new development (camp ground) they should have come to the township for the additional driveway prior to installation. Allen reported they have drainage issues in section 35 and 36 because the roads were not installed up to township specs, and that is why they took the roads over. There are driveways, in reference to culverts, that do not meet the criteria for driveway approaches at this point.

Alan addressed the garbage site, and stated it is locked with no way to get in. The township has paid for trees, brush and shrub disposal off the roads, as there is an ongoing issue of dumping garbage anywhere from the people who live/camp there.

Alan said the biggest and foremost problem is the recreational vehicles tearing up the roads. Last August the problem had to be addressed at the township meeting on how to handle the vandalism and the phone calls two days after the road grader goes through, regarding roads that are being torn up by ATV's right behind them. It is not always an owner that lives there, sometimes it is a visitor tearing things up, however, it

becomes a township's expense. Alan stated, in his opinion, they do not want more sites, as it will only add more trouble. He said he understands Sylvan Shores' desire to put more in, but stressed how important the driveway permitting and culverts are. Alan said he has lived in the area for 60 years and wanted to give us a little background and insight on what's been going on and the direction it has been going in the past few years.

John Bunkholt, from the public, said he is pretty familiar with the campground and noticed ATV drivers whip through there. There are a lot of curves and stated someone is going to be killed one of these days. Kids with ATV's and cars whip through stop signs. He said he has a mobile home park about a mile away, people move these used trailers in, and whenever they leave, they don't take them with and he said it used to be a lot of money to have them removed. Just wanted to say it needs other attention.

Ed Thull wanted to address the road signs that are being stolen, they do replace them all the time and out of lack of respect, they disappear, even the road closed signs that get put up in the spring, due to water issues. They usually struggle with keeping signs up, even when road safety is one of their biggest concerns. He said in the 70's and 80's when people bought in, it was great, but the last few years, it has turned to the point the people are scared to be out and about, sometimes.

John Bunkholt, from the public, mentioned there is no surveillance out there, and he's been around for twenty years, and sees no police at all, anytime of the day and no cameras for vandalism. He said people know they are not going to be cited. It needs to have some attention to it.

Rick closed the floor to the public/applicants and opened it up for board discussion.

Ed asked Rick if it was in the process to respond to the public and Rick stated it was not.

Betsy asked if was in the process to make a comment as a Sylvan Shores person.

Rick consulted Adam, to which Adam said it was at Rick's discretion as Chairman to allow, if she responds to him, it is acceptable.

Rick stated it was acceptable to him and allowed Betsy more time as the applicant.

Betsy said we have met with the County and township officials with some of these issues and that Sylvan Shores needs their help out there, have forwarded problem property owners to the County for help, however, the County said there is nothing they can do there. As far as vandalism and ATV's, that is year 'round. It is not related to the campers. Betsy said she has met with Commissioner, Barb Becker, the Sheriff's dept. and has put more people out there, more than we know, dealt with deputies for vandalism, and they are aware of the problems at Sylvan Shores, however, Sylvan Shores does not have the power to address these problems directly.

Rick again closed the public/applicant comment and opened discussion up for the board, and reminded everyone that the board must focus on the variance appeal also an after-the-fact variance to go beyond the allowed thirty-three sites according to the County Ordinance, and are seeking forty-two, to which Ed confirmed.

Adam clarified they have forty-two that have long been licensed there, and the reason for the recent application request was for fifty-seven.

Ed added Sylvan Shores has since restructured that, and are taking away sites in the non-full-service hookup sites and requesting the original count to forty-two.

Adam interjected, on behalf of staff, and stated it has changed the whole conversation in reference to the application, as the camp ground is being run as a legal non-conformity, as is, and if there are no extra sites being requested, he recommended tabling the application, extending it for a time until we can zero in on what the actual request will be.

Ed recapped they are not requesting sites beyond the forty-two, and they will agree to tabling it.

Rick made a motion to table and for them to sign an extension for the application to address at a future meeting and asked for a second. Russ seconded. Voice vote. No dissent heard. Motion carried.

Rick announced Sylvan Shores has been tabled.

Bill thanked the township members for attending and voicing their concerns and Rick agreed and assured them they did not waste their time.

Agenda Item 3: Telecommunication Tower Discussion

Rick addressed the last agenda item, to discuss the Ordinance in regards to communication towers, requested by Mike.

Adam read from the Todd County Ordinance, Standards for Telecommunication Towers: Towers shall be set back a distance equal to the tower height from all property lines and said setback shall not cross a public right of way. All accessory structures shall be set back a minimum of fifty feet from all side yard and rear yard property lines and one hundred feet from all public right of ways.

Danny brought up the last case and asked for clarification on the variance request.

Adam informed all the distance to the road right of way was the limiting factor. Both were being encroached beyond the 408' for the tower, with the South property line a possible second variance request.

Rick made the comment they could have potentially needed a second variance, to his understanding. He added they did deny it, going through the criteria questions, as applicants did not demonstrate a practical difficulty.

Bill supported and said they could have moved north.

Rick thought their decisions were made from sound judgment, however, during the review, with the letter from the engineer pointing out new standards, today's engineering, new technology, they are now being built to collapse, during destruction, and can predict with high probability the location, and felt perhaps our Ordinance may have to be looked at. He added he did not feel comfortable to just go by one letter, from one engineer, from one consulting firm and not an engineer himself, pointed out it wasn't within the scope of this Board as part of their job.

Bill said he felt we are turning a blind eye to technology, and it is their job as a Board of adjustment when given new information before us, it is our responsibility to pass that back to zoning board and say this needs to be looked at and readdressed. These towers are designed to collapse to a smaller footprint. He brought up the terrible EMS radio coverage around Browerville and Grey Eagle, and said as a County we need to get these towers in.

Ken said your need for change is correct.

Rick agreed that the board does see a need for change.

Bill invited Adam's input.

Adam said there were plenty of resources out there for us to accumulate information. He is hearing from the board that there is probably a need for change. So, if it's the consensus of the Board, we can bring this to a County work session and if Rick is willing, he can represent this board as to the origin of this conversation. One of the Avenues in which an Ordinance may be amended is "initiation by County Board". So, if we present this to them and say this is something we should consider, they can initiate that, and we can get on the planning commission, and send it through the formal process.

Danny expressed the need to address the safety towards homeowners.

Mike said you may have to go back to the science, and ask for the criteria to put in place from the people who have the power, so we may facilitate the change and increase towers, and have cell phones and other communication for safety purposes.

Rick said he has heard good discussion and he is comfortable representing this board and has heard convincing evidence, there is a need to look at the changes in setback requirements. If they do decide to address this, they go through a thorough and rigorous, due diligent process, so it may reflect the current technology/engineering capabilities.

Ken said the question is do we need to adjust the setback, and how are we going to do that. How are we going to allow someone to prove that to us, so we may rewrite the ordinance? The Planning Commission has to figure that out.

Ken asked if this is just for telecommunication towers and Adam confirmed yes, and added it does not include wind turbines.

Danny asked if that is all this board has to do to address the Ordinance change and Adam responded yes, as the general consensus, have Rick represent the BOA and communicate at the work session, it gets put on our agenda, once approved, presented to the Planning Commission board, making note: in the Comprehensive Plan, there is reference to next generation technology, then it gets presented to the Commissioners for consideration.

Rick said we shall do that, and asked if there was any other discussion.

Ken made a motion to adjourn.

Russ seconded.

Voice vote, no dissent, motion carried, meeting adjourned at 7:40 pm.