

## Minutes of the Todd County Board of Adjustment Meeting

February 22, 2024

Completed by: Sue Bertrand P&Z Staff

Site visit completed by Adam Ossefoort and Ken Hovet on February 15, 2024

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheit and Planning Commission Liaison Ken Hovet, and alternate Larry Bebus.

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. The Pledge of Allegiance was recited. Each board member introduced themselves and Rick explained the process for those attending.

Rick drew attention to the amended items on the agenda; Rengstorf has withdrawn indefinitely and Kortuem has asked to table until the March meeting. Ken motioned to have the agenda approved as amended, and Bill seconded. Voice vote, no dissent heard, motion carried.

Bill motioned to have the January 25<sup>th</sup>, 2024 meeting minutes approved. Ken seconded the motion. Voice vote, no dissent heard, motion carried.

Introduction of the meeting process and etiquette by Rick.

### **AGENDA ITEM 1: Ryan Rengstorf – PID 22-0052500 – Staples Township**

**This item has been withdrawn from consideration.**

### **AGENDA ITEM 2: Michael T. and Lori K. Lyon – PID 11-0049600 – Staples Township**

#### **Requests:**

1. Request to reduce the OHWL setback from 100' to 34.85' for construction of deck in RD Shoreland Zoning.
2. Request to reduce the OHWL setback from 100' to 44.85' for the proposed house with attached garage in RD Shoreland Zoning.
3. Request to reduce road right-of-way from 20' to 8.56' for the proposed garage in RD Shoreland Zoning.
4. Request to increase the height limit from 18' to 21'1.5" for the proposed house in RD Shoreland Zoning.

#### **Updated Requests:**

1. Request to reduce the OHWL setback from 100' to 37.5' for construction of deck in RD Shoreland Zoning.
2. Request to reduce the OHWL setback from 100' to 47.5' for the proposed house with attached garage in RD Shoreland Zoning.
3. Request to reduce road right-of-way from 20' to 8.56' for the proposed garage in RD Shoreland Zoning.
4. Request to increase the height limit from 18' to 21'1.5" for the proposed house in RD Shoreland Zoning.

Proposed Condition(s):

1. Implementation of a stormwater management plan as designed and approved by the Soil and Water Conservation District.
2. Establishment of a 10' vegetated buffer along the lake frontage (no mow zone). A 6' wide maintained area shall be allowed for lake access.
3. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
4. Establishment of construction stormwater controls prior to issuance of land use permits.

Michael & Lori were present as the applicants.

Rick reminded the board this application had been tabled from the January meeting. What we were asking for was staff to provide good information to establish the road right-of-way easement and locations and how that relates relatively to the property lines and asked Adam if we could have that.

Staff Findings: Adam reviewed the new information added to the report. The staff report is available for viewing, upon request, in the Planning & Zoning Office.

Rick asked Mike and Lori if they felt the Staff Report was accurate and they both agreed it was. Mike also added after the last meeting, he thought the question was on the survey by Brad Nyberg. He stated, you'll see a dashed line going through the property. He called Brad and asked him what the dashed lines mean and Brad was hesitant. Mike stated Brad, you are going to tell me that is the road right-of-way, aren't you? Brad stated yes, it is. Mike responded the road is not there, and Brad's comment was he was hired to survey his lot not the road. Brad said he had some information for Mike and sent him some surveys, the initial one Mike sent to Adam, to which Adam confirmed receipt. Mike continued, the original plat map actually shows the North side which was actually lot five at that time, being a hundred and twenty feet deep and it shows the road, right at the edge not going through the property. That was the original one and he didn't know what year, but was October 15<sup>th</sup> of some year.

Adam offered to find it.

Mike continued, after that, there was a survey done by Ron Engelmeyer, on the 29<sup>th</sup> of July in 1983, which is the first one they find with the road showing the dashed lines going through those lots. When he had the conversation with Brad, he said his personal opinion was the dashed line was put in the wrong spot on the original plat and nobody has changed it. So, on that particular survey, it shows that North side as one hundred and twenty feet deep still, and one hundred and twenty-five on the South side. After that, David Engelmeyer surveyed it on May 27<sup>th</sup>, 2023, and he didn't survey these lots, but the lot just to the South of there. There again, still showing the road where it's at, but on the South side, it went from the one hundred and twenty-five feet to one hundred and twenty-six feet and didn't do anything on the North side because he was surveying the neighbor's lot to the South. Still showing the road right there. The last one, done by Nyberg, whom he hired to have it done, shows the North side at only one hundred and thirteen feet but the South side grew to one hundred and twenty-seven. His point is, there have been three different surveys and three different surveyors, all coming up with pretty much the same lot line measurements within a couple of feet or so for the lot dimensions. He added he thought the road was drawn in on the wrong spot. After that, he called the Todd County GIS mapping, didn't remember the gentleman's name, and asked if he could help him through this? He pulled it up and stated it was showing a road right-of-way of 88' and it should be 66' so our mapping is wrong and we can't even go by that. Mike stated he does not know what else he has to do.

Ken stated I was the one who had the concern with the road right-of-way and probably the reason we are back here tonight, but he is interested in the resolution we got from the township, basically says our road is where it is physically, regardless of what it says on the map. He stated that is what he and Adam had done on the site visit, is pull out a tape measure from where the road is driven, and we have plenty of room, and as far as he was concerned, this is not even an issue anymore, as they have the resolution right there.

Mike stated they tracked that down through John Young and MaryAnn Primus with Eagle Valley township.

Ken stated it is kind of a novel way of handling this situation, but as far as he was concerned it's as official as it needs to be. He was good with that.

Bill stated he was very good with that, and he did agree with Adam in an effort to do due diligence and protect our procedure and protect anything that happens going forward, if we grant this, we should grant it with the condition in regards to that setback on the road.

Ken stated he didn't follow.

Adam explained, if we grant the Variance we should include granting of the right-of-way setback anyway, as a due diligence effort to protect the platted road right-of-way. We know that the township right-of-way is fine anyway.

Bill stated his logic was, we don't have an established distance otherwise.

Ken stated he has no problem with that, as far as he was concerned, that setback is not even an issue anymore, so whatever you want to put in there is fine.

Rick asked, so what does that do to the variances? We are showing four variances, so does that change anything?

Adam stated, in his opinion, it does not change anything. It didn't impact anything on the lake side, or any of those setbacks, and the road is simply, at this point, a due diligence, because it was included in the request, but we know it has no impact on the road.

Bill, added, if anything, it gives the applicant a little more space on the road side, if they chose to use it. But, it was so close already, he didn't know if there was a point to that.

Rick asked for any written correspondence: None.

Public comment: None.

Board discussion:

Larry stated he wasn't here last month and asked what was discussed in reference to the variance from the water level? He stated, looking at this, he doesn't know what they had discussed last month. Going from 100 feet to 35 feet and going from 100 feet to 45 feet is pretty drastic.

Rick stated he didn't know how to summarize that.

Mike stated there is an existing structure there already, that is already closer than that to the lake, and with the new structure, what they are trying to do, is move further away from the lake, further off the road and control the water. Asked Adam to pull up the survey where it shows the new structure overlay of the old structure. You can kind of see what is going on.

Bill stated he would like to add to what Mike is saying, stated he was on site last month, and all of this stuff looks significant, and it is significant, but every request here is less than what is currently there. So, in any direction there is a request for a variance, there's less infringement than what there was previously.

Mike added the lot, at its' widest point, is only one hundred and twenty-seven feet. So, with a one hundred feet off the lake, and twenty feet off the road, it gives me a seven-foot structure.

Ken confirmed there is no room to meet all of the setbacks.

Adam stated they had worked with Soil and Water, prior to his application, so he has those plans in the staff report too, if Larry wanted to see that. He showed the recommendations from Josh Vortruba, showed the directional flow of the water and retention "map", and how they came up with a storm water plan. It's all in his staff report if he wanted to take a look at that.

Rick stated he was struggling with having to put Larry in this position, and unfortunately, we only have the four board members present tonight, and each and every vote is going to be critical. He suggested we can do one of two things: take some time to have Larry review the minutes, because everything that was discussed is reflected in the minutes, or he stated, he felt compelled to start over from the beginning.

Larry asked for a couple minutes to look at the staff report.

Rick stated the minutes are quite long (six pages), so he stated we are going to take a ten-minute recess, and during that recess, we are going to allow Larry time to read the minutes, so he can catch up, as he was not at the last meeting to hear what was discussed. Stated we will reconvene at 6:35 (10 min.)

Rick reconvened at 6:33 as Larry is finished, everyone was back, and no one left.

Rick asked Larry if he had any questions of Mike and Lori, after reading everything, to which Larry stated not at this time. Rick asked the other board members if they had any questions or comments.

Rick stated we had discussed, at the last meeting, combining all appeals for variances. There are four of them for this application, and he reviewed the original requests and added these are all interconnected, which simply means without approval of the dwelling, there would be no need to obtain a variance for the other

three. So, when we go through the criteria questions, we're going to do this a single time, but when you give your reasons for your decisions, if the reasons relate to all four, you don't need to stated anything. If there is a decision you feel that you need to expand upon, because it is not interconnected, please say so.

Mike asked if he could make one comment regarding height, and stated he did measure the existing structure and it is actually taller than what they are asking for.

Rick clarified the proposed new structure will have a shorter peak height, and actually be farther from the lake, to his understanding, but the footprint will be enlarged.

Mike confirmed that was correct.

Rick called for Criteria Questions individually by request.

<b>Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes.
Ken Hovet	Yes.
Larry Bebus	Yes.
Rick Johnson	Yes.

Majority response- Yes

<b>Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes, basically we are moving back, with each one of these requests, it's less than what is currently there. But also, to truly appreciate this, and thought Ken would agree with him, the amount to which we are improving this lot, you kind of need to be on the lot. A lot of applications we get a pretty good picture, but what is put before us, does make a difference to be on the lot.
Ken Hovet	Yes. For all the same reasons, and it is going to improve the setback situation than what is there now, and that is a win.
Larry Bebus	Yes.
Rick Johnson	Yes. The comprehensive plan, goals and policies are to protect the quality and use of the surface water. He felt in this situation, we are replacing a non-conforming structure but at the end, we are going to end up in a much better place. When we look at official controls and comprehensive plans, he does understand we need to do a balancing act. He stated in this situation because of what you are proposing, all the work you have done, combining lots, all of the conditions that we're proposing to add, we are just in a better place. Because of that he will say yes.

Majority response- Yes

<b>Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes, stated he agrees with Larry.
Ken Hovet	Yes.

**Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?**

Larry Bebus	Yes, even though the setbacks are still fairly drastic, based on what the existing structures are, and what is going on, he'll say yes.
Rick Johnson	Yes.

Majority response-Yes

**Criteria Question #4: Is the need for a variance due to the circumstances unique to the property not created by the landowner?**

Board Member	Vote and Comments
Bill Berscheit	Yes.
Ken Hovet	Yes.
Larry Bebus	Yes.
Rick Johnson	Yes, the lots were platted in 1917, plus, it appears that the depths of the lot in this particular location are due to the location of the township road, restricting the lot depths. So, the variance is needed due to that lot depth.

Majority response- Yes

**Criteria Question #5: Will the variance maintain the essential character of the locality?**

Board Member	Vote and Comments
Bill Berscheit	Yes.
Ken Hovet	Yes.
Larry Bebus	Yes.
Rick Johnson	Yes.

Majority response- Yes

**Criteria Question #6: Does the need for the variance involve more than just economic considerations?**

Board Member	Vote and Comments
Bill Berscheit	Yes, environmentally, this is a win for the lake.
Ken Hovet	Yes.
Larry Bebus	Yes.
Rick Johnson	Yes.

Majority response- Yes

**Criteria Question #7: Have safety and environmental concerns been adequately addressed?**

Board Member	Vote and Comments
Bill Berscheit	Yes, and just add that this is one the best put together applications this board has seen in quire some time, in regards to addressing environmental issues and other issues on the lot. He commended the applicants for that, and thereby environmental concerns have definitely been addressed.
Ken Hovet	Yes.
Larry Bebus	Yes, he noted the recommendations were in there from Josh, and confirmed with Mike and Lori those were going to be met, so, yes.
Rick Johnson	Yes, he feels most conditions will mitigate the adverse effects of the variance.

Majority response-

Summary of criteria question majority responses as follows:

#1	Yes
#2	Yes
#3	Yes

#4	Yes
#5	Yes
#6	Yes
#7	Yes

Ken motioned to approve, all four variance requests with the proposed conditions, and seconded by Bill.

Conditions:

1. Implementation of a stormwater management plan as designed and approved by the Soil and Water Conservation District.
2. Establishment of a 10' vegetated buffer along the lake frontage (no mow zone). A 6' wide maintained area shall be allowed for lake access.
3. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
4. Establishment of construction stormwater controls prior to issuance of land use permits.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Larry Bebus	Yes
Bill Berscheit	Yes
Ken Hovet	Yes
Rick Johnson	Yes

Motion to grant all four variances has been approved.

**AGENDA ITEM 3: Edward C. Kortuem – PID 03-0030000 – Birchdale Township**  
**Item requested to be tabled until the March meeting.**

**AGENDA ITEM 4: Bruce and Linda Westbrook – PID 11-0030500 – Grey Eagle Township**

**Requests:**

1. Request for variance to reduce the setback from the OHWL from 100' to 39' for proposed dwelling replacement in RD Shoreland Zoning.
2. Request to reduce the right-of-way setback from County 47 from 20' to 12' for proposed dwelling replacement in RD Shoreland Zoning.
3. Request to increase the max roof surface impervious from 15% to 16.2% for proposed dwelling replacement in RD Shoreland Zoning.
4. Request for variance to increase the peak height limit from the required 18' to 20' for proposed dwelling replacement in RD Shoreland Zoning.

Bruce and Linda were present as the applicants.

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

Proposed Condition(s):

1. Development and implementation of a storm water management plan submitted to Planning and Zoning Prior to issuance of a Land Use Permit.
2. Establishment of a 5' vegetated buffer (No Mow Zone) along the lake frontage. A 6' maintained access path shall be allowed for lake access.

Bruce and Linda confirmed the staff report was accurate. The slope of 6% between the cabin and the lake, where all the water seems to migrate to that spot. Right now, he didn't think there was too much water going into the lake off of the land. Leveled off a little bit and they did work with the County putting in the ditch on the south side. He'd like to get it cleared up. He'd like to run through the rain gutter and then into the ditch. So, the water running is not running off the roof and running in.

Adam explained the 6%, just to be clear is based on the contour lines, measuring contours and the distance, doing rise over run, is how he established that number, just what comes off the computer screen.

Ken reviewed his site report notes and this report may be viewed in full upon request, at the Planning and Zoning office.

Correspondence received: Yes. These two letters were read by Adam and may be viewed in full in the Planning and Zoning Office, upon request.

Public comment: None.

Adam also added that Sue provided the calculations for the total additional square footage that will be added with the new proposed additions is 124 sq. ft. He stated the existing cabin is 686.18 sq. ft. and the new will be 810 sq. ft. Adam zoomed into the map that showed the new over the old and pointed out the proposed areas that will be added.

Board discussion:

Rick stated he notices this proposed dwelling is within the shore impact zone. He stated he agrees with Ken that the proposed footprint is insignificant from what is currently sitting there. Asked the applicants why they are replacing the structure?

Linda stated they first considered remodeling, and had a carpenter look at it and all the windows would have to be replaced, the floor between the kitchen and living room is kind of sagging down, right now pressure tank and the water heater were put down in a hole and it is all rusted and they would like to raise that up and there is no room to do it. There are just so many little things, the carpenter stated they would end up putting more money into remodeling this 1962 cabin. Another thing they want to do is go up a little higher, you probably saw that, we would like to do a story and a half is it?

Bruce stated a two story.

Linda stated they had two tiny little bedrooms now and they would like to have space for kids, grandkids, whatever, upstairs.

Rick stated that was his other question, you barely increase the footprint we can almost dismiss it as it's so insignificant, but you are looking to expand up.

Linda agreed.



Bill stated this side of Big Birch, many, many years ago, the highway department did come to the landowners down that side of Big Birch Lake, with a proposal to move County Road 47 back about a half mile to the East, and they met with a significant resistance and thought that it was a significant loss at that point in time that that didn't happen, and this represents where it was a significant loss.

Linda agreed.

Rick stated Hwy 47 goes from...

Larry added Rock Tavern to St. Rosa.

Rick continued that's where the speed limit is reduced to 40 mph. in that area and that is where they are?

Linda, yes.

Rick stated this application includes four variances and reviewed the requests. He added all of these are interconnected, without approving the dwelling, there is no need to approve the other variances, so we will go through the criteria questions once. Keep in mind our reasons for approval are for all four variances. So if you need to respond separately, please do.

Rick called for Criteria Questions individually by request.

<b>Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes. He agrees with Rick.
Ken Hovet	Yes.
Larry Bebus	Yes.
Rick Johnson	Yes. Primarily because the variances are insignificant. You do have the right to use the property as residential dwellings. You do have the right to replace the existing structure exact for exact and you are just asking for a little more. He is not concerned about that.

Majority response- Yes

<b>Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes, assuming there are conditions attached that would improve the water quality, and mitigate or treat any roof water coming from the structure. Assuming those two things, he says yes.
Ken Hovet	Yes, with the same conditions and for the same reasons to question number one. A replacement of the exact size is allowed, although there will be a slight increase in square footage, it will not affect the setbacks any. So, as far as he is concerned, he's good with that. Yes.
Larry Bebus	Yes, with the same comments as Bill.
Rick Johnson	Yes, for the same reasons as Ken just articulated.

Majority response- Yes

<b>Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes.
Ken Hovet	Yes. The replacement of a cabin is reasonable use.
Larry Bebus	Yes.
Rick Johnson	Yes, he considers this to be reasonable, because it is such an insignificant change to an already non-conforming structure.

Majority response- Yes

<b>Criteria Question #4: Is the need for a variance due to the circumstances unique to the property not created by the landowner?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes, stated he does have some concerns, not sure this is the question to address them on. One is; we are going to increase the use of this lot by increasing the height and increasing the inside floor space and that is a land owner issue. The other thing is; he is concerned this is going to increase the seasonality use of this structure, thereby, increasing the parking and the demands on this lot, but still says yes.
Ken Hovet	Yes, quite simply, it is a small lot.
Larry Bebus	Yes, but has the same concerns as Bill, mentioned the grandchildren, people are probably going to be coming up there, possibly spending more time, more usage, possibly not just in the summer time. Is the lot big enough to handle everybody coming in and parking there? He stated he doesn't see that on the drawing where the septic tank and the well are. * Larry stated, for now is what counts, and Loren with the County already stated he can live with it, and he's the guy that has to live with it.
Rick Johnson	Yes, due to the small lot that was platted, prior to the now conforming ordinances. He also thinks it's worth noting what Bill stated of the proposed moving of it. That was not created by the landowner, felt it was worth stating that.

Majority response- Yes.

\*Linda and Adam pointed out on the drawing where the well is, beside the house in the front, and the septic is back in the road right-of-way area. Linda stated it's a holding tank and they usually park two along the side, and if their son comes...

\*Bruce added they only have two kids.

\*Linda added they all live locally in Sauk Centre, so, they don't usually stay overnight very often.

Rick made a short summary: Obviously, looking at this lot, it's such an extreme non-conforming lot, there are a lot of concerns. But, never the less, we are just simply here to address your variances on replacing the building with an insignificant increase. There is not a lot the board can do about their concerns at this point, outside the scope of their capacity. Route 47 will be okay.

<b>Criteria Question #5: Will the variance maintain the essential character of the locality?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes. Their structure is not the only one along there that's in that very tight pinched in position.

<b>Criteria Question #5: Will the variance maintain the essential character of the locality?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Ken Hovet	Yes. Even though the new cabin is going to be somewhat taller, it is certainly not going to detract from anything, and anything new looks nice.
Larry Bebus	Yes.
Rick Johnson	Yes.

Majority response- Yes

<b>Criteria Question #6: Does the need for the variance involve more than just economic considerations?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	Yes, there is need for repair, if there is a sagging floor, and no footings, then the structure needs significant repair. Would we need to change the dimensions of it to do the repair? Probably not, but as Rick has repeatedly stated the change equates to about a 10' x 12' room and is not highly significant, and it does square the structure off.
Ken Hovet	Yes.
Larry Bebus	Yes.
Rick Johnson	Yes. For the same reasons as Bill.

Majority response- Yes

<b>Criteria Question #7: Have safety and environmental concerns been adequately addressed?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill Berscheit	No, and he is going to hang on to his statement earlier in regards to the County proposing to move the highway. That proposal was to allow room for these lots, as well as for safety reasons. When they did rebuild the highway, the entire highway was built for 55-mph traffic, and very shortly after that it was reduced to 40 for safety concerns. He stated he thinks in the granting this variance we are increasing activity and also safety concerns.
Ken Hovet	Yes.
Larry Bebus	Yes.
Rick Johnson	Yes, only as long as the proposed conditions by staff are part of the variances.

Majority response- Yes

Summary of criteria question majority responses as follows:

#1	Yes
#2	Yes
#3	Yes
#4	Yes
#5	Yes
#6	Yes
#7	Yes

Ken motioned to approve with the conditions stated, Larry seconded.

Conditions:

1. Development and implementation of a storm water management plan submitted to Planning and Zoning Prior to issuance of a Land Use Permit.

2. Establishment of a 5' vegetated buffer (No Mow Zone) along the lake frontage. A 6' maintained access path shall be allowed for lake access.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Ken Hovet	Yes
Bill Berscheit	Yes
Larry Bebus	Yes
Rick Johnson	Yes

Motion carried to approve the four variances.

**AGENDA ITEM 5: Garhard Hendricks – PID 21-0009100 – Round Prairie Township**

**Requests:**

1. Appeal of administrative decision a feedlot was illegally established on the property.
2. Appeal of administrative decision a variance could not be applied for because it would constitute a use variance.

Gerhard was present as the applicant.

Rick stated we will ask the staff for the grounds for this decision and then ask the applicant to specify his grounds for taking the action causing the appeal. Then written correspondence, public comments, then open it up to the board for discussion, then make a decision.

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

**Options for a decision:**

1. A motion to reverse the decision.
2. A motion to wholly affirm the decision.
3. A motion to partly affirm the decision.
4. A motion to modify the decision.

Adam added one other note, that 1599 which is the 60-day rule, does not apply to these applications.

Rick addressed Gerhard, and stated he is asking him to state what grounds he has for taking this action to appeal this first administrative decision that states a feedlot was illegally established on this property.

Gerhard stated he didn't purchase the land (his place of residence) until July 17<sup>th</sup>, 2006 and there had already been animals there and he was never told he couldn't have them. They moved in August first, 2006 and from the pictures you can see in 2003 the ground is broken already, showing black dirt, in that area, what is circled there doesn't have the structure. It was built before he bought it, but he doesn't know how it was permitted. He stated according to Adam, it was not permitted properly, as it was a detached garage, he believed, and you tell me, what detached garage has an automatic water and a hydrant in it. That stuff was there when he bought the place. He stated he did not know anything about variances, and had he known he needed a

variance, he sure would have applied for one. He was a young kid. He was twenty. He didn't know any of this stuff. The only reason he has cattle is his kids are in 4-H. These are their 4-H projects. He stated he has horses too, and again, 4-H. That is why we have them. He is a strong believer in kids having projects in livestock as because it teaches responsibility. He has an acre. But all the land back behind it there's fifty-five acres that he rents that the cattle are normally on. The only time they are up front, like now, is winter. It's hard to keep an eye on cattle during the winter, especially when they are trying to calve, to have prospect calves. That's the only reason it looks the way it does right now. Other than that, I don't really have anything, other than I bought it as a farm, that's what it was listed as.

Rick stated, moving on to the second appeal, as Adam covered both, but wanted to ask Garhard about the second one. Asked him to please specify his grounds for causing to take an action to appeal that decision.

Garhard stated because he does not know what he is doing. Seriously, he has lived there since 2006, and this is the first time something has ever come about. Honestly, as a parent trying to raise his kids in a good manner, he was blindsided. We don't even have ten head, with the horses it would be nine.

Rick stated that was fair. So, with respect to the two appeals for the administrative decisions, first of all, is there any written correspondence? None.

Public comment: None.

Board discussion:

Bill asked Adam, how far over the required registration level are we.

Adam stated he didn't think we ever confirmed how many animal units were the max out there because we never had the site registered. He didn't count when we were out there, so we only have what Garhard shared tonight.

Bill, so at what threshold do you not need a feedlot permit?

Adam stated no permit would be involved, it would be the registration. Our ordinance requires registration of feedlots starting at ten animal units. But regardless of the number of animals you have on a site, you may have feedlot conditions even at less than ten. It just may not be required to be registered. In reality, you could have one or less animal units, but if there is accumulation of manure, or black dirt in a confined area, it's still going to meet that definition of a feedlot, even though you are not required to register as a feedlot.

Bill stated his point to his question is the registration process or communication from the County would have happened if we were consistently over ten animal units. So, the animal units are only part of the question here, the majority of the question is the traffic, the destruction of natural vegetation and the accumulation of waste.

Adam confirmed, right.

Bill stated we have a short list of issues.

Adam noted this registration piece, as we had no documentation that a feedlot existed on this site.

Rick asked Bill to specify exactly what his point is.

Bill stated his point was, he can understand if they looked at the rules, and looked at the animal units, they weren't concerned about registering a feedlot, and on the other side, the County wasn't communicating with them. Because normally the County with a feedlot has to register and re-register, but with the low animal unit level, presumably under threshold, neither side is initiating that communication. His point is, what is initiating this issue was simply an accumulation of waste and traffic that has created a lack of vegetation. That is his point. Is it pertinent to number two, as he is not 100% certain as to why we are here? Appeal of administrative decision, a variance could not be applied for because it would constitute a use variance. In his mind, we have to cross this bridge before looking at the other one.

Ken agreed and stated he was absolutely right. It is zoned where you cannot have a feedlot, and it is within a quarter of a mile of a church. So, we can't change either one of those.

Bill stated he is not sure how we can even decide, as he is not seeing it and his question to the board is where is the traction? What are we doing with it?

Ken stated there isn't anything we can do. We can't move the church.

Bill continued, having said all that, what he would say to the applicants is: as a person with a history of feedlots, he is not a feedlot person right now, but he has been, and he would simply say that if you make a significant effort, you have acres enough there, if you have 55 acres back there you are renting, you have acres enough to move these things out and keep moving feeders. You could have 15 / 20 animals, not have an accumulation of waste and not have a destruction of vegetation. You could meet all of the County's requirements and not have to lose your animals or your 4-H projects or detract from anything the kids are doing. This is a very doable thing. He stated maybe it should be part of your kid's 4-H project. There's a lot of resources available to instruct them and help them figure out how to spread this out and move it so we don't have this concentration that's causing the issue. He stated he didn't think this is an "either/or" you can't have livestock question. He didn't see it that way. But he also didn't see how we can do anything with this.

Garhard stated his daughter raises steers for 4-H and they do rate-of-gain. He acknowledged Bill having feedlots, and stated you want to get to that projected number by a certain date. Obviously, you do have to keep them in a smaller area to get that. What would be a way to alleviate that and still gain vegetation? They are in that front pen and he directed to the overhead photos.

Bill stated Garhard was asking him the question his daughter should be asking other resources, but he does know that it is possible. Are you going to win awards for rate-of-gain, he didn't know that you can or will, but he does know that walking of a near quarter mile is not going to have any type of negative impact on rate-of-gain. The feed side to Bill, would be of less concern than the water side. When it gets hot in the summer, water availability is going to be more important than the feed availability to maintain that rate-of-gain.

Regardless, he thinks he can achieve all the things you are trying to achieve and not have black dirt there, or if there is it's going to be a narrow path, as they come and go to the water tank.

Garhard pointed to the overhead and showed the two-and-a-half-foot wide path, and stated that is what we are seeing. The picture makes it look like a big area, but it is really not. Believe it or not, that is two and a half feet wide.

Bill stated when applicants come before the board of adjustment, like Rick mentioned before, earlier, the burden of truth is on the applicant. He stated in this case, the burden is on you and your children to figure out how to make this work. Bill didn't think he'd have to give much of anything up, other than you have to figure out how to disperse this load, and not have it concentrated.

Garhard agreed, absolutely. He stated he had discussed this with his father and wife. Had he known this was going to be an issue... He stated growing up they always kept their cattle close.

Ken, if you feel you can make use of those 55, 65 acres you have next to you, and you will for some foreseeable time into the future, that's your pasture and you don't need a feedlot.

Garhard, agreed absolutely, it can be done.

Roger Hendrickson, Round Prairie town board, stated he got a call from a township resident that lives approximately four miles from Round Prairie, and said he better come to the meeting. Roger stated he better come because this must be something bad, but he hasn't seen anything bad and doesn't know how many cattle he has there. By the ordinance, he can see this is too close to the Church, and Gerhard may not have even known there was an ordinance that would keep him away from the Church by so far, when he put the cattle in there. He stated there was no correspondence from the city limits of Round Prairie, so as a town board member, he was going to leave it up to the board, whatever they decide, he didn't care one way or the other.

Garhard stated didn't know about any correspondence. He could have had correspondence from neighbors. But to be honest, he could go to everyone of his neighbors and none of them had any issues with what he has out there. He stated he will agree, come spring, he hauls out with the manure spreader, so there is some build up there, but he will alleviate that issue.

Adam stated in reference to Roger's comment on no correspondence submitted, part of that may be because this type of appeal doesn't require it to be noticed to neighbors, it just requires it to be publicly noticed in the paper, so the neighbors may not have even known you were going to be here tonight, because we are not required to notice the ten neighbors within the quarter mile distance. Stated, the reason we became aware of this in the first place is we did receive a complaint about the feedlot, didn't know off hand and couldn't share where it came from, but that's the reason it came to us in the first place, and how we tried to get it registered and that, into the future.

Bill said he thought it was good, the stockpiling of manure and the concentration of manure has to be alleviated. It has to be fixed. But you can do it. You can figure it out.

Guy Hendicks, Garhard's dad, stated the reason the pile of manure is there right now is when we had that rain over Christmas. The front pen got so muddy because of all that rain he scraped it all out at Christmas time. The front pen got all muddy at Christmas time. That's why that's there. That was all cleaned up. There's nothing you can do when you get four inches of rain.

Bill stated, your goal is you are going to have to not house them and not concentrate them. You are going to have to move your feed source daily or every three days. You are going to have to move the food source. You are not going to be able to do concentrated feeding.

Bill asked Roger again, and Roger did not have further comment, so Bill added he thought Soil and Water may have to be contacted as the better resource as opposed to the feedlot office. He felt Soil and Water can give better information and resources on re-establishing grass in there and what type of foot traffic it can handle without destroying the cover. Those resources are available within the County and certainly available within the Extension Services. They are out there. This can be done.

Ken agreed, if they have that much land available, there is no reason this can't be taken care of.

Gerard stated he agreed absolutely. Had he known there was an issue, this would have been done a long time ago.

Ken added he grew up with dairy, but we pastured them all summer, and we had self-feeders out there, but we'd move them, often, like Bill was talking about. Otherwise, you end up with a big muddy mess someplace, which is just the way cows are. This is doable, absolutely doable.

Bill, Amen.

Garhard added everything you see pasture there is actually also hay field, so, it's spread out onto there.

Bill repeated simply, if they move the feeders, there won't be any manure to deal with. They won't be scooping manure, they won't be hauling manure.

Rick announced he would like to make a statement for the record. Felt he has let this discussion go on for a long time because he felt it was a very good discussion, and it was very productive. You are getting a lot of good advice from the board members and they tend to do that. They tend to go above and beyond their job. But the statement he would like to make though, is when we are talking about feedlots and cows and everything else, admitted he does not have that background, so a lot of this was flying over his head. He was trying to grab it and process this as best he could, but where he is stuck, where he is at, what his position is right now, and just speaking for himself, but why we are here is simply to review two administrative decisions. Once we review those decisions, your appeal for the two administrative decisions is this boards' responsibility to make a motion to:

Reverse that decision

Or motion to wholly confirm that decision

Or motion to partially affirm



Or modify the decision

Rick stated based on everything he has heard, and the findings of facts that were presented by the staff and the staff report, he finds the staff's decision really, on both the appeals for the administrative decision, to be fully supported and there's been nothing presented tonight for a finding of facts where you oppose those decisions. He is looking for reasons and the grounds for opposing those decisions based on these findings of facts. He understands that he doesn't understand it, and doesn't have the knowledge of that, and when it comes to feedlots, neither does he. So, he thinks we just need to focus on exactly why they are here. He thinks we need to make a motion to:

Reverse the administrative decision or  
To wholly confirm their decision.

Ken motioned to confirm both administrative decisions.

Bill seconded and added this is not necessarily a negative vote on the applicant or the request person. It does not necessarily find them at fault for things that happened multiple years ago, but it does support the position of staff so, yes, he seconds the motion.

Rick asked for any other board discussion on this motion, or any other comments before putting it to a vote?

Larry asked if this is something Kevin could work on as far as feedlots and things like that?

Adam stated we have feedlot staff like Dylan and Tim and regardless of what the decision is here tonight, this wouldn't mean you absolutely can't have animals. He thought we have to work together to get to what the discussion was here. He stated he'd be willing to help with that, and we have staff in our office with grazing expertise in all of this stuff so, we have resources to assist in this process too. Just find that balance between not having a feedlot but having the animals there that you need, to support what you are after.

Larry stated what he was going to suggest, could he get together with Dylan, whoever and you (Adam) or whoever it is, and work out something?

Adam stated yes, and he thinks the best approach would be is to try to get to a positive resolution where we know we don't have a feedlot, but they can operate in a way that hopefully works for them, and they can have some animals in and around that area there.

Rick stated we have a motion and a second to affirm the two administrative decisions.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no)</b>
Ken Hovet	Yes
Bill Berscheit	Yes
Larry Bebus	Yes
Rick Johnson	Yes

Motion Carried.

Adam stated training on this Tuesday, 2:00.

Ken motioned to adjourn and Bill seconded. Voice vote to adjourn. No dissention heard. Motion carried and the meeting adjourned at 7:49 PM.

DRAFT