

STATE OF WISCONSIN  
OZAUKEE COUNTY  
DEPARTMENT OF PLANNING, RESOURCES & LAND MANAGEMENT  
BOARD OF ADJUSTMENT

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March 7, 2006 - 9:45 a.m.  
Ozaukee County Administration Center  
Port Washington, Wisconsin  
Reported by: Liane Baranek, RMR

Board Members Present:

Bernadyne Pape, Chairman  
John Riordan  
Catherine Stern

Absent: Paul Brunnquell  
Steve Castner

Also Present:

Andy Holschbach, Department of Planning, Resources  
& Land Management

Agenda:

Cliff and Sarah Norris/Scott Thiel Builders -  
After-the-fact Special Exception Permit (Page 2).  
Present: Scott Thiel, Warren Bloch, Randy Bloch.

Consideration of complaint received by Lucy McCue -  
(Page 18). Present: Lucy McCue, Dennis Kenealy.

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LIANE M. BARANEK, RMR  
Baranek & Stanke, Court Reporters  
262-284-3869  
262-679-3069

P R O C E E D I N G S

1  
2 MRS. PAPE: We'll reconvene the Board of  
3 Adjustment committee. We met at 8:45 and then went  
4 out on the site inspection. And Mr. Holschbach,  
5 has the news media, neighbors, general public,  
6 applicant and property owners been notified of this  
7 meeting?

8 MR. HOLSCHBACH: Yes, they have.

9 MRS. PAPE: Thank you. The Board meeting  
10 and public hearing are open to the public. Anyone  
11 may address the Board providing they are recognized  
12 by the chairperson, identify themselves, and print  
13 their name on the attendance sheet, please.  
14 Adequate time will be provided to address the Board  
15 regarding the various requests.

16 The hearing is being recorded by a court  
17 reporter. Therefore, I ask that you do not  
18 interfere, interrupt or interject comments while  
19 another person has the floor. Please speak one at  
20 a time so the court reporter can accurately record  
21 the meeting.

22 So then first case is the Norris case,  
23 and do you want to read their request, please?

24 MR. HOLSCHBACH: Yeah. This is an  
25 after-the-fact special exception permit requested

1 by Cliff and Sarah Norris, owners, and Scott Thiel  
2 Builders, the designer and agent, for filling,  
3 grading and excavating within the shoreland area of  
4 Ozaukee County for construction of a single-family  
5 residence with attached garage and driveway in  
6 accord with Section 7.072 of the county ordinance.  
7 Total disturbed area is approximately 21,875 square  
8 feet. The property is located at 7002 Sauk Trail  
9 Beach Road.

10 MRS. PAPE: Is there anybody here that  
11 would like to present their case?

12 MR. THIEL: We would like to build a new  
13 residence on that property. Some of the neighbors  
14 -- or the neighbor to the north had question about  
15 filling in areas.

16 Basically our thought process is that we  
17 want to keep the grade relatively the same as what  
18 it is now. Typically what we do -- We've done a  
19 number of homes up in Sheboygan County, and what we  
20 do is, depending upon what we're going with the  
21 basement, if it's a crawl space or six-foot-high  
22 crawl space or eight-foot, if it's an eight-foot  
23 basement we'll bring that foundation out of the  
24 ground three feet and drop the siding down on the  
25 foundation and then have our floor, first floor

1 elevation would be up higher for better view of the  
2 lake and stuff, so Andy and I talked about this  
3 this morning.

4 As far as the grade goes and filling in,  
5 we plan on keeping it as flat as we possibly can.  
6 Obviously the water would run away from the  
7 foundation but we don't plan on bringing three feet  
8 of fill or anything like that in. We want to keep  
9 that grade pretty much natural as it is now.

10 As far as any tree cutting, there's a few  
11 small trees -- there's one big tree we have to take  
12 down, but as far as the cluster of cedars and stuff  
13 that are there, we don't want to have to touch any  
14 of that stuff if we don't have to.

15 MRS. PAPE: So that one big tree is the  
16 one in front of the bushes?

17 MR. THIEL: Yeah. That's got to come  
18 down. Not the big cluster that you and I talked  
19 about, Andy, but--

20 MRS. PAPE: The single tree?

21 MR. THIEL: Yeah, that one big -- as much  
22 as we didn't want to, unfortunately we have to.  
23 Sometimes, too, from past experience, even if  
24 you're 20 feet away from a tree and it's got roots,  
25 you get into the roots and cut the roots, that

1 tree's going to die anyway, but we want to maintain  
2 as much natural surroundings as we can.

3 WARREN BLOCH: So you're not going to be  
4 any higher like our neighbor on the other side.

5 MRS. PAPE: Your name, please.

6 WARREN BLOCH: Warren Bloch.

7 MR. THIEL: Our intent is to keep it as  
8 level as we possibly can.

9 WARREN BLOCH: You mentioned that you  
10 were going to bring it up higher.

11 MR. THIEL: We bring the foundation out  
12 of the ground and you drop the siding down to cover  
13 the block instead of filling in along there, and by  
14 doing that, we -- all these houses that we do we  
15 try to have four or five steps and the front porch  
16 going up to the first floor elevation but the grade  
17 stays down and it gives you a nice look with a  
18 walk-up porch, where the one you're talking about,  
19 they basically built it up and then got it down.

20 RANDY BLOCH: My name is Randy Bloch.  
21 How about the location of the building on the  
22 property? What's the -- how close is he going to  
23 be to the north property line and the septic as  
24 well?

25 MR. THIEL: Andy, I forgot to grab the

1 survey this morning. Basically what we try to do  
2 is, here's the -- here is the survey, and the way  
3 we have it positioned, we would be closer to the  
4 north property line than the south.

5 As we got our septic system going over  
6 here, it's a mound system, so just the way it is on  
7 the survey. You guys, your house is over, so--

8 WARREN BLOCH: So is your house going to  
9 be any closer to us than the house that was there?

10 MR. THIEL: Actually, we'll probably be  
11 further away with the house than what the garage  
12 was. That garage was pretty close, so now you  
13 won't have this, and the property line, we are .6  
14 feet from the edge of the garage to that north  
15 property line. 26 feet.

16 MRS. PAPE: How much?

17 MR. THIEL: 26 feet.

18 WARREN BLOCH: That's not very much.

19 MR. THIEL: Well, garage before was, I  
20 think, about 35 feet.

21 RANDY BLOCH: He was talking about the  
22 residence itself.

23 MR. THIEL: You would be 26 feet from  
24 that property line. We only have to be ten.

25 MR. HOLSCHBACH: For the county, right.

1 MRS. PAPE: And the front of the house is  
2 a hundred feet from the high water mark.

3 MR. THIEL: Correct.

4 MRS. PAPE: Anybody else have any  
5 questions or concerns?

6 MR. RIORDAN: I wonder, is there any way  
7 of establishing the amount of fill in terms of  
8 depth added to the property that we could include  
9 as one of the conditions to -- We know it's all  
10 going to be retained in natural -- as natural as it  
11 is now, but could we get a number in there since  
12 you're talking about some grading?

13 MR. THIEL: When I say some grading,  
14 obviously we want to be safe in keeping the water  
15 flow not to run against the house. We want to run  
16 it away, but you still have to look at the overall  
17 lot size.

18 It's a very good size lot, so there is --  
19 between what was -- between Mr. Bloch's property  
20 and our property. We don't want to be spilling  
21 water on his, nor do we want his water spilling on  
22 ours, so we want to work together to -- if we got  
23 to build a little swale or something, but I think  
24 it's pretty good right now.

25 If you want to put a number in there I

1 think you're guessing. It might be six inches, it  
2 might be a foot, but you've got enough area there  
3 that even if you have to put a foot up against  
4 there -- I'm not saying it would be that much --  
5 you still got plenty of disbursement to make that  
6 very subtle.

7 MR. RIORDAN: Have we ever done that  
8 before where we would have a number?

9 MR. HOLSCHBACH: Certainly. When an  
10 application is made for filling in the floodplain,  
11 then we typically want to know the cubic yards of  
12 fill.

13 In this case they're outside of the Lake  
14 Michigan floodplain, and just having been to that  
15 property, it's kind of undulating so it's -- Yes,  
16 we have, to answer your question.

17 MR. RIORDAN: Do you think that would be  
18 helpful in this case or--

19 MR. HOLSCHBACH: In this case, personally  
20 I tend to agree with Scott, that your key focus is  
21 on proper grading.

22 MR. THIEL: Oh, absolutely.

23 MR. HOLSCHBACH: And I think the fill  
24 here is minimal.

25 MR. THIEL: Very minimal. Very minimal.

1           Basically any fill that we need, quite honestly, we  
2           should get out of our excavated area and be able to  
3           keep that on site and probably still haul some away  
4           because we should have excess but, you know, I'm  
5           the type of contractor -- I'm sure everybody tells  
6           you this -- but we want to do it once the first  
7           time and do it right, and we all -- in any  
8           development we do, you have to get along with your  
9           neighbors.

10                         We don't want to create a problem with  
11           disbursing too much water, so you work together.  
12           That's why we have the surveys and all the  
13           engineering things get done ahead of time so, like  
14           I said, I have no problem putting in a fill amount,  
15           but I think you're kind of guessing until you see  
16           the foundation of the place.

17                         MR. RIORDAN: I believe I'm satisfied. I  
18           don't know about the neighbors. I don't know if  
19           the neighbors want to opine on this.

20                         WARREN BLOCH: In regard to?

21                         MR. RIORDAN: How much fill or any fill  
22           or degree of fill, the amount of fill.

23                         MR. THIEL: Mr. Bloch, I can assure you  
24           that it isn't going to be like your neighbor to  
25           the--

1                   WARREN BLOCH: That's horrendous.

2                   RANDY BLOCH: Have you seen it?

3                   WARREN BLOCH: That's ridiculous.

4                   MR. HOLSCHBACH: He was in the Lake  
5 Michigan floodplain. To meet the floodplain  
6 development standards he had to place fill in the  
7 lowest floor of his home.

8                   WARREN BLOCH: It didn't have to be that  
9 way. I want to say one thing, too. Our neighbor,  
10 what he -- you know, what were -- the previous  
11 people who lived there, they had no -- they didn't  
12 have any flooding around their house, and we don't  
13 either and, you know, that's why I say--

14                  RANDY BLOCH: We hadn't -- I don't mean  
15 to interrupt. We hadn't had any flooding problems,  
16 but since the new house to the north, it has now  
17 become a lake. Our patio area behind our cottage  
18 is now full of water.

19                  I had to -- this last summer I had six to  
20 eight inches I had to walk through to get to our  
21 little boathouse behind it. I believe that to be  
22 ridiculous, and we have no recourse at this time it  
23 seems because--

24                  MRS. PAPE: Wasn't there a swale that was  
25 supposed to crack that?

1 RANDY BLOCH: There was.

2 MRS. PAPE: Wasn't that put in?

3 RANDY BLOCH: No.

4 MRS. PAPE: Hello.

5 MR. HOLSCHBACH: No, he's -- well, he's  
6 got what -- You know, I asked that same thing and I  
7 did a site visit. He's got a little ditch that he  
8 dug.

9 RANDY BLOCH: It's not to par.

10 MR. HOLSCHBACH: This is another matter.  
11 It's not on our agenda.

12 MRS. PAPE: Okay.

13 MRS. STERN: That's where I was going. I  
14 sympathize with you, but you need to bring this  
15 forward on an agenda item. Okay? Do that.

16 My concern with the plan here, you have  
17 two areas or three areas for excavated soil. What  
18 will you do with that?

19 MR. THIEL: That will become flat grass  
20 here.

21 MRS. STERN: Okay. Will that not create  
22 a higher area then?

23 MR. THIEL: No, no. That area's  
24 designated for topsoil piles and stuff like that.  
25 That will blend with the neighbor to the south, and

1 in the future if they want to, you know, put a  
2 tennis court or whatever, just looking at if they  
3 would like to want to do something like that, I  
4 have no idea, or it would just be lawn like it is  
5 currently.

6 MRS. STERN: Do you know, is the driveway  
7 going to remain hard pack gravel or is that going  
8 to--

9 MR. THIEL: Hard pack gravel. Where the  
10 pillars are, where we come in, we want to maintain  
11 that, have compacted gravel going up to the new  
12 garage, and off the new garage will be concrete  
13 slab, and that will be as wide as the garage, 24  
14 wide and out 24 feet.

15 MRS. STERN: That would be the only  
16 concrete?

17 MR. THIEL: Yeah, and the service walk-up  
18 to the front door.

19 MRS. STERN: Thank you.

20 RANDY BLOCH: Just to finish what our --  
21 the question was to us between -- it went a  
22 different way -- I don't think we have a problem  
23 with his building. Great. It's his land, or the  
24 owner's land, as long as the height doesn't get in  
25 such a way where it's going to interfere with the

1 water flow and directed to our place.

2 I don't know what you would put in place  
3 to say look, you got to make sure that these poor  
4 people aren't caught in the middle of two bowls  
5 here and we get flooded out. I don't know how that  
6 would be worded.

7 MR. THIEL: Well, I think water flow and  
8 everything is shown on the survey map. Some  
9 elevations and things are shown on there, but I can  
10 personally assure you that if it would become that  
11 -- I don't see where we'll have to, but if we have  
12 to put a proper swale in, by all means we would do  
13 that.

14 RANDY BLOCH: That would be great.

15 MR. THIEL: Your other situation, that's  
16 what I would recommend the other people do. It's  
17 pretty simple.

18 RANDY BLOCH: I think so as well.

19 WARREN BLOCH: If it's done.

20 RANDY BLOCH: If it gets done right,  
21 correct.

22 MRS. PAPE: Thank you.

23 \* \* \*

24 STAFF REPORT:

25 The proposal is to fill, grade and

1 excavate within 300 feet of Lake Michigan for the  
2 construction of a single-family residence with an  
3 attached garage, screen porch and raised patios and  
4 driveway on the east side of Sauk Trail Beach Road.  
5 The total disturbed area will be approximately  
6 21,875 square feet.

7 Findings:

8 - Ordinary high water mark for Lake  
9 Michigan was staked out by Department on August 25,  
10 2005 along with determining setback averaging for  
11 new residence which is 40 feet from the OHWM.

12 - Kathi Kramasz, DNR, concurred with OHWM  
13 location and setback average of 40 feet to OHWM on  
14 October 12, 2005.

15 - Existing residence and outbuildings  
16 razed and old septic system abandoned per site  
17 visit by Department on December 7, 2005.

18 - Sanitary permit issued for mound system  
19 on December 19, 2005.

20 - Zoning permit application was submitted  
21 to the Department on December 27, 2005.

22 - Phone call to Scott Thiel of Scott  
23 Thiel Builders on or about January 3, 2006 in  
24 regards to square footage of new residence and need  
25 for special exception permit. On Department

1 advice, Mr. Thiel and property owners waited for  
2 new proposed zoning ordinance to be adopted by full  
3 County Board on February 1, 2006 to avoid need for  
4 Board of Adjustment approval. New proposed zoning  
5 ordinance was not presented to full County Board  
6 February 1, 2006 as originally anticipated. Phone  
7 call to Mr. Thiel the following week by staff  
8 informed Mr. Thiel of the delay of adoption of new  
9 proposed zoning ordinance. Mr. Thiel and clients  
10 decide to start site work and apply for an  
11 after-the-fact special exception permit in order to  
12 keep project on schedule.

13 - Scott Thiel of Scott Thiel Builders  
14 submitted the after-the-fact special exception  
15 permit application on January 25, 2006.

16 - No wetlands or floodplain will be  
17 directly impacted by this proposed project.

18 The department recommends approval with  
19 the following conditions:

20 1. The proposed residence is allowed to  
21 be located no closer than 40 feet to the ordinary  
22 high water mark of Lake Michigan as staked out by  
23 the Department.

24 2. Only clean fill be used, not to  
25 contain lumber boards, asphalt, blacktop, trash or

1 any hazardous or putrescible material.

2 3. Erosion control provisions at least as  
3 effective as those in the Construction Site Best  
4 Practices Handbook be installed at the start of the  
5 project and be maintained until the exposed soil is  
6 revegetated or otherwise protected from erosion.  
7 The erosion control barriers shall be removed after  
8 the exposed soil is adequately revegetated.

9 4. Fill shall be properly graded so as to  
10 ensure the drainage of adjacent properties is not  
11 negatively impacted.

12 5. The permit shall be valid for one year  
13 from the date of approval. The permit can be  
14 extended or renewed only upon review and approval  
15 by this Board.

16 6. Obtain the necessary permits from  
17 federal, state and local governments and follow the  
18 conditions as stated in those permit approvals.  
19 Copies of those permits, if required, are to be  
20 filed with this department.

21 7. Notify the department within ten days  
22 of completion to request a Certificate of Zoning  
23 Compliance.

24 The Board and applicant must be aware  
25 that if the project is approved, an appeal period

1 extends for 30 days after this hearing. During  
2 that period, any interested party can appeal the  
3 decision, either approved or denied, to circuit  
4 court. Any work done prior to the appeal period is  
5 at the applicant's own risk.

6 \* \* \*

7 CORRESPONDENCE:

8 "From: Kathleen C. Brady, February 25,  
9 2006, To: Andy Holschbach, Subject: Norris  
10 after-the-fact permit.

11 "We just received the notice re the  
12 Norris' after-the-fact permit. We are one house  
13 removed to the north and share a common neighbor.  
14 We faced some opposition in our permit requests and  
15 believe that, on review after completion, Sauk  
16 Trail Beach Road property owners are better off for  
17 what was done.

18 "We are 100% in favor of the permit being  
19 granted. The improvements will accrue to the  
20 benefit of all neighbors."

21 \* \* \*

22 MRS. PAPE: Anything further?

23 MRS. STERN: No.

24 MR. RIORDAN: No.

25 MRS. PAPE: I'll entertain a motion.

1 MR. RIORDAN: I motion to approve the  
2 request as stated with the conditions laid out by  
3 the department as recommended, 1 through 7.

4 MRS. STERN: I would second that.

5 MRS. PAPE: The conditions being 1 to 7  
6 on the bottom. Okay.

7 MR. RIORDAN: Yes.

8 MRS. PAPE: Thank you. Moved and  
9 seconded to grant the special exception permit with  
10 the seven conditions attached. Any further  
11 discussion? Hearing none, how do you vote?

12 MR. RIORDAN: Aye.

13 MRS. STERN: Aye.

14 MRS. PAPE: Mrs. Pape, aye. Thank you.  
15 The office will keep in touch with you, sir.

16 MR. THIEL: Thank you.

17 MRS. PAPE: And next on the agenda, in  
18 preference for Mrs. McCue, I think we'll jump to G,  
19 and for Mr. Kenealy also, and how do I handle this,  
20 Dennis? I'm going to ask for Mrs. McCue to present  
21 her--

22 MR. KENEALY: Well, there is no process  
23 to handle this because there's nothing that can be  
24 done.

25 Apparently you have a complaint about

1 procedure or the process in regard to issuance of a  
2 permit. I don't know whether it's an issue or not,  
3 and the person who wants to explain their  
4 dissatisfaction.

5 MRS. PAPE: I'll call on Mrs. McCue to  
6 present her complaint.

7 MRS. McCUE: Thank you. Good morning.  
8 Could I ask the Board, have any of the Board  
9 received a copy of my request on two different  
10 occasions last year regarding the complaint that  
11 I'm about to speak on?

12 I don't know what other process other  
13 than delivering to this building. I'm wondering if  
14 every one of the Board members had gotten a copy of  
15 my complaint or request to be heard.

16 MR. HOLSCHBACH: I can answer. What I  
17 provided in the meeting packet -- and that was your  
18 correspondence dated December 15th?

19 MRS. McCUE: Yes.

20 MR. HOLSCHBACH: And also correspondence  
21 dated January 26th?

22 MRS. McCUE: Okay. Thank you. Then I  
23 basically have a basis for what you have or have  
24 not read or heard. I'm still not clear on all the  
25 after-the-fact permits that are being issued, but

1           that's another matter.

2                       I've come before the Board this morning  
3           not to try to dissuade you on your views, but to  
4           bring forth an allegation that may have a major  
5           impact on how this Board does business in the  
6           future.

7                       This raises a serious ethical question.  
8           We have reason to believe that a member of this  
9           Board has never looked past a relationship with an  
10          interested person to give a fair and impartial vote  
11          in our project that has been presented to you on  
12          April and December of last year.

13                      I have spoken to Mr. Kenealy on two  
14          occasions regarding information as to the procedure  
15          to appeal under this premise. We are not here to  
16          go over the politics of the Board's decision, and I  
17          do want to comment that I respect this Board and  
18          the work that you do, and I have the utmost respect  
19          for Land Management and the research and the  
20          knowledge that they bring forth in these meetings,  
21          and I am not a bitter person, nor is my husband  
22          regarding the issues that have been decided in  
23          fairness.

24                      It is only an issue that has come to  
25          light recently that I'm even here to speak before

1           you, so we don't want to go over the politics of  
2           this Board's decision, but we ask that you decide  
3           for yourself if the impasse vote of two approvals  
4           and two negatives on December 15th would have had a  
5           different ending had this person recused themselves  
6           from voting.

7                         We were granted approval on February  
8           28th, 2006 [sic], over one year ago, from the board  
9           of -- Town Board of Belgium for a five-foot setback  
10          from the north lot line to build our home. This  
11          was a mere five-foot request from the ten-foot  
12          requirement.

13                        I offered publicly to purchase land on  
14          that site from Mr. Opitz, the owner, and had also  
15          offered to step back and allow the lot to be  
16          purchased by him. Both offers were declined. At  
17          any time, any one of the neighbors could have owned  
18          that lot and had it become whatever they wanted it  
19          to be.

20                        On that evening in February at the town  
21          meeting, John Bowers (phonetically), a member of  
22          the Town of Belgium board, who is a prior friend  
23          and neighbor from Silver Beach Road in Belgium  
24          where we used to live, he recused himself from that  
25          vote due to our past friendship. We had not seen

1 John for over five years since we moved out of that  
2 area, and we respect his integrity for doing that.

3 On April of last year, Mr. Castner,  
4 another board member, recused himself from voting  
5 on our project because, as he put it, he had  
6 counseled Mr. Hemans and ourselves regarding the  
7 building of a home on that lot. He was hired by  
8 Mr. Hemans to represent us and to show cause that  
9 there was a legal right to have a building put on  
10 there.

11 Both Mr. Hemans, the former owner, and  
12 ourselves were given positive answers, and case law  
13 was brought up for his reasons. I want to read to  
14 you just a short document that he had e-mailed Mr.  
15 Pfister, Ed Pfister, Land Management; also gave  
16 copies to Mr. Hemans and myself recently.

17 This is addressed to Ed. Mr. Hemans  
18 asked me to advise him and the prospective buyers  
19 on this lot, Tom and Lucy McCue, concerning the  
20 McCues' application for a variance from the 75-foot  
21 stream setback. I recused myself from voting by  
22 the Board of Adjustment. This was dated March 7th,  
23 one year ago today. I would appreciate knowing  
24 your opinion on variance application. I believe  
25 the lot qualifies for a variance, and this is my

1 reason. I alluded to this at our last meeting in  
2 the Ziervogel Supreme Court case. I will not read  
3 those again to you.

4 He goes on to say here is what the Snyder  
5 Court wrote. He read from that and printed that  
6 out, Snyder v. Waukesha County Board. In the  
7 Snyder case, there were special reduced offset  
8 distances for small lots, which is not the same as  
9 the setback averaging in the Ozaukee County.

10 The Hemans' lot is subject to the same  
11 75-foot setback as are all parcels, so the facts  
12 are unique. The general rule favoring a variance  
13 would apply.

14 He goes on to say he plans to be in the  
15 county building on Tuesday and he would like to  
16 stop and talk about this, and in this letter -- I  
17 can pass this around -- he states in here why he  
18 thinks there should have been a variance granted.

19 He did not vote because he recused  
20 himself because he represented us. I also was  
21 under the belief that day he was going to speak for  
22 us, and I have since come to find that he not only  
23 did not speak for us, but he recused himself, which  
24 basically let me be here with you as the Board  
25 members to try to present our case to you, but I

1 have printed information from him right here saying  
2 at that time one year ago today that there should  
3 have been a variance that would have had reference  
4 to our situation.

5 We went forth on the purchase of that lot  
6 with the sole intention of building on it with the  
7 information given to us by Mr. Castner and the DNR,  
8 a dream the former owner had never materialized.  
9 Mr. Hemans bought that property in 1962 and it was  
10 his dream to have his retirement home, which he has  
11 not been able to do.

12 The person that I'm going to mention at  
13 this time -- and again, I don't do this out of any  
14 maliciousness or anything other than there possibly  
15 should have been some issues at hand. That person  
16 we allege to have voted in both meetings without  
17 fair and impartially is Chairperson Bernadyne Pape.

18 I have watched and listened to Ms. Pape  
19 at both meetings. I have been trained to interpret  
20 body language due to the nature of my business to  
21 keep me from harm's way. I have noticed eye  
22 contact and body language from Ms. Pape when  
23 speaking to Mr. Opitz, the neighbor to the north,  
24 who was present at both meetings.

25 Several people noticed the seemingly

1           discomfort level Ms. Pape displayed after I spoke  
2           at the December meeting before you. I was never  
3           able to understand the meeting until I read in the  
4           newspaper article from the Milwaukee Journal, and I  
5           believe it was also in the Ozaukee Press, what that  
6           relationship is.

7                       Ms. Pape and Mr. Opitz have been friends  
8           since the '70s when his mother and she became  
9           longtime friends. With all due respect, I just  
10          want to read two sentences from that article. This  
11          was in reference to Ms. Opitz' obituary that I had  
12          recently -- was unaware of, but had come to my  
13          attention.

14                     In two sentences, Supervisor Bernadyne  
15          Pape said Mrs. Opitz persuaded her to run for the  
16          County Board in 1976, the two having become  
17          acquainted through a woman's group that regularly  
18          wrote legislatures, Pape said. Legislatures being  
19          Mr. Opitz, state representative, whatever other  
20          governmental issues he was involved in. They have  
21          been involved since 1976. I said I didn't know how  
22          to become the supervisor. I didn't know enough,  
23          and Ms. Opitz said that's all right, you know more  
24          than most. We have been friends ever since.

25                     That in itself, two sentences, that

1 basically is showing the friendship, and I did not  
2 mean it out of disrespect to bring up an obituary,  
3 but it really came to light as to what I felt was  
4 what I was basically seeing, was a relationship, a  
5 friendship from 30 years ago, possibly a little  
6 more, and it just started to show me that there's  
7 possibly some issues that need to be brought up  
8 before this Board.

9           How could this vote have been fair and  
10 impartial with this relationship? Political and  
11 ethical principles require that one would recuse  
12 themselves under certain conditions and situations  
13 in order to avoid the appearance of any  
14 impropriety. This is an observation I have  
15 noticed.

16           The people that have spoken on this Board  
17 have referred to the person they are addressing by  
18 their surname, Mr. or Miss, unless they had known  
19 that person, at which time they addressed them by  
20 their first name. When Ms. Pape addressed Mr.  
21 Opitz, she addressed him as Dave or David.

22           The other instances which I noticed but  
23 was not aware of the meaning of them until recently  
24 at the April 5th meeting in 2005, this is the  
25 meeting that I came to you where Mr. Castner

1           recused himself and Mr. Kenealy I believe was  
2           present, and at that time I did not know him or why  
3           he was present.

4                         At the beginning of that meeting, Ms.  
5           Pape asked to have anyone heard, and every meeting  
6           that I have read minutes from -- and there have  
7           been many -- the person bringing about that request  
8           for either variance or permit or after-the-fact  
9           permit was always the person that brought forth  
10          that issue.

11                        On that meeting she looked to David Opitz  
12          and said David, by first name only. Mr. Opitz then  
13          took the lead of that meeting. Contrary to any  
14          minutes I've read, the parties bringing forth that  
15          request would have been myself or my husband or  
16          whoever else was present at the time of that  
17          meeting.

18                        In the minutes of previous meetings I  
19          read, Ms. -- the Board Chairman Pape does not refer  
20          to other people addressing the Board by their first  
21          names unless she knows them. Ms. Pape was the one  
22          to put the motion on the Board to deny request,  
23          leaving Mr. Brunquell with questions.

24                        I have minutes from that meeting and I  
25          have the pages folded if anyone would like to look

1 at this, because I've reviewed this several times.  
2 Mr. Brunnquell stated a question. Ms. Pape passed  
3 him by and took his eye when he began a question  
4 for response as a vote, ignoring his question.  
5 Numerous eye contact with Mr. Opitz was observed,  
6 which did not seem to make sense until recently.

7 This file represents some of the issues  
8 regarding the berm problems that was before the  
9 Board several years back which seemed to be the  
10 issues of the neighbors being upset, and in this  
11 issue and these minutes that I've read and my  
12 husband's read several times, Ms. Stern was either  
13 questioning whether she could or should -- and I  
14 don't know if it's because she was new to the  
15 Board -- whether she could vote on that matter and  
16 Ms. Pape said no, you can't, and it was pretty  
17 blunt; no, she could not vote.

18 Again, I don't know the reason for that.  
19 I'm just telling you the things that I've just  
20 heard. Land Management was quite against all that  
21 issues of that berm and the meeting still went by  
22 and after-the-fact permits were issued.

23 On the December 6th meeting of last year,  
24 Ms. Pape again addressed David Opitz by his first  
25 name, and observing body language, Ms. Pape

1 appeared uneasy about my opening statement, and eye  
2 contact was also noticed.

3 When mention of EMS service sent to the  
4 entry of the home in response to the answer to  
5 Question 3 that Land Management had presented as an  
6 issue we needed to answer, there was no answer,  
7 there was no response from that, and the subject  
8 was read minutes prior to the statement.

9 The issue of how EMS should have access  
10 and how building codes should be done was basically  
11 put back on the burner and minutes of the last --  
12 of the next minutes were read. That vote was a two  
13 to two impasse, and I contend that had Ms. Pape  
14 recused herself, there would have been a different  
15 outcome in that meeting.

16 I want to ask the Board a question here.  
17 I know the full Board's not here, but I want to ask  
18 if they could search their heart and soul and their  
19 minds and ask themselves a question, and I know  
20 there are ethics guides that you all follow such as  
21 governmental ethics. I just want to ask if you  
22 could answer to yourselves what issues would cause  
23 you to recuse yourself.

24 You can compare them to the issues that  
25 I've just brought up or you could ask what

1 situations you feel you would have to recuse  
2 yourself, and just answer that to yourself  
3 honestly.

4 I just would like to ask Ms. Pape if she  
5 has had any prior discussions with Mr. Opitz prior  
6 to these meetings, either in person, by phone, by  
7 mail or e-mail, without the rest of the Board being  
8 present or relating these conversations to them.

9 Tom and I have read volumes of meetings  
10 and recent history of the issue of Country Club  
11 Beach Road where there was an issue of the berm,  
12 the ensuing meetings, how that would resolve brings  
13 up many issues.

14 Mrs. Ruberti hired Mr. Castner in that  
15 case. This Board ignored the review from Land  
16 Management against the fix that Mrs. Ruberti  
17 performed. In the minutes, Mrs. Stern was not  
18 allowed to vote. What rules govern that? And  
19 permits were issued after the fact.

20 We have been threatened with civil  
21 litigation by a neighbor over something that has  
22 not ever materialized. The neighbors appear to  
23 think that their position or title is beyond  
24 reproach as if declaring their pedigree as a means  
25 to an end. What they are or their children do for

1 a living has no bearing or any wrongdoing on our  
2 part.

3 We have done everything according to the  
4 rules and regulations and will continue to do so.  
5 Integrity is not something you have or do not have.  
6 People cannot give it to you. It is what gets you  
7 by when you have difficult decisions to make and it  
8 is not always the easiest decision to make, but you  
9 also know when you've made the right decision.

10 Ms. Pape looked me in the eye and told me  
11 to wait on April, 2005 because the ordinances were  
12 going to change presumably in July of last year.  
13 At that meeting the issue should have been resolved  
14 and voted on, not with possibility of what may  
15 happen in the future, but what the issues are at  
16 the time of the request.

17 It is borderline malicious to put that  
18 project on hold due to what may happen. It is now  
19 over a year ago since the Town of Belgium granted  
20 this variance. I have a schedule that I received  
21 from Land Management regarding the issues that the  
22 zoning would go away where we wouldn't need to be  
23 before you as the Board, and obviously the agenda  
24 changes. There's nothing set in concrete. We  
25 understand and respect that.

1                   Now even though it hasn't been voted on  
2                   to my knowledge, they're saying that possibly in  
3                   the fall of this year that they're going to amend  
4                   the maps to incorporate these changes which would  
5                   allow us to build without that five-foot variance.

6                   I contend that I have heard -- and I  
7                   don't know it to be true -- that if these maps come  
8                   out in the fall, that would be when this Board  
9                   would resolve the issues of the five-foot setback  
10                  to us, and I contend that the fall of this year is  
11                  quite a distance from the future from what we are  
12                  sitting here today.

13                  I'm not here out of any disrespect again.  
14                  I'm only here to ask this Board to possibly have  
15                  something in their code of ethics that would tell  
16                  them in black and white, not in a matter of gray,  
17                  whether or not they should have recused themselves,  
18                  and the other side of that coin would be to say  
19                  that someone being on a board such as this should  
20                  have the integrity and the ethical knowledge to say  
21                  that I can still hear the issue and I can still  
22                  vote on it fairly, but I contend that with the way  
23                  politics in our government is today and all the  
24                  issues of allegations of ethical and misconduct, I  
25                  contend that it is only fair to not have people

1 believe there's some impropriety, and I ask you  
2 again that however you would like to put this on  
3 the board or never put it on the board or tell me a  
4 day, I ask you to at least search yourselves and  
5 ask that this doesn't happen to someone in the  
6 future, because that last vote we had in December  
7 would have ended differently with the impasse of  
8 two for and two against.

9 MRS. PAPE: I'm going to answer your  
10 question, whether I ever had any contact outside of  
11 the Board of Adjustment meetings with Mr. Opitz.

12 Yes, I am acquainted with him for a long  
13 time. Whether we ever had conversation about this  
14 case, and the answer is no.

15 MRS. McCUE: Okay.

16 MRS. PAPE: Never. First of all, I don't  
17 even use a computer so I didn't do any e-mails.

18 MRS. McCUE: Thank you.

19 MRS. PAPE: And knowing people, like I  
20 knew Mr. Warren Bloch today, and that can't be  
21 avoided. You live in this area, you're going to  
22 know people, including Mr. Opitz and his family,  
23 and Ella, his father, and I had no conversation  
24 with him about the case -- none -- except what he  
25 presented here, so I'm answering your question

1           there.

2                       Outside of that, how can I avoid not  
3           recusing myself?   Dennis?

4                       MR. KENEALY:   I don't know your question,  
5           specific question, Bernie.  I'm saying I've spoken  
6           to Mrs. McCue several times.  I believe I just  
7           informed her of the process for excusing people  
8           from the votes and the conflict.

9                       First of all, I think mainly what you --  
10          all you can really do today is hear her out.

11                      MRS. PAPE:   Pardon me?

12                      MR. KENEALY:   All you can do today is  
13          hear her out.  The process, if you believe that you  
14          have been wrongly voted on by a conflict of  
15          interest, is to appeal that decision through the  
16          courts.  That's the only process.  That's it.

17                      You bring up identifiable -- not  
18          speculation -- identifiable biases and conflicts of  
19          interest.  You appeal to the court saying that  
20          members should not have voted because of that  
21          conflict.  Mrs. McCue said she did not wish to  
22          proceed that route, so that issue is not there.

23                      Then you go the next level of okay, so  
24          you cannot identify a particular conflict or bias  
25          to overturn the decision or make it appealable,

1 just as a general ethics and a board meeting  
2 voting, was there enough potential conflict or bias  
3 that the person should have maybe excused  
4 themselves personally, which is I think what you're  
5 asking, and again, that is laid out in the general  
6 ethics and that's an individual choice.

7           You don't excuse yourself just because  
8 you know a person. You don't have to. A financial  
9 interest -- I think Mr. Castner has in most of  
10 these situations -- is not a bias but a conflict  
11 that he would excuse himself.

12           If you don't have a financial interest  
13 and a particularly personal interest that would  
14 bias you, you're not required to excuse yourself.  
15 There's no identifiable level where that comes in.  
16 That's pretty much a personal decision or  
17 discussion among the board as to how much your  
18 relationship with the person who's before you would  
19 bias your decision other than financial  
20 considerations because of your personal  
21 relationship, your maybe family knowledge of them  
22 or something like that.

23           All I can rely on is that from what  
24 you've said here. Apparently from what you did  
25 there, you felt you could be fair and impartial

1 even though you knew the person. That's an  
2 individual member's decision.

3 Mrs. McCue, in order to overcome that,  
4 would have to show some particular occasions of  
5 bias.

6 Again, I wasn't at the meeting, but I  
7 assume that the record would indicate you had  
8 reasons for your vote other than that you just knew  
9 the person. But I don't know. I wasn't here, but  
10 the ethics is not a bright line. It's a floating  
11 thing and you can only put that out as to your  
12 knowledge as to if you want to excuse yourself  
13 because you feel you could not be fair.

14 Maybe retaliation maybe because you like  
15 the person or don't like the person, but you'd have  
16 to identify some specific reasons ethically to  
17 excuse yourself from voting.

18 MRS. PAPE: Wouldn't you have to have an  
19 advantage or disadvantage by staying in the vote?

20 MR. KENEALY: That gets into more the  
21 conflict rather than just the ethics of it. Ethics  
22 are more of a bias. Would your relationship create  
23 a bias. The advantage or disadvantages come in  
24 more in the second area of whether you would  
25 actually have a conflict of interest in voting

1           because of an advantage or disadvantage financially  
2           or socially or something.

3                         That's a conflict. That's almost an  
4           absolute reason for you not to vote. The ethics is  
5           a floating thing on that. Should you vote because  
6           you would be biased one way or the other by reasons  
7           other than the facts before you because of your  
8           relationship. How far do you go on that scale?  
9           That's really hard to determine.

10                        MRS. PAPE: So--

11                        MR. KENEALY: But people can bring this  
12           up in the same way and they can appeal it in the  
13           same way as a conflict as actual--

14                        MRS. PAPE: So I come to the Board of  
15           Adjustment meeting and I know the case presented, I  
16           have no idea who's going to be here in the  
17           audience. Is that when I recuse myself, is when I  
18           see somebody there that I know?

19                        MR. KENEALY: No.

20                        MRS. PAPE: No. Because there's no  
21           advantage or disadvantage.

22                        MR. KENEALY: You would recuse yourself  
23           if during the course of the presentation or  
24           something there or the applicant or information  
25           you're getting, you go okay, now I recognize that

1 person, we had a -- for instance, we had a bad land  
2 dealing with his sister three years ago. I don't  
3 like her. I don't like him. I really feel I can't  
4 be too fair to this person.

5 It's hard to identify. That's where it  
6 comes in. Well, I had a bad land dealing with the  
7 sister. I don't even know this person. Sister's  
8 not here. I know the relationship. I can still  
9 function independently. You can't--

10 MRS. PAPE: But that's a person's  
11 thinking. Nobody knows that, so how can another  
12 person accuse me of not recusing myself when they  
13 don't know why I stayed in?

14 MR. KENEALY: Mrs. McCue is saying that  
15 upon -- You can't, and that comes up later on and  
16 it's not appealed so the process hasn't been  
17 appealed so that's not what's before you.

18 You can't on a thing like that because it  
19 is so nebulous, but I think what Mrs. McCue is  
20 saying, that if a person feels there was a bias  
21 that they found during the meeting, they have gone  
22 back, check the record, check what the  
23 relationships may have been, and appeal it saying  
24 that person had a bias even though not expressed at  
25 the meeting because I found this, this, this and

1 outside communications, etc., etc., that builds my  
2 case that that person did not recuse themselves and  
3 they should have and I can identify these reasons.

4 Then you appeal that and let the court  
5 decide whether the person should have recused  
6 themselves and the vote not standing. It's a  
7 matter of gathering -- Sometimes you may have the  
8 information beforehand, but it's a gathering of  
9 information afterwards stating that I feel it was  
10 unfair because of these biases I have since found  
11 out.

12 The only one who may know it at the time  
13 is yourself or any other member, and that is where  
14 it's -- comes in the hard-to-define ethics thing of  
15 you being appointed through the administrator,  
16 through the Board as a certain amount -- there's a  
17 certain amount of faith and trust in your fair  
18 judgment that you will act according to best  
19 interests of the public and the government and know  
20 that even if the people don't know all the facts  
21 behind that personal relationship.

22 There's no cut-off point. You have to  
23 decide that. It's either clear there's a  
24 conflict -- Mr. Castner can say I dealt with this  
25 person. You may have a financial advantage or

1           disadvantage.  It's a conflict.  That's much easier  
2           to get out.

3                       MRS. PAPE:  It is.

4                       MR. KENEALY:  Secondly, Mrs. McCue  
5           mentioned, too -- I can't remember if you  
6           recommend -- the County Board appoints in order to  
7           -- Tom cannot remove a member offhand unless  
8           there's some criminal or other violation and make a  
9           recommendation.

10                      This isn't the process.  It's meant for  
11           that you're an independent statutory board, not  
12           meant to be overseen by the County Board or the  
13           administrator in your actions, and removal for  
14           actions would bias that.  That's why it's an  
15           independent board, so I know administrator and the  
16           board not necessarily have authority to make a  
17           removal unless you're involved in some criminal or  
18           other various activity.  Then they may ask for your  
19           resignation, but I think Mrs. McCue is more  
20           interested -- at least interested in bringing this  
21           to the attention -- her perceptions to the  
22           administration, to proper people.

23                      If nothing else, I think she spoke well  
24           for herself to emphasize that the ethics and bias  
25           can be evident, and she wanted to bring that to

1 your attention to be aware of that.

2 I don't know anything in this situation  
3 that would have required you to recuse yourself,  
4 particularly since you said you did not have any  
5 prior contact. That's almost an automatic recusal  
6 if you had some contact before the person gets  
7 here, that you may have had a discussion -- I'm not  
8 speaking of you, I'm speaking of anybody -- a  
9 discussion or some pre -- That was the Mequon case  
10 several years ago. They went to the Court of  
11 Appeals and I think the Supreme Court. I think  
12 there's a chairman actually. They said he had  
13 pre-judged the case, and I think that's kind of  
14 what you're looking at, was it pre-judged because  
15 of the personal bias.

16 That court sent back there had been prior  
17 contact and there was a lot of information that  
18 they may have had in the relationship that  
19 influenced the judgment, but that's about the most  
20 serious situation.

21 In general, you're going to know people.  
22 You have to kind of put it how far out do I feel  
23 that my knowledge and contact with that person  
24 makes me too biased or already judgmental to sit  
25 in.

1           You didn't also feel -- at that time Mrs.  
2 McCue felt there may have been some of it, but she  
3 would have had -- if there was a formal process to  
4 follow, there was.

5           She indicated she preferred not to follow  
6 that process, but I wanted to bring this up to your  
7 attention for your information and through the  
8 entire county.

9           It's not unusual we have at the County  
10 Board at times where people will bring that up. If  
11 not, they want to re-emphasize that there are these  
12 standards there and be aware of them and consider  
13 them.

14           MRS. McCUE: May I speak?

15           MRS. PAPE: Yes.

16           MRS. McCUE: Again, I think Mr. Kenealy  
17 pretty well summed up my feelings, my husband's  
18 feelings. I respect that you have over 30 years in  
19 government and I have not even 20 in my profession,  
20 and integrity is something that I know you hold  
21 dear to you, and at this point my mind says that I  
22 do want to go further.

23           Mr. Kenealy referred to certiorari, which  
24 basically I believe is higher courts and such. My  
25 brain says that there could be proof on this and my

1 heart says that I'm not here to do that.

2 Coming here today I may have said that a  
3 different way, but that's the way I feel right now  
4 before this Board, and I guess Mr. Kenealy kind of  
5 summed up my feelings, is that even if there's no  
6 change in decision on our project, I'm asking you  
7 to all search your own feelings so that when this  
8 does come up again that you may say to yourself,  
9 I've known this person for 30 years, I've done  
10 business with him, I've written to him as a  
11 representative in the government, that is certainly  
12 a very close relationship.

13 The neighbor that recused himself in  
14 Belgium, we had only known him as a neighbor down  
15 the road for five years and he still made that  
16 determination, that he felt the knowledge wasn't  
17 that he couldn't vote fairly, but this would have  
18 been considered improper had those issues ever come  
19 up in the future, and all I'm asking this Board to  
20 do is again, if you need to do that in your own  
21 meetings to decide, ethics is very -- there is no  
22 set -- other than if it's something criminally.  
23 That's certainly not where I'm going with this.

24 What I'm saying, that as a Board that it  
25 may be to your best interest if someone such as I

1 were to want to take this further and cause issues  
2 within the Board, to have this meeting re-held, and  
3 I'm looking at this State of Wisconsin Standard of  
4 Conduct, use the public position to obtain unlawful  
5 benefits, use or attempt to use his or her public  
6 position to influence or gain for anyone.

7 Doesn't refer to family, doesn't refer to  
8 personal relationships. It says for anyone;  
9 benefits, advantages or privileges, under Section  
10 19.45(5), and again, it's not black and white.  
11 It's just had I known this information on that  
12 first meeting, I would have asked if you wouldn't  
13 consider recusing yourself.

14 Mr. Castner did, Mr. Bowers did, and it  
15 basically, with the relationship you had with Mr.  
16 Opitz in the past, I certainly think it would have  
17 been something for this Board to consider, and with  
18 all due respect, I'm done with this issue. I  
19 really am. It's put to rest right here, and if  
20 it's okay, I would like to sit in to find out if  
21 there is some other proposals for land management  
22 on these zoning issues.

23 I would like to just continue to be  
24 present. Our home will be built. We're getting  
25 notes from the bank of increased costs for

1 extending the loan which is quite extensive at this  
2 point for all the work done so far, so I'm not  
3 going to make it sound like I'm happy walking out  
4 the door.

5 It not only causes emotional things in  
6 people's lives when your decisions are based on  
7 things, but financial issues come into play. Where  
8 I work, I'm required to live in the county that I  
9 work in. I don't live in the county where I work  
10 in right now. That's the purpose for us building  
11 here.

12 I love my occupation. I continue to want  
13 to be involved in that, and that's why I'm going to  
14 be building and living in Ozaukee County, but I  
15 just want you to understand the immense things that  
16 go into decisions that you as a board member either  
17 can or cannot cause, and I'm not asking for mercy.  
18 I'm not asking for anything other than to consider  
19 a policy among yourself where, if you have known  
20 someone 30 years and have done business with them,  
21 that that might not be the case you want to hear;  
22 not for any wrongdoing, but only for any improper  
23 thoughts that could come up in the past.

24 I thank you all for being here and I do  
25 appreciate Mr. Kenealy's comments, and I knew you'd

1 be here, and again, I'm not here to hurt this  
2 Board. I basically have respect for all of you,  
3 and with that, I just want to sit in on the rest of  
4 the meeting if I could.

5 MRS. PAPE: Sure.

6 MR. KENEALY: You certainly could, and  
7 there's nothing more that you need address, but I  
8 think to assure here, too, that the County Board,  
9 whenever there's new members, we do get an ethics  
10 booklet, and I don't know if this Board has had  
11 that, but I certainly think at a minimum they could  
12 maybe share that. It gives a little guideline.

13 MRS. PAPE: Do you want to--

14 MR. KENEALY: And I'm going to exit, so  
15 Mrs. McCue, it's a public meeting. You can stay.  
16 It's up to the chairman, of course, but -- it's up  
17 to the chairman. I'm not the chairman.

18 MRS. PAPE: Okay. Where do we go from  
19 here?

20 MR. HOLSCHBACH: Now we're up to Item E,  
21 approval of the previous meeting minutes.

22 MRS. PAPE: I have a few. This is on the  
23 December 6th meeting minutes, and anybody else have  
24 corrections? Okay.

25 I only have Page 30, Line 23. Okay.

1 "He's giving his opinion that he sees no reason for  
2 a variance."

3 Is that worded right? "He's giving his  
4 opinion that he sees no reason for a variance", and  
5 I don't think that's what you said.

6 This is you, your witness, and it says  
7 here "I've read too much of that to want to even  
8 rehash this at this meeting." See, that's you.  
9 Right? You remember this?

10 MRS. McCUE: Yes.

11 MRS. PAPE: It goes on, Line 23, "He's  
12 giving his opinion...", meaning Mr. Castner,  
13 evidently.

14 MRS. McCUE: Mr. Castner wasn't here.

15 MRS. PAPE: I know that, but you're being  
16 the witness here, "...that he sees no reason for a  
17 variance."

18 MRS. McCUE: I'm sorry if that was--

19 MRS. PAPE: That is just the opposite.

20 MRS. McCUE: Ma'am, I don't believe I did  
21 say that, but if that's what you're reading in the  
22 minutes, then--

23 MRS. PAPE: That's what I'm reading.

24 MR. HOLSCHBACH: No, I understand.

25 MRS. PAPE: I want that corrected to be

1           what your witness actually -- what you actually  
2           said.

3                   MRS. McCUE:   Okay.  If that's what you're  
4           reading, I'm not going to dispute that.  Why are we  
5           discussing this?  I thought this issue was now  
6           closed.

7                   MRS. PAPE:   No, no.  This is correcting  
8           the previous minutes of the previous meeting, and  
9           I'm wondering if I'm right or if I'm wrong in  
10          reading this.

11                   Do you want to read that, Cathy?  I don't  
12          want you to be misquoted there.  That's all I'm  
13          saying.

14                   MRS. McCUE:   And I'm misquoted because I  
15          have that presentation in front of me.

16                   MR. HOLSCHBACH:  That would be the  
17          opposite, but I know--

18                   MRS. McCUE:   I also tried to speak loud  
19          because I understand -- What I'm looking at right  
20          here is -- There was another typo in these minutes,  
21          the word "g-u-t" reference, when my word was  
22          "guide".  Do I make an issue of that?  Absolutely  
23          not.  I understand that.

24                   MRS. PAPE:   What line and what page?

25                   MRS. STERN:   I wonder, were you referring

1 to the e-mail, that copy of the e-mail that you  
2 read to us but that was not public record?

3 MRS. McCUE: Yes, and I have that here if  
4 you needed to see that, and there was also another  
5 typo. I'm not concerned about it, but since this  
6 Board is -- The statement I read to you was from  
7 this letter, and it says that -- Again, this is in  
8 the Snyder case, reviewing the setbacks.

9 It says the general rule favoring a  
10 variance would apply. I'm not sure if that's the  
11 exact wording you're referring to, but my words  
12 should have been and are that he's saying that a  
13 variance would apply in this case, and this is from  
14 Mr. Castner. I will certainly pass this down.

15 MRS. PAPE: You can sit down here, too,  
16 if you want.

17 MR. RIORDAN: The letter we're talking  
18 about is from Steve Castner, but the reference is  
19 to the -- someone else, the Snyder case.

20 MRS. PAPE: He used the Snyder case, the  
21 previous jury trial.

22 MRS. McCUE: Showing why there should be  
23 a variance.

24 MRS. PAPE: To prove his argument. In  
25 the Snyder case there were special reduced offset

1 distances. See, he's using the Snyder case as an  
2 argument. We didn't have the Snyder case.

3 Now the general rule favoring a variance  
4 would apply, so that's her intent in that  
5 statement, and not that it's not, okay? So we'll  
6 correct that. Agreed?

7 MRS. STERN: That a variance is required.

8 MRS. PAPE: Would apply, yeah, and that's  
9 my correction.

10 Did you get that corrected, the wording  
11 that you wanted for horse-related activities? Was  
12 that corrected?

13 MRS. McCUE: There's also an error on  
14 Page 10 of your minutes, if you want to put those  
15 down as a typo. Could the Board take a look at  
16 Page 10? It's Paragraph 3, Line 2. It's the third  
17 paragraph starting in Line 2, starting the  
18 sentence--

19 MRS. PAPE: Don't you have lines on  
20 your--

21 MRS. McCUE: Line 16, "guts". I mean I  
22 certainly don't think I used the word "guts". The  
23 word should have been "guides". It's not  
24 important, but since you're bringing it up--

25 MRS. PAPE: All right. Thank you. And

1 now move to approve or--

2 MR. RIORDAN: Motion to approve.

3 (Vote taken - Unanimous.)

4 MRS. PAPE: Now do we do something about  
5 her request?

6 MR. HOLSCHBACH: No, that's taken care  
7 of. Item G? That's done.

8 MRS. PAPE: I know Mrs. McCue wanted us  
9 to make a decision about my situation here.

10 MR. HOLSCHBACH: No. It's actually, you  
11 know, with Dennis' interpretation, and so Mrs.  
12 McCue, the issue is resolved.

13 MRS. McCUE: I am not going forth with  
14 any legal -- any legal aspects at this point. I  
15 just basically want this information within the  
16 Board. That's all.

17 MRS. PAPE: Okay. Thank you.

18 MR. HOLSCHBACH: Really the next item is  
19 the proposed revisions to the county shoreland  
20 zoning ordinance.

21 MRS. PAPE: What do you mean?

22 MR. HOLSCHBACH: I will just give you a  
23 real brief update. The ordinance again was  
24 reviewed at the February Environment & Land Use  
25 Committee. There were some concerns within the

1 ordinance, mainly the vegetation management plan,  
2 the soil boring requirement -- We had a requirement  
3 that soil borings may be needed at some point in  
4 time. The board felt that was not necessary to  
5 include language regarding that.

6 Land divisions -- Right now in the  
7 present ordinance, land divisions are whenever  
8 there's three parcels in the shoreland area that  
9 are being divided, it needs to go before the  
10 committee.

11 The board felt that that's an exceedance  
12 of the state code, which it is, so the direction  
13 that they gave us as staff was to re-write the  
14 ordinance specifically for land divisions so that  
15 it does not exceed state code.

16 MRS. PAPE: What would you suppose would  
17 pertain to our committee here that would be most  
18 important such as wetlands and floodplains?

19 MR. RIORDAN: Borings?

20 MR. HOLSCHBACH: Soil borings. It's  
21 really interesting. First of all, COMM 83 was  
22 recently changed -- not recently, a couple years  
23 ago.

24 When COMM 83 was changed, it went from  
25 holding tanks are a system of last resort to now

1 holding tanks are a system of choice. If you  
2 wanted to put a holding tank in, John, you don't  
3 even need a soil test.

4 MR. RIORDAN: They're a system of choice,  
5 more preference than a mound system? Is that what  
6 you're saying?

7 MR. HOLSCHBACH: What I'm saying is if  
8 you as a homeowner had a site where you could put a  
9 conventional system in but you, for whatever  
10 reason, did not want to put a conventional system  
11 in--

12 MR. RIORDAN: Meaning mound?

13 MR. HOLSCHBACH: No. Conventional is an  
14 inground system, the cheapest system virtually to  
15 put in. If you did not want to put a conventional  
16 system in, but rather you wanted to put a holding  
17 tank in, you could go ahead and put a holding tank  
18 in, whereas before, under the old rules, you'd have  
19 to put a conventional system in because that was  
20 the best system for that site. Holding tanks now  
21 are a system of choice, whereas before they were a  
22 system of last resort.

23 MR. RIORDAN: I still don't understand  
24 that, Andy. Choice, meaning the first choice?

25 MR. HOLSCHBACH: Landowner's choice.

1 Pick whatever recipe you want for your system,  
2 basically.

3 MR. RIORDAN: You have three choices,  
4 right? Septic, mound and holding tank. Are there  
5 any others?

6 MR. HOLSCHBACH: Oh, sure. Inground  
7 pressure, there's at-grade, there's system in fill.  
8 There's a lot of different systems.

9 MRS. PAPE: Isn't it Saukville that  
10 doesn't allow any holding tanks?

11 MR. HOLSCHBACH: There are certain -- At  
12 the local level there's certain towns that do not  
13 require the use of--

14 MRS. PAPE: Allow them, you mean.

15 MR. HOLSCHBACH: Allow. What did I say?

16 MRS. PAPE: Require.

17 MR. HOLSCHBACH: Oh, gosh. That would  
18 have been another one. Some towns limit holding  
19 tanks, the use of holding tanks.

20 MR. RIORDAN: Does that override the  
21 county rule?

22 MR. HOLSCHBACH: Yes, so the rationale  
23 was, why should we at the county level require  
24 people to have soil borings?

25 MRS. PAPE: Now wait a minute. We don't

1 have jurisdiction over Saukville so they can  
2 still--

3 MR. HOLSCHBACH: Right, but in our county  
4 ordinance, in our sanitation ordinance, we  
5 specifically say that holding tanks are a system of  
6 choice. We're following the state minimum  
7 guidelines, so that language was taken out of the  
8 ordinance.

9 MR. RIORDAN: That the only reason for  
10 requesting borings? The department may request  
11 borings, but the language was that you started with  
12 and they said no, we don't want that in there,  
13 right?

14 MR. HOLSCHBACH: They felt it was not  
15 necessary.

16 MR. RIORDAN: Is it just pertaining to  
17 sewage systems?

18 MR. HOLSCHBACH: This is all just for  
19 septic systems, right. It's not to say when  
20 somebody comes in our office I wouldn't sit down  
21 with them, say looking at the soil map this is wet;  
22 before you purchase it it may be a good idea to  
23 have a soil test done, and most people will do  
24 that.

25 I guess the feeling was do we have to be

1 Big Brother to every person. The committee felt  
2 no, we do not have to make that required per se.

3 MR. RIORDAN: I can see not making it a  
4 requirement, but I certainly think a lot of people  
5 need a little hand-holding.

6 MR. HOLSCHBACH: We help them. There's a  
7 lot of things we do that are not in the ordinance  
8 as advisory-type things to help people. That's  
9 what we're all about, is trying to help people.

10 We have a lot of resources and we want to  
11 make those resources available and known to help  
12 people make choices.

13 MR. RIORDAN: Okay.

14 MR. HOLSCHBACH: To go back to your  
15 question, floodplains is an issue, and the  
16 committee agreed to keep the language in the  
17 ordinance that does exceed state code. That says  
18 for land divisions after the effective date of the  
19 approval of the ordinance for any new land  
20 divisions they should all be designed in such a way  
21 that no fill has to be placed in a floodplain.

22 MR. RIORDAN: And no building in a  
23 floodplain? Do they agree with that, or does it go  
24 that far?

25 MR. HOLSCHBACH: Well, in most cases if

1           you're going to build in a floodplain you have to  
2           meet the floodplain development standards which do  
3           require fill.

4                     MR. RIORDAN:   Okay.

5                     MR. HOLSCHBACH:  But, however, if there's  
6           a situation for whatever reason that the people  
7           want to contest it, say there is a land division  
8           that's been approved, there may be a small little  
9           lot that was approved and there's a floodplain  
10          nearby, those folks could contest it by coming to  
11          you as the Board of Adjustment asking for a permit  
12          for that.

13                    Now I'm not going to give any more  
14          forecasting for when is the board actually going to  
15          approve the plans.  The board will, at the March  
16          meeting, again look at the ordinance with those  
17          recommended changes that they made, but I'm not  
18          sure what their next step is going to be.

19                    I was hopeful it would have been taken  
20          care of this spring, and it may, but I don't know.

21                    MR. RIORDAN:  When you say board, you  
22          mean the full County Board.

23                    MR. HOLSCHBACH:  Yes.

24                    MR. RIORDAN:  Okay, but has everything  
25          passed through the Zoning and the Environmental

1 Committee?

2 MR. HOLSCHBACH: They made a motion at  
3 the last meeting to accept the deletion of the  
4 items I just spoke of, and I was instructed to  
5 bring back the ordinance at the meeting in March, a  
6 clean ordinance showing all of the changes, which  
7 doesn't mean that there may be another change or  
8 two that the board may want that I'm unaware of.

9 MR. RIORDAN: The committee or the board?

10 MRS. PAPE: We're talking committee here.

11 MR. HOLSCHBACH: Committee.

12 MR. RIORDAN: Zoning and Environmental  
13 Committee, correct?

14 MR. HOLSCHBACH: Yeah.

15 MR. RIORDAN: Rose Hass Leider.

16 MR. HOLSCHBACH: The Environment & Land  
17 Use Committee. I have to make sure I don't mix the  
18 boards and committees.

19 MR. RIORDAN: So if it passes, then it  
20 would go to the full County Board for up or down  
21 vote, as they say.

22 MR. HOLSCHBACH: Right. That's all I  
23 really have.

24 MRS. PAPE: Okay. We'll go on to H, any  
25 other matter allowed by law.

1 MRS. STERN: Chairman Pape? I would just  
2 like to mention that John and I and Andy did attend  
3 Zoning Board of Adjustment workshop. It was geared  
4 to intermediate and advanced procedures. We spent  
5 a great deal of time talking about conflict of  
6 interest and recusal and, you know, all of that  
7 which we covered today.

8 It was an excellent, excellent workshop.  
9 It was a whole day. I'm glad we spent that whole  
10 day. I just wanted to let you know that we did  
11 attend that.

12 MR. HOLSCHBACH: I'd like to also mention  
13 that I thought it was an excellent workshop.

14 MR. RIORDAN: I'll chime in I felt the  
15 same way.

16 MR. HOLSCHBACH: And I did -- for all the  
17 Board members, I did bring back the Zoning Board  
18 Handbook, which there's a copy. John has a copy.

19 MR. RIORDAN: I don't think I got a copy.  
20 Thank you.

21 MR. HOLSCHBACH: I'll make sure that all  
22 the other Board members do get the most recent  
23 copy.

24 MRS. PAPE: So you all got Representative  
25 Mark Gottlieb's letter, a copy of the letter?

1 MR. RIORDAN: Yes.

2 MRS. PAPE: And that's where that's at as  
3 far as any work on the historical structures  
4 salvation, and I don't know, it doesn't sound like  
5 they're very busy with that, does it? And I can  
6 see where Fredonia doesn't want to get into it  
7 because of all the demands.

8 I know when my son Jim did Cedarburg --  
9 I mean he was instrumental. He didn't do it  
10 himself.

11 MRS. STERN: He and Mr. Levy, correct?

12 MRS. PAPE: Right, and there was a lot of  
13 opposition because of all the restrictions; you  
14 can't do this, you can't do that, you can't fix  
15 this, you can't paint it that color, although the  
16 Legacy's place painted theirs purple anyway.

17 MRS. STERN: And it's still purple.

18 MRS. PAPE: But anyway, that's not going  
19 to be the answer, you know, for us.

20 MRS. STERN: It's not.

21 MRS. PAPE: You got to get rid of that 12  
22 months vacancy thing or another way of having the  
23 list being bona fide and accepted, so I don't know  
24 where we're going to go from here, unless you have  
25 some ideas.

1                   MRS. STERN: The Button Factory has a big  
2 sign on it for sale to be torn down.

3                   MRS. PAPE: For sale to be torn down?

4                   MRS. STERN: Removed.

5                   MR. HOLSCHBACH: The sign states that?

6                   MRS. STERN: I believe so. Somebody  
7 called me on it. I was going to drive by this  
8 morning. It was too foggy. I was concentrating on  
9 getting here.

10                  MR. RIORDAN: The property is for sale?

11                  MRS. PAPE: Well, the property goes into  
12 the river.

13                  MRS. STERN: Yes, it does.

14                  MRS. PAPE: I don't know who would buy  
15 that except the man from Chicago. He wanted to  
16 restore it and then make like a shop or something  
17 out of that, I'm supposing, so--

18                  MRS. STERN: Actually I think he was just  
19 looking to restore it as a building as a historical  
20 site. I don't believe he was planning on making  
21 anything internal; no coffee shop, just it would be  
22 restored. Visual.

23                  MRS. PAPE: Yeah, right. Well, that was  
24 nice.

25                  MR. HOLSCHBACH: That goes back several

1 years.

2 MRS. STERN: It goes back a long time.

3 MR. HOLSCHBACH: Nine or ten.

4 MR. RIORDAN: Since that man came along?

5 MR. HOLSCHBACH: Yeah, because I remember  
6 meeting with him many years ago, and I'm thinking  
7 it's probably ten years ago.

8 MRS. PAPE: We allowed him to put a roof  
9 on to save the building.

10 MR. HOLSCHBACH: Oh, he did. Okay. I  
11 did find a clamshell with a hole in it.

12 MRS. STERN: Where the buttons were  
13 drilled out before they took the dam out, I went  
14 down there and collected a bunch of those.

15 MRS. PAPE: So, anything else?

16 MR. HOLSCHBACH: No.

17 MRS. PAPE: Anybody have anything?

18 MR. RIORDAN: No.

19 MRS. PAPE: Move to adjourn?

20 MRS. STERN: I would so move that we  
21 adjourn.

22 MR. RIORDAN: Second.

23 MRS. PAPE: All in favor say aye.

24 (Vote taken - Unanimous.)

25 (Proceedings concluded at 11:00 a.m.)

1 STATE OF WISCONSIN)  
 ) ss.  
2 OZAUKEE COUNTY )

3 I, LIANE M. BARANEK, Notary Public in and  
4 for the State of Wisconsin, do hereby certify that the  
5 foregoing proceedings were taken before me at the time  
6 and place set forth in the caption thereof; that the  
7 foregoing proceedings were reported by me  
8 stenographically in shorthand; and that the foregoing  
9 proceedings constitute a true and accurate transcription  
10 of my original machine shorthand notes taken upon the  
11 hearing to the best of my ability.

12 I FURTHER CERTIFY that I am not a relative  
13 or employee or counsel to any of the parties hereto, nor  
14 a relative or employee of their counsel, and have no  
15 interest in the outcome or events of said action.

16 IN WITNESS WHEREOF, I have hereunto  
17 affixed my official signature and seal of office, this  
18 17th day of March, 2006 at Port Washington, Wisconsin.

19

20

21

\_\_\_\_\_  
LIANE M. BARANEK  
Notary Public  
State of Wisconsin

22

23

24

25

My Commission Expires:  
December 27, 2009.