

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

November 6, 2007 - 10:00 a.m.
Ozaukee County Administration Center
Port Washington, Wisconsin
Reported by: Liane M. Baranek, RMR

Board Members Present:

Bernadyne Pape, Chairman
Stephen L. Castner
Barbara J. Jobs
John P. Riordan
Catherine Stern

Also Present:

Andy Holschbach, Department of Planning, Resources
& Land Management

Agenda:

John and Ruth Schinner/Scott Thiel Builders -
Conditional Use Permit (Page 2).
Present: Scott Thiel, Jennifer Lund, Mary Dries,
Cindy Schaffner.

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 call the Board of
3 Adjustment meeting together, and we were here at
4 8:50 to -- 8:45 actually to gather and register for
5 the meeting, and left for inspections at 8:50 or
6 thereabouts to inspect the case site, and we're
7 here now to commence the deliberation, and do you
8 want to read the request?

9 MR. HOLSCHBACH: Okay. The request is --
10 it's a request for a conditional use permit by
11 owner Ruth D. Schinner and Scott Thiel of Scott
12 Thiel Builders as agent to allow for filling,
13 grading and excavating within the Lake Michigan
14 floodplain to create a building pad area for the
15 construction of a new residential house and
16 driveway in accord with Section 7.0709 of the
17 county shoreland and floodplain zoning ordinance.

18 The project will involve razing an
19 existing house and buildings and placing
20 approximately 4,500 cubic yards of fill in the Lake
21 Michigan floodplain to meet floodplain development
22 standards for the construction of a new house and
23 driveway, and the total disturbed area for this
24 site is about .6 acres, and the project is located
25 at 120 Hidden Bluff Road in the Town of Belgium.

1 MRS. PAPE: Thank you. And do we have
2 anybody here that would like to be heard concerning
3 this project? State your name for the reporter and
4 whatever you'd like to say.

5 MR. HOLSCHBACH: I also would like to
6 mention that we do have Scott Thiel Builders here
7 who is the, I guess you could say, the agent for
8 the project. You're going to be the builder if
9 this all would get approved.

10 MRS. PAPE: Scott, would you like to
11 present what you have?

12 MR. THIEL: Yes. Andy, do you have the
13 big plan?

14 MR. HOLSCHBACH: I do.

15 MR. THIEL: Good. That will help
16 everybody see what we're doing versus that little--

17 MR. HOLSCHBACH: This.

18 MR. THIEL: I'm Scott Thiel from Scott
19 Thiel Builders. I'm the acting agent and the
20 builder of this residence if this does get
21 approved, but basically what we're proposing to do
22 is take down the existing house that's on the
23 property, and there's a guest house or another
24 outbuilding and a little well shed and things.

25 We want to take that down, rezone this

1 property out of the floodplain, and in order to do
2 that we have to haul in fill into the lot, go 15
3 feet around the perimeter of the proposed new
4 house, and off that 15 feet, a 3 to 1 slope to get
5 proper drainage.

6 The way we've laid this out with the
7 house, we're meeting the side setback marks of 30
8 feet. The water would drain off the property on
9 the north and south side of the house and drain to
10 the east so we aren't creating any water problems
11 for the neighborhood or anything like that, so is
12 there any questions?

13 MS. LUND: I'm Jennifer Lund. I am --
14 Schinners' and then Willets' to the south and then
15 us, so we're -- there's one in between us and
16 Schinners in the south.

17 That was just one of our biggest concerns
18 was how this was going to change the water flow and
19 would it create flooding on Willets' property and
20 our property as a result of this.

21 MR. THIEL: I actually believe -- and we
22 looked at this this morning -- it's going to help
23 the drainage down there.

24 The neighbor to the north, right now the
25 way his house is is zoned out of the floodplain,

1 but he's got like a swale in his back lot on the
2 east side of his house and there's a little berm,
3 but what we're proposing to do is going to carry
4 that water from -- we want to make a swale and take
5 that right out to the beach so, quite frankly, I
6 think it's going to enhance that drainage there
7 versus what it is now.

8 MS. LUND: Okay.

9 MR. CASTNER: Scott, could you point out
10 the swale plan and your grading plan here?

11 MR. THIEL: Okay. If you look -- there
12 should be arrows -- This one here showing the
13 arrows are going to indicate where that water is
14 going to be coming and everything is going to be
15 flowing to the east.

16 MR. CASTNER: Okay. We got 588, 5--

17 MR. THIEL: 587.

18 MR. CASTNER: --and 590, so we're
19 draining down this way, and then--

20 MR. THIEL: The water is going to swale
21 like this.

22 MR. CASTNER: --587, and then--

23 MR. THIEL: We're down to 586 over here.

24 MR. CASTNER: That doesn't really -- I
25 see the arrows.

1 MR. THIEL: Here you're at 591 and you're
2 coming down to 587, so that water is coming down
3 from the house and run off this way.

4 MR. CASTNER: Right. What I'm looking
5 for is 5 -- 587 -- 586. It's continuing -- I mean
6 there's no higher elevation 587, so that water
7 would continue down this way. It's the same
8 situation over here.

9 MR. THIEL: But you have to remember this
10 is kind of bermed up here so the water from this
11 point, here's where you cut your swales out to the
12 beach.

13 MR. CASTNER: I think you need to -- the
14 swales on your project, property, like you got 588
15 here, and if I read this right it's 587 here, so
16 this should be 588, and then for swale -- this
17 should be like maybe 590 on the property line?

18 In other words, the swale needs to be on
19 this property same way over here.

20 MR. THIEL: Well, he's at 592 here so
21 you're automatically creating that swale. Being
22 that he's at 592, we're at 588, he's actually
23 higher so that water's going to come down and run
24 out.

25 MR. CASTNER: This is outflow in here. I

1 can't read the -- there's 587, '86, so this water
2 is going to be coming down here. Unless there's a
3 design swale in here, which there is not, the water
4 is going to come down here. Same thing over here.

5 MR. HOLSCHBACH: I also noticed the same
6 thing on here. It was basically showing the cut
7 coming down. You're not showing the cut.

8 MR. THIEL: Like here we're at 586. What
9 we want to do is show on this detail that the water
10 is flowing out here, which we can easily do.

11 MR. CASTNER: That's what you need to do,
12 cut through here, so on the property line you need
13 a higher elevation than what you've got now so you
14 have a true swale.

15 It will flow east and down here on the
16 existing -- see, this is 587 here, and this is 587
17 here, so you're going to do some cutting through
18 here. Otherwise it will be -- just sit there.

19 MR. THIEL: Right. We don't want to have
20 any problems with the water sitting anywhere. We
21 want the water to drain from our property straight
22 out.

23 MR. CASTNER: Well, that's state law.
24 You can't interfere with that, and I just call your
25 attention to point 4 on the report that says that

1 fill shall be properly graded to ensure the
2 drainage of adjacent properties is not negatively
3 impacted and to ensure adequate management of
4 stormwater, so I think there should be a revision
5 to show the swales on both sides.

6 MR. HOLSCHBACH: Yeah, we can easily work
7 with Scott and change the contour lines on there so
8 we reflect the swale.

9 MR. THIEL: And to go along with that --
10 we can easily do that -- and to go along with what
11 you're saying with No. 4, if you do approve us to
12 fill that in, when you approve that fill, you want
13 to see that at that time also when you do a site
14 visit.

15 MR. CASTNER: That's right. Exactly.

16 MRS. PAPE: John and I were talking to
17 the -- were talking to the original owner of that
18 area. I think his name is Ray something, and I
19 asked him to come but he didn't think--

20 MR. RIORDAN: Cary.

21 MRS. PAPE: Cary, okay, and do you want
22 to kind of tell about the natural path of the water
23 from above. He said it goes south in that area and
24 that there's a--

25 MR. RIORDAN: South of this property.

1 MRS. PAPE: --and there's a--

2 MR. RIORDAN: Berm.

3 MRS. PAPE: --drainage or something, a
4 river or something he said.

5 MR. RIORDAN: That I don't recall.

6 MRS. PAPE: Some way that it had a path
7 down through. Do you know that?

8 MS. LUND: Sure. That would be south on
9 our property line. There's a creek that comes down
10 from the west as far as Sauk Trail and west of
11 there, a natural little waterway that comes down
12 and empties out on to the lake into the water.

13 MRS. PAPE: And also that there was a
14 natural drainage in front of your properties.

15 MS. LUND: Kind of coming across.

16 MRS. PAPE: Between the water and your
17 properties, kind of just naturally goes.

18 MS. LUND: It just kind of comes across
19 from the north.

20 MRS. PAPE: Andy, that's a comment from
21 the neighbor?

22 MR. HOLSCHBACH: I have some
23 correspondence from John and Polly LeBlanc, and it
24 says -- I'll read it for the record.

25 It says "Dear Andy: Thank you for

1 spending the time with me on the telephone earlier
2 this week. I did receive the fax which shows the
3 property surveyed. I must admit that I cannot
4 really see what the survey is communicating, as I
5 do not know how to read it.

6 "We are writing this letter to the Board
7 of Adjustment as an interested party to the
8 conditional use permit being requested by Ruth
9 Schinner and Scott Thiel. We live at 121 Hidden
10 Bluff Road, which is the lot just north of the
11 Schinners' home.

12 "We will not be able to attend the
13 meeting on November 6th, 2007 to discuss the
14 conditional use permit request. However, we would
15 appreciate the Board considering a couple of points
16 as they consider the request for the conditional
17 use permit.

18 "1. Drainage. There is substantial
19 runoff that flows primarily from the west to the
20 north across the Schinners' lot. The drainage
21 generally flows across the Schinners' property
22 north onto our lot. It flows north both onto our
23 back yard -- which is the west side of the house --
24 and between our house and the lake, east side of
25 house. With heavy rains, this leads to significant

1 pooling/flooding. Our concern is if the drainage
2 with all the fill is not properly addressed, our
3 home will be damaged by the increased drainage.

4 "2. Location of planned new home. We
5 cannot read the property survey in sufficient
6 detail to determine if the front of the new home
7 will be subject to the same setback distance as the
8 five homes north of the Schinners. We would
9 strongly oppose the new home having a front (east
10 side) being any closer to the lake than our home or
11 the other four lots to the north. We do not want
12 to look at a large home to our south. The
13 Schinners' current home is not an issue because it
14 a) is not built on an elevated platform as the new
15 home will be, and b) it is one story and not a
16 major view obstruction.

17 "3. The driveway location. We assume
18 that the new driveway will need to be elevated from
19 the current driveway to meet floodplain levels.
20 Please ensure that the new driveway is sufficiently
21 south from our property line to account for the
22 slope of the fill required and the drainage concern
23 mentioned in item 1.

24 "4. The heavy trucks bringing the fill to
25 the Schinners' lot could damage our road. We would

1 request that someone commit to repairing the road
2 after the fill is brought in for any damage done.
3 Perhaps a commitment to take before and after
4 pictures of the road would be appropriate in order
5 for all parties to have a clear picture of the
6 status of the road before and after.

7 "If these four concerns are addressed by
8 the Board, we are fully supportive of the
9 conditional use permit being granted."

10 I also had a letter from the DNR stating
11 that because you're disturbing more than 10,000
12 square feet, you also need to get a permit from the
13 DNR.

14 MR. THIEL: We have got that all in the
15 works, so once -- if we do get approval, we can
16 submit that.

17 Again, to follow up with that letter,
18 Andy, I think it's real crucial when we're talking
19 about that swale, that that water does run out to
20 the east, and that's been our intent all the while.

21 The other thing to address, the road
22 issue, when we did Sauk Trail Beach Road last year,
23 7070, I paid to have that road regraded, redone
24 this spring, and that's definitely just to keep all
25 the landowners along that road, any damage that

1 would occur, that we would take care of that, and I
2 would put that in writing, so that's not a problem.

3 MRS. PAPE: And is this a two-story home?

4 MR. THIEL: It will be a two-story home,
5 yes, and the setback is the same. That's pretty
6 much standard.

7 It's a 75-foot setback from the ordinary
8 high water mark, so to answer their question, Andy,
9 it's not going to obstruct their view of the lake
10 because it's lined up with theirs.

11 MS. LUND: I have one more question.
12 Again, Jennifer Lund. With the drainage that
13 you're going to create -- a swale I guess it's
14 called -- going towards the east, will that affect
15 the beach erosion at all to either side?

16 MR. THIEL: No, I don't believe it will,
17 and the reason for that is you've got all that
18 beach grass and things in there, and that water, to
19 be quite frank, once it hits that sand level it's
20 not going to erode a channel into Lake Michigan per
21 se.

22 I feel that should spill out, and the way
23 you do that in that swale, we put some type of
24 buffer that allows that water to drain into the
25 ground and not create a channel to the lake.

1 MS. LUND: Not everybody has beach grass,
2 though, so--

3 MR. THIEL: They should.

4 MS. LUND: We don't. We take great pride
5 in our beach and we keep it cleared.

6 MR. CASTNER: There should be a--

7 MR. THIEL: But we don't anticipate any
8 type of ditching or eroding out to Lake Michigan.
9 I believe if we make that swale properly that
10 should eliminate problems of that matter, because I
11 think down on Sauk Trail, 7070, we carried a lot
12 more water down there than this lot will, and the
13 way that one is set up, we haven't had any problem
14 with eroding of the beach.

15 MR. HOLSCHBACH: You know a suggestion or
16 recommendation would be to do what you were
17 referring to, placing some rock riprap perhaps
18 right at the outfall.

19 MR. CASTNER: The outfall, similar to the
20 outfall of the stormwater basin.

21 MR. THIEL: We did that at 7070, put some
22 rocks in there. That really helped.

23 MR. HOLSCHBACH: If you could do the
24 same, that would be helpful to address your
25 concern.

1 MS. LUND: There really hasn't been any
2 rain down towards 7070 to really know for sure how
3 heavy rainfall would affect the beach.

4 MR. THIEL: I watched the little bit of
5 hard rain we had that fall. That was a real
6 concern of mine, and we haven't had any problem
7 with that. But you're right. To put some type of
8 buffer in there with big boulders and whatever,
9 that's going to really help knock that problem
10 down.

11 MRS. PAPE: Did anybody else have a
12 concern and want to speak up?

13 MS. DRIES: Mary Dries, and I own the
14 property on Jones Court, and my mother owns the
15 property down east of there on Lake Michigan, and I
16 was just curious how big the house is.

17 MR. THIEL: The house right now is 4500
18 square feet, and that's two stories.

19 MS. DRIES: I was also wondering, it's on
20 a .6 acre lot. Is that--

21 MR. THIEL: Five-acre lot.

22 MS. DRIES: Okay. Is there any rule
23 about the size of a house on a specific lot size?

24 MR. HOLSCHBACH: That would be a question
25 for the Town of Belgium, and I don't believe the

1 Town of Belgium at this point in time has any
2 restrictions regarding the size of dwellings.

3 MRS. PAPE: As long as the side lots are
4 in line.

5 MR. THIEL: If you meet the side setback
6 requirement -- We also have to be 75 feet in from
7 the road easement coming in there. As long as you
8 meet all your setback requirements, there's no
9 square footage minimum.

10 There is a -- if you would ever put an
11 outbuilding up besides a house, like a separate
12 garage or shed or whatever, then restrictions come
13 into play based on the amount of the lot size, but
14 this lot is five acres deep. It's 150 feet of
15 frontage and it goes back five full acres.

16 MR. HOLSCHBACH: Just for your
17 information, a little more valuable information,
18 here's an aerial photograph which shows you the
19 lot. That's north. Here's Lake Michigan. Here's
20 the lot.

21 Like Scott said, it's a long, narrow lot.
22 It's five acres. If you're familiar with the site,
23 here's the swimming pool. There's the pool. Right
24 here's the existing house that's going to be razed,
25 and the proposed house is going to be right in this

1 area.

2 MR. THIEL: I think this pond here, that
3 water that comes down off that slope in the back,
4 that gets pretty much retained in that pond.

5 MR. HOLSCHBACH: Okay.

6 MR. THIEL: I really think where the
7 access road coming in from -- that access road
8 through the lot is where you're picking up water,
9 but this pond, it's not a natural spring pond.
10 There's water in there. Most of that comes down
11 that runoff.

12 MS. LUND: And the mound system isn't
13 affected by where this house is?

14 MR. THIEL: No. Our plan right now is to
15 hopefully use that mound system because it's
16 relatively new, but once you get the -- We have got
17 on the survey where the house is going, and we
18 don't know for sure if they're going to be able to
19 use that or not. We're hoping we can.

20 MRS. PAPE: We have to have this
21 recorded, so you have to speak up. And any other
22 questions?

23 Committee, would you like to have the
24 staff report now first or comments? Which?

25 MR. RIORDAN: Staff report.

1 MRS. PAPE: Okay.

2 MR. HOLSCHBACH: Do you want me to read
3 the entire report? Should I start at the
4 department findings, or have you had a chance to
5 read through it?

6 MR. CASTNER: I think we've all read it,
7 haven't we? It could be incorporated by reference
8 in the record.

9 MR. RIORDAN: I do have--

10 MR. HOLSCHBACH: You want me to give a
11 real little summary here? Is that what you're
12 looking for?

13 Certainly I think the conditions are the
14 important items. If you decide to go ahead and
15 approve of this, there's several conditions listed.
16 I wanted to mention -- I'll just do a Reader's
17 Digest version here instead of reading every little
18 item here.

19 MRS. PAPE: Could we ask questions of the
20 staff report, the committee? Anybody have some
21 questions on the staff report?

22 I have, for instance, on 8, septic system
23 impacted by fill shall be modified as necessary per
24 state and local code requirements, and my question
25 is, how is that monitored? I mean who checks that?

1 MR. THIEL: You have to apply for a
2 permit with the state, so--

3 MRS. PAPE: They come in and--

4 MR. THIEL: Yeah. All of that, any mound
5 system has to be approved by the state, so if
6 there's any modification to that mound system, that
7 is state approved.

8 MR. HOLSCHBACH: Actually our department
9 now has the capability to work with you and approve
10 of the mound design, and I do have a copy of the
11 septic system that was installed.

12 MRS. STERN: I think about that septic
13 system as it was installed for that house. Now
14 we're talking about a 4500 square foot house. I'm
15 concerned that if that -- how could that possibly
16 be the same?

17 MR. HOLSCHBACH: I'm not saying that it
18 is the same at this point.

19 MR. THIEL: We don't know that yet.
20 That's why there might be a modification, but
21 again, anything that is modified has to be
22 state-approved and with Andy's help.

23 MR. HOLSCHBACH: The septic system, the
24 size of the septic system is based off of several
25 things. First is the number of bedrooms.

1 Three-bedroom home, you're looking at 150 gallons
2 per bedroom per se, so that is 450 gallons per day.
3 If this is a four-bedroom house, we're looking at
4 600 gallons per day.

5 Secondly, you're looking at the soil
6 conditions. If it's well drained soils, which it's
7 probably well drained, you probably have some high
8 groundwater concern so that's why they had to put a
9 mound in.

10 If you're going from a three-bedroom home
11 now up to a four-bedroom home, we have to look at
12 the loads and flows and see if it would be capable
13 of holding the system.

14 We work through COMM 83 and some other
15 codes that the Department of Commerce has, but
16 certainly I know, Scott, that just from looking at
17 the septic design, certainly there are going to
18 probably be some modifications.

19 The tank is probably going to be
20 relocated as well, but we'll work closely with
21 Scott on that.

22 MR. THIEL: Also to go along with that,
23 the existing well has been abandoned and we'll be
24 drilling a new well. The existing well is east of
25 the house that's there now.

1 MR. HOLSCHBACH: How do you abandon that
2 well? Do you put bentonite?

3 MR. THIEL: Bentonite goes down and it
4 gets sealed off.

5 MR. RIORDAN: What is bentonite?

6 MR. HOLSCHBACH: That's actually a clay
7 material, a clay that has a real high swell
8 capability.

9 MR. RIORDAN: Thank you.

10 * * *

11 STAFF REPORT

12 Department findings:

13 1) The Lake Michigan floodplain elevation
14 is 588.2 feet NGVD resulting in the majority of the
15 lot being in the flood fringe of the Lake Michigan
16 floodplain. Residential development is an
17 allowable use in the flood fringe district per
18 7.0709 of the County Shoreland and Floodplain
19 Zoning Ordinance. Developments may be permitted in
20 the flood fringe only if such developments do not
21 cause an obstruction to flood flows and do not
22 increase the regional flood height due to flood
23 storage area lost equal to or exceeding 0.01 foot.
24 While the Lake Michigan floodplain is large enough
25 that this individual project is not likely to

1 seriously reduce the flood storage capacity of the
2 total floodplain, each floodplain project adds more
3 fill. The cumulative effect of similar projects
4 can have significant and serious negative impacts
5 on the floodplain and the near shore habitat.

6 2) Proposed residential house and deck
7 are greater than 75 feet from ordinary high water
8 mark of Lake Michigan, compliant with Section
9 7.0306, County Shoreland and Floodplain Zoning
10 Ordinance, "Setback from Navigable Waters". The
11 OHWM determined by PRLM Department is shown on CSM.

12 3) The existing house to be razed is a
13 legally nonconforming structure in the Lake
14 Michigan floodplain not compliant with floodplain
15 development standards.

16 4) An at-grade POWTS was installed July
17 11, 2006 for the existing three-bedroom home. A
18 four-inch septic sewer line from existing house to
19 septic tank is located in proposed fill area.
20 Septic tank is near the proposed fill area.

21 5) An existing well east of the existing
22 house, detailed on CSM, is planned to be abandoned.

23 6) Project will result in the loss of
24 several trees; mainly ash, spruce and birch.

25 7) The proposed project should not

1 adversely affect water quality if properly managed
2 through the use of erosion control provisions at
3 least as effective as those in the Construction
4 Site Best Practices Handbook. The "Implementation
5 of Erosion Control Methods" dated 1/17/07 provided
6 to the department shall provide adequate erosion
7 control.

8 8) The existing drainage in the project
9 area appears to flow easterly towards Lake
10 Michigan.

11 9) The filling will not significantly
12 reduce wildlife habitat for the area.

13 Should the Board decide to grant the
14 conditional use permit to allow the placement and
15 grading of approximately 4,500 cubic yards of fill
16 in the Lake Michigan floodplain, the department
17 recommends the following conditions of approval:

18 1) Only clean fill be used. The fill
19 shall not contain hazardous or putrescible
20 materials or demolished building materials,
21 including concrete, lumber, rubble or asphalt.

22 2) The top of the fill must be a minimum
23 of 590.2 feet and maintain that elevation for a
24 minimum of 15 feet from all points of the proposed
25 structure. After 15 feet, the fill can taper down

1 with a minimum of a 3 to 1 side slope to the
2 natural grade.

3 3) The first floor of the proposed
4 residence is to be a minimum of 590.2 feet with the
5 floor of the crawl space to be greater than 588.2
6 feet.

7 4) Fill shall be properly graded to
8 ensure the drainage of adjacent properties is not
9 negatively impacted and to ensure adequate
10 management of stormwater.

11 5) The fill shall be contiguous to land
12 lying outside the floodplain to provide dry land
13 access to the residence.

14 6) Existing well shall be abandoned per
15 state and local code requirements.

16 7) Existing house and outbuilding (guest
17 house) shall be removed and properly disposed of.

18 8) Septic system impacted by fill shall
19 be modified as necessary per state and local code
20 requirements.

21 9) Erosion control provisions at least as
22 effective as those in the Construction Site Erosion
23 Control Best Management Handbook shall be installed
24 immediately downgrade from the project site to
25 prevent sediment delivery off the property or onto

1 adjacent properties. These controls must be
2 maintained until the soil is adequately revegetated
3 or otherwise protected to prevent erosion. Once
4 the vegetation is adequate to prevent erosion, the
5 barriers shall be removed.

6 10) An as-built elevational survey and
7 elevational certificate completed by a licensed
8 surveyor shall be submitted to demonstrate
9 compliance with the conditions of the permit before
10 the Certificate of Zoning Compliance can be issued.

11 11) Prior to any construction on the
12 property, the filled floodplain area shall be
13 rezoned to non-floodplain. To change the location
14 of the floodplain boundary to recognize the
15 placement of the floodplain fill requires a
16 rezoning request and associated fee.

17 12) Prior to any construction on the
18 property, a Letter of Map Revision Based on Fill
19 (LOMR-F) shall be issued by FEMA.

20 13) All required state, federal and local
21 permits must be acquired.

22 14) Notify the department within ten days
23 of project completion to request a Certificate of
24 Zoning Compliance.

25 15) The conditional use permit shall be

1 valid for one year from the date of issuance, with
2 renewal or extension only upon review and approval
3 by this Board.

4 The Board and applicant must be aware
5 that if the project is approved, an appeal period
6 extends for 30 days after this hearing. During
7 that period, any interested party can appeal the
8 decision, either approved or denied, to circuit
9 court. Any work done prior to permit issuance is
10 at the applicant's own risk.

11 * * *

12 MRS. PAPE: Any questions of the staff
13 report?

14 MR. CASTNER: I'd like to see Item 4
15 amended to state that a swale should be constructed
16 on the north and south lot lines adequate to
17 prevent conveyance of stormwater to adjoining
18 properties, and that riprap be placed at the foot
19 of the swales, of each swale, to minimize water
20 flow impact on the beach.

21 MR. HOLSCHBACH: Okay.

22 MRS. PAPE: As soon as he has that
23 finished, would you please read it?

24 MR. HOLSCHBACH: It was suggested that a
25 swale be constructed on the north and south lot

1 line adjacent to the lots to convey stormwater
2 adequately and also to place riprap at the foot of
3 each swale to minimize water impacts that are
4 conveying across the beach.

5 MRS. PAPE: Okay? Is there a second?
6 That's a motion?

7 MR. CASTNER: That was my motion.

8 MR. RIORDAN: I second it.

9 MRS. PAPE: John seconds it. Any
10 discussion?

11 MR. RIORDAN: On that or other points?

12 MRS. PAPE: We're going to vote on this
13 now, okay? And all in favor of the motion that was
14 just made and seconded say aye.

15 (Vote taken.)

16 MRS. PAPE: That's unanimous, and now you
17 have another comment or question?

18 MR. RIORDAN: Just in the department
19 findings. Can we move back to that, unless there's
20 more to be said on the list of requirements.

21 We talk about the Lake Michigan
22 floodplain elevation is 588.2 feet, and I go back
23 to -- I do have an uncertainty about the past and
24 the future.

25 We're building this house built on that

1 as the norm for now, but how about if the norm
2 changes as it has in the past? What protection is
3 there for that and what are your thoughts on that?

4 MR. HOLSCHBACH: Well, first of all, you
5 know, we look at NR 116 and National Flood
6 Insurance Program rules, and the way our ordinance
7 is structured, first of all they're in the Lake
8 Michigan floodplain which is flood fringe which
9 allows for residential use.

10 I would add, in our ordinance we talk
11 about we don't want a structure to be obstructing
12 flow which would cause an increase in flood height,
13 so that's always an issue here.

14 Secondly and foremost, the question is
15 are we increasing the floodplain elevation of Lake
16 Michigan by a hundredth of a foot. That would be
17 one of the legal questions, and it's been an
18 understanding because of the expanse of Lake
19 Michigan that a project similar to this would not
20 be likely to be impacting the flood height of Lake
21 Michigan. This is one single project.

22 Now to expand on your thought, you're
23 looking beyond this one little project and looking
24 at the cumulative effects of all these projects.

25 MR. RIORDAN: That's the next point, of

1 course, but the first one is we're using a norm
2 that is today's norm and it doesn't seem to take
3 into account the past or potential future of the
4 height of that lake, and we have all seen the lake
5 a lot higher.

6 MRS. PAPE: But it's been the history
7 that we have to deal with the present numbers and
8 that's what we make our decision on, what it is
9 today. We can't go back in history and judge by
10 that or in the future, so we have to live with the
11 numbers that we get now.

12 MR. RIORDAN: We have historical records
13 which maybe going forward is more difficult. Going
14 back we have the--

15 MR. HOLSCHBACH: We're relying on the
16 state water folks, the engineers who do the
17 modeling to take the most recent factual
18 information that they presently have and that's
19 what we're basing everything off of and that's how
20 that flood height of 588.2 is gathered.

21 MR. RIORDAN: So we have a constraint
22 then. We must use today's numbers.

23 MRS. PAPE: This is what we have to deal
24 with.

25 MR. RIORDAN: Second point I have is -- I

1 just would read this out of the department
2 findings: While the Lake Michigan floodplain is
3 large enough that this individual project is not
4 likely to seriously reduce the flood storage
5 capacity of the total floodplain, each floodplain
6 project adds more fill. The cumulative effect of
7 similar projects can have significant and serious
8 negative impacts on the floodplain and the near
9 shore habitat.

10 My question here is who's doing the
11 metrics? Who's doing the measuring? Who's doing
12 the counting? City? States? Municipalities?
13 Other governments? Other countries? Because there
14 are a lot of factors there or jurisdictions
15 involved.

16 If no one's doing the metrics, then what
17 are we basing our decision on?

18 MR. HOLSCHBACH: Well, I understand your
19 concern here, your issue. Right now, however, it's
20 not regulated on a cumulative point of view. It's
21 on an individual project basis, and I've heard
22 people say well, perhaps we need to move away from
23 that and look at more of a cumulative impact,
24 perhaps rightly so, but the way it is today, it's
25 not being done in that fashion.

1 MR. THIEL: Just to add to your concern,
2 because I had those same concerns, you know, based
3 on, okay, the hundred-year flood and everything
4 else, the situation here, FEMA's got a big impact
5 on all these things that go on.

6 FEMA wants to get these properties out of
7 the floodplain, and when you really think about it,
8 when you bring fill in, take these properties out
9 of the floodplain -- this is just my opinion -- I
10 think it makes the land better, and why I say that
11 is you minimize water pocketing, mosquitoes. It
12 traps all kinds of things like that by doing
13 this -- and that's only my opinion -- if it's done
14 properly like we talked about with swales on each
15 side of the property line and stuff, and any time
16 by doing this if we can help a drainage situation
17 or a potential problem with the existing drainage,
18 I think that makes sense to do it, but I mean I
19 understand where you're coming from totally, but I
20 think by filling in these areas and getting them
21 out of those floodplains -- God forbid we don't
22 want a New Orleans situation up here and I don't
23 believe that would ever happen again, but that's my
24 philosophy on things, so I think if we can help the
25 overall landscape of everything by doing this and

1 if it's done properly with the proper guidelines,
2 that's what we have Ozaukee County for, that's what
3 we have the state for, and that's what we have FEMA
4 for.

5 They pretty much set the standards on
6 things, and I believe we have a long-range plan
7 that they want to get out of these floodplain areas
8 and minimize any type of future flooding.

9 MR. HOLSCHBACH: I'd like to add that
10 there is a great concern about protecting the
11 floodplain and preserving the floodplain so when we
12 do have floods the floodplain can do what it's
13 supposed to do and that's store floodwaters, so
14 just to say that everybody is in support of filling
15 in the floodplain, no, I wouldn't want to go on
16 record stating that either.

17 I feel we have to be protecting our
18 floodplains so that they can perform the functions
19 they're--

20 MR. THIEL: Exactly. I'm not saying,
21 Andy, you don't need floodplains, but -- because
22 every situation is different -- but looking at what
23 you have down there, the three properties to the
24 north are already zoned out of the floodplain.

25 By having another one in the future,

1 mark was determined to be right below where the
2 rock riprap is, the rock that was placed right
3 directly--

4 MS. LUND: Theirs is out farther.

5 MR. HOLSCHBACH: That's the ordinary high
6 water mark, which would be also if you were to go
7 north and south of there it would tend to follow
8 the same topography. It would be close to the --
9 right at the edge of the shoreline area. There's a
10 lot of vegetation there. It would actually be in
11 front of the vegetation.

12 MS. LUND: I'm just curious as to how the
13 part they have built out with the rocks, if it
14 changes their setback and their--

15 MR. HOLSCHBACH: No, it really didn't
16 change their setback. I used that as a reference
17 because the rock was placed there to protect the
18 land from the waves, and the waves are there
19 because -- when the ordinary high water is up to
20 that point. Now it happens to be the lake levels
21 are down.

22 MS. LUND: Looking at the white line, it
23 juts out a little bit. I didn't know if that made
24 a difference where this setback -- where they count
25 the 75 feet.

1 MR. HOLSCHBACH: They do meet the 75-foot
2 setback from the ordinary high water mark. In
3 fact, you're exceeding it in this case.

4 MRS. STERN: Because of the contour of
5 the beach it's not always going to be a perfectly
6 straight line.

7 MR. HOLSCHBACH: No. You measure from
8 the ordinary high.

9 MRS. STERN: Who determines the ordinary
10 high water mark?

11 MR. HOLSCHBACH: That was determined by
12 our department.

13 MRS. STERN: It's been surveyed.

14 MR. HOLSCHBACH: Before the surveyor went
15 on-site we put in flags where the ordinary high
16 were and they surveyed the ordinary high on the
17 certified survey map.

18 MS. LUND: Thank you.

19 MR. HOLSCHBACH: You're welcome.

20 MS. SCHAFFNER: Cindy Shaffner. I'm
21 wondering the square footage of this house and how
22 many bedrooms and bathrooms it's going to have and
23 the impact of property taxes.

24 I live up above on the bluff part, I
25 don't live down on the lake, but our taxes are

1 already high enough.

2 I'm just wondering overall how is this
3 going to affect everybody in this neighborhood of
4 mine?

5 MR. HOLSCHBACH: You know, I don't have
6 any information. I've not seen a house design or a
7 house plan. I know Scott is here, you mentioned
8 how many bedrooms.

9 MR. THIEL: It will be four bedrooms,
10 four bathrooms.

11 MR. HOLSCHBACH: The hearing before us
12 this morning is mainly to address the environmental
13 type issues.

14 MS. SCHAFFNER: Also I'm concerned about
15 the water table, how that's going to affect all of
16 us who live nearby, all these bathrooms and
17 everything.

18 MR. THIEL: One thing just to get
19 everything on the up and up here, this is not a
20 permanent residence. It will be a cottage. It's
21 for a couple from Illinois.

22 MS. SCHAFFNER: It's a big cottage.

23 MR. THIEL: So it's not going to be
24 used--

25 MS. SCHAFFNER: It's bigger than our

1 house and we have got a two-story house.

2 MR. THIEL: It's not going to be used as
3 a full-time residence. I'm sure it will be used
4 full time all summer long, but in the winter
5 months--

6 MS. SCHAFFNER: They won't be year-round
7 residents like the rest of us. Okay.

8 MR. RIORDAN: Excuse me. May I? But it
9 has to be built as if it's going to be used full
10 time.

11 MR. THIEL: Absolutely. Right now their
12 plan is to use it as a cottage. As life changes,
13 two years from now it could be a full-time
14 residence, but definitely it has to be built
15 according to all state codes, state and local
16 codes.

17 MR. HOLSCHBACH: And regarding your
18 question regarding water supply, you know--

19 MS. SCHAFFNER: It affects the quality of
20 the water too because we do have a well just like
21 everybody else, and--

22 MR. THIEL: Well, there was an existing
23 well there. Granted, we're digging a new well, but
24 I don't believe that should have any impact on any
25 of the water situations because you're eliminating

1 one well, adding -- just replacing it.

2 MR. HOLSCHBACH: It sounds like the water
3 usage will be somewhat similar as to what the
4 existing house had.

5 MRS. PAPE: All set? Okay. Committee,
6 request is for a conditional use permit by -- I
7 won't go into it -- to allow the filling and
8 grading and excavating within the Lake Michigan
9 floodplain to create a building pad area for the
10 construction of a new residential house and
11 driveway in accord with Section 7.0709 of the
12 county ordinance.

13 How do you vote?

14 MR. CASTNER: I'll move that the
15 conditional use permit be granted as stated and
16 subject to the 15 conditions that are stated as
17 previously amended.

18 MRS. PAPE: As amended.

19 MR. CASTNER: Yes, as previously amended.

20 MRS. PAPE: Any second on that?

21 MRS. STERN: I will second.

22 MRS. PAPE: Cathy, and discussion? We've
23 had enough? How do you vote? Mr. Riordan?

24 MR. RIORDAN: I feel that the
25 department's done an excellent job as always, and I

1 think Steve Castner's suggestion about the swale
2 makes good sense, and all of the points that are
3 recommended here make good sense for this project.

4 I only feel that we're not doing the
5 metrics on this as far as incremental impacts, and
6 on that basis, until there's something that answers
7 that question, somebody who addresses it, I can't
8 in good conscience vote, so my vote is no.

9 MRS. PAPE: Thank you. Cathy Stern?

10 MRS. STERN: Yes.

11 MRS. PAPE: And Barbara Jobs?

12 MRS. JOBS: Yes.

13 MRS. PAPE: And Steve Castner.

14 MR. CASTNER: Aye.

15 MRS. PAPE: And Bernadyne Pape says aye.

16 Okay. Granted.

17 MR. THIEL: Thank you.

18 MR. CASTNER: Madam Chairman, may I be
19 excused? I have an 11:15 in Mequon.

20 MRS. PAPE: Okay. Nice to see you.

21 MR. RIORDAN: Madam Chairman, could I
22 just make a statement to these two people who
23 raised questions about the Town of Belgium just for
24 their information because I am from the Town of
25 Belgium.

1 The building administrator, to answer
2 your question, is Charlie Parks. Do you know
3 Charlie Parks? I think that's the best source of
4 information for your questions, and this other lady
5 had a question about the taxes.

6 Are you familiar with the Town of Belgium
7 board meetings every first Monday of the month?

8 MS. SCHAFFNER: Yes, I know about them.

9 MR. RIORDAN: You might go and raise your
10 questions there.

11 MS. SCHAFFNER: Yes. I know a more
12 specific group.

13 MRS. STERN: Give them the facts. They
14 can do the taxes -- how taxes have escalated over
15 the last four or five years.

16 MR. RIORDAN: Thank you.

17 MRS. PAPE: As far as minutes are
18 concerned, I don't remember them.

19 MR. HOLSCHBACH: I do have the minutes.
20 They date back from June 6th of '06. These are the
21 latest minutes that I have in the office, and I
22 know that goes back quite some time.

23 To refresh your memory, this is regarding
24 the Dominic and Katherine D'Alexander property.

25 (Discussion off the record.)

1 MRS. PAPE: Now I don't think we can--

2 MR. HOLSCHBACH: If no one's comfortable
3 in approving them--

4 MR. RIORDAN: I think we all got copies
5 of them. I'm willing to vote.

6 MRS. PAPE: I would like to read them and
7 we'll do that at the--

8 MR. HOLSCHBACH: All right. So at this
9 point in time then I'd like to--

10 MRS. PAPE: Postponed to next meeting,
11 and now communications and miscellaneous.

12 MR. HOLSCHBACH: I'd like to add that I
13 did receive on your behalf these zoning board
14 handbooks. There's a lot of good valuable
15 information in the handbook.

16 For our next hearing we'll be on a
17 variance request. There's a very good section in
18 here on variances and what it is you as a board
19 need to be reviewing and be concerned with.

20 MR. RIORDAN: Is it different from the
21 seminar that we attended, Andy?

22 MR. HOLSCHBACH: No, not really, no.

23 MR. RIORDAN: Roughly the same.

24 MR. HOLSCHBACH: It's the same.

25 MRS. PAPE: This is not the code, right?

1 MR. HOLSCHBACH: This is a handbook.
2 This is just a handbook and it was prepared by Lynn
3 Markan. Lynn Markan was the educator.

4 MR. RIORDAN: She's good.

5 MRS. PAPE: Were there any changes in the
6 zoning code?

7 MR. HOLSCHBACH: Since?

8 MRS. PAPE: Since I left.

9 MR. HOLSCHBACH: Since you left the
10 county board?

11 MRS. PAPE: Yeah.

12 MR. HOLSCHBACH: Well, sure, and in the
13 zoning code we have adopted some of the National
14 Flood Insurance Programs, some of the new rules
15 they have in place.

16 It used to be an accessory structure
17 could be two feet below the regional flood
18 elevation. Now an accessory structure has to be at
19 or above the regional.

20 MRS. PAPE: That makes sense.

21 MR. RIORDAN: These are changes to this
22 code.

23 MR. HOLSCHBACH: Those are already in
24 this ordinance. This ordinance was adopted --
25 revised I believe in April of '06.

1 MR. RIORDAN: Right.

2 MRS. PAPE: So I wouldn't be aware of
3 that. I don't have that.

4 MR. HOLSCHBACH: I'll make sure you get a
5 copy.

6 MRS. PAPE: I have the code at home.

7 MR. HOLSCHBACH: Before you leave--

8 MRS. PAPE: I don't have the amendments.

9 MR. HOLSCHBACH: Before you leave I can
10 give you a new draft of these.

11 MR. RIORDAN: April 5th.

12 MRS. PAPE: Appreciate it.

13 MR. RIORDAN: But these changes you're
14 talking about now will have to be incorporated.

15 MR. HOLSCHBACH: They're already
16 incorporated, so this is good information.

17 I also wanted to mention that tomorrow at
18 the full county board meeting, before the board is
19 the adoption of the new digital flood insurance
20 rate maps.

21 MR. RIORDAN: That will be available
22 online.

23 MR. HOLSCHBACH: They are already
24 available online.

25 MR. RIORDAN: On the county website.

1 MR. HOLSCHBACH: Yes. I also wanted to
2 mention Ozaukee County is one of the -- well,
3 there's Ozaukee County and Adams County in the
4 State of Wisconsin. We participate in the
5 community rating system. It's part of the National
6 Flood Insurance Program.

7 We do a few things above and beyond the
8 normal information and education regarding
9 floodplain management. It used to be -- and we get
10 a score. We used to have a score of 9, which would
11 provide people in the unincorporated areas with a
12 5% reduction on their insurance premium.

13 Now we're doing a few extra things and
14 now the score is dropping down to an 8, so now
15 people that live out in the unincorporated area
16 when they purchase flood insurance they're getting
17 a 10% discount on their premium, which is I think a
18 -- kind of a nice thing.

19 What we do is we provided some links on
20 our website in regards to floodplain management.
21 We're trying to do more educational programs
22 regarding floodplain management.

23 We send letters out to the insurance
24 lenders regarding concerns with floodplains. We
25 keep elevational certificates in our office. When

1 this project is completed, now their next step is
2 to have a LOMR-F, a letter of map revision, done.
3 Before we go any further that has to be issued by
4 FEMA because it's now taking that property outside
5 of the floodplai n.

6 MR. RIORDAN: When you say the floodplai n
7 lenders, you mean insurers?

8 MR. HOLSCHBACH: Yes.

9 MR. RIORDAN: They're not lenders.

10 MR. HOLSCHBACH: The insurance agent.

11 MRS. PAPE: Do the lenders still require
12 that?

13 MR. HOLSCHBACH: Most lenders require
14 flood insurance.

15 MR. RIORDAN: This is for building in the
16 floodplai n?

17 MR. HOLSCHBACH: Well, a lender might say
18 well, Mr. Smith, if your home is in the floodplai n
19 we require that you have flood insurance, but it's
20 recommended -- and flood insurance is recommended
21 and available to people outside of the floodplai n.

22 MR. RIORDAN: I contacted my insurance
23 agent after reading your stuff on the site and said
24 we'll increase your policy for back-up and sewer
25 and septic, but you're fine. You're up on a hill.

1 MR. HOLSCHBACH: Where you are, but there
2 are some people on the fringe and they may be just
3 outside of the floodplain and they think I'm okay,
4 but if you get some catastrophic events where you
5 do get flooding and their regular homeowner's
6 insurance does not cover flooding.

7 That's all I have.

8 MRS. PAPE: Anybody else? Any other
9 matters allowed by law?

10 MR. HOLSCHBACH: Unless you have any
11 other questions.

12 MR. RIORDAN: No.

13 MRS. PAPE: Okay. I will entertain a
14 motion to adjourn.

15 MR. RIORDAN: Motion.

16 MRS. STERN: Second.

17 MRS. PAPE: Moved and seconded to
18 adjourn. All in favor say aye.

19 (Vote taken -- Unanimous.)

20 MRS. PAPE: We're done here.

21 (Proceedings concluded at 10:50 a.m.)
22
23
24
25

1 STATE OF WISCONSIN)
2 OZAUKEE COUNTY) ss.
3)

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

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

17 IN WITNESS WHEREOF, I have hereunto
18 affixed my official signature and seal of office, this
19 13th day of November, 2007 at Port Washington, Wisconsin.

20
21 _____
22 LIANE M. BARANEK
23 Notary Public
24 State of Wisconsin

25 My Commission Expires:
December 27, 2009.

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