

**MINUTES – CONTINUED PLANNING COMMISSION/BOARD OF
ADJUSTMENT MEETING**

**THURSDAY, NOVEMBER 18, 2010, 9:00 A.M., BLUE ROOM (MEETING ROOM),
LYON COUNTY GOVERNMENT CENTER, MARSHALL, MINNESOTA**

MEMBERS PRESENT: Thooft, Vroman, Buesing, Nassif, Ludeman, Nelson, Ritter, Zimmer, Biren

AUDIENCE: Linda Louwagie and Troy Wendland

PLEDGE OF ALLEGIANCE TO THE FLAG

BOARD OF ADJUSTMENT:

Continued Public Hearing for Axel and Judy Hansen for an after the fact variance request for a new non-conforming structure within the 150 foot setback of Rock Lake. The new non-conforming structure (garage with living quarters) replaced a previously existing non-conforming structure (garage). Structure was built approximately twenty (20) feet from the Ordinary High Water Mark. This is a one hundred thirty (130) foot variance request. The area representing the request is zoned shoreland. The property is described as follows: a tract of land located in Government Lot One (1), of Section Six (6), Rock Lake Township. (60 day timeline: November 23, 2010). Ludeman – appreciated Axel and Judy Hansen being here. Appreciated Jeff coming in a little over a month ago. We were not able to resolve issue, open for comments. Will go through Findings of Fact which was started when Jeff was here, make a determination. Want to make statements, go ahead. Hansen – thanked board to have meeting when I had time to come in. Appreciated Jeff covering for me, he didn't handle some of things John and I discussed. He wasn't in on some conversations. My wife says I talk to much, write even more. Read statement prepared for board.

Take it from the very beginning of us owning the property. Wednesday before sale on Saturday I went and looked at the property. I made three stops: DNR finding out what could/couldn't do out there. Visited with John and Banker. Everyone pretty much said sewer could stay as is, or could stay as is as long as we didn't make it a permanent residence or add bedroom. Talked about the trailer house and garage being there, grandfathered in, location site put in 1975, 30 year past history. After purchase, John and Jim Seihl came out to property and we discussed a great deal of things, campsites for friends and family, house/garage chance of remodeling them. Jim Seihl suggested change roof line to direction it is now, said we could build up as long as we didn't exceed 35' tall. John agreed. Last year talked to John several times in the middle said I was still putting money together for garage remodel. Last year came in and talked to John said I was getting ready to start. He said we are going to treat it as a remodel. Took down lean to and poured new footings and cement then the weather stopped me last fall. The Spring before we started construction thinking how nice it would be for the whole family to enjoy the lake and not having to drive back in the dark and people could stay in bed and rest as long as they wanted to. Talked with John about going to a second story. He said that was okay. Confusion/oversight came into the picture. I knew the garage site was grandfathered and so was the trailer. I had been

told that you could build a guest house if you were larger than a duplex site which is 120,000 feet and 300 feet shoreland. Our lot is 2.8 acres which puts us at 122-125,000 sq feet plus we have 500' shoreline so I was thinking 2nd story serves as a guest house. Thought that was great for me. We had a long visit and in conversation I asked if I would lose my spot if I moved the garage off and poured new footings and cement or if I had to move it side ways onto last years project cement to preserve the grandfathered site. That point John asked if I thought the old garage would carry a second story. I said I was afraid that it would not. We talked what I would do to build extra support walls, tear it down, absorb it or save it. I have no problem paying more real estate taxes on second garage. Wrap it in steel like the other garage and move it back by the garden 150' would not also be asking for a water craft building. John agreed with me it would be asham to destroy the old garage and said okay move it. I asked at that point what do we have to do now? John said we would go ahead and continue with the project as a remodel. I am thinking no watercraft building 400 sq feet that could be put almost anywhere. Guest house 700 sq feet covered, garage on the original grandfathered site next to my cabin. All 1820 sq feet covered in a 720 square footprint. The building would have been the same except for a partial garage absorbed in another with two walls being 9" thick. We would have had to build up to support the 2nd story. Lean to had a roller door that was quite wide enough to drive the grandson's 4-wheeler through until we traded lawnmowers. The first lawnmower fit in there as well. Numerous people have told me that when Mike was a live the lean to also served as a party room and if people had too much to drink it also served as a bedroom until people sobered up. It was also a garage and storage area. We planned the structure for all the uses except for much more family orientated purpose with the same results. Maybe we spoke too many times, I don't know. John and I now feel that maybe we had possibly everything flowing together too much. Talked everything from boat landings to driveways to campsites for friends and family, building sites and remodels. I think we got comfortable and dropped the ball about what we needed. Didn't have, needed to have, whatever. I have spoken to Glen Peterson, Lincoln County Attorney, to see what happens on their lakes in their area. He did bring up one point that with grandfathered sites always are confusing scenario also why not an after the fact building permit instead of an after the fact variance considering the building was already there and construction on the original site and use. I also own land in Murray County. Some of the things going on down there on Shetek are totally mind boggling. This lake will never be a Lake Shetek. What you think are cut and dried are wrong down there are okayed and some that aren't okayed are reversed. I don't know how to interpret the rules. Two State Senators Anderson and Olson in the October 10th Sunday paper "I have to ask if we are being far to Minnesotans. The legal standards seem to be contradictory. How are property owners going to know what to do." Clause, professor of law at UM, "anytime there is this much confusion even a smart lay person cannot figure it out." My family discussed the building and color at great lengths. We ended up with green and taupe combination feeling that it would blend well with the tree bark and leaf colors. In passing the building from the lake with a boat the colors match fairly well. The deck and stairs show up quite plain but you have to look for the building. Plan to plant more trees. Red oaks, sugar maples, evergreens in background for more distraction. Install gutters/down spouts to guarantee no shoreline washout, erosion, contamination of the lake, lake damage of any kind that is the last thing we want to do. I feel responsible for the shoreline and the banks integrity. I feel very strongly about the lake. We want to make sure that we don't wash and cause any damage there. Former structure and present building location I will not hold the county liable for any of the bank integrity. I feel that is my responsibility. I understand that there will be no other dwellings, no other structures within 150'

HWM. When it comes to the variance I am surprised how the language what I hoped to do to resolve this problem matched in with some of the things that I wanted to do. A lot of things I would have done different, hindsight 20/20. Cost of moving the building as in the variance would be a great hardship, plus it would still need a variance if we are going to leave room to put a residence back 150'. When we get 150' back there is not room for two buildings, end up in the lake water on the north side between the road and property. Contacted Anderson Movers from Paynesville, \$5000 to move; \$2000 for cement; \$1600-1700 labor; \$375 rebar; \$2500 cement removal; \$1917 fill; \$600 overlay quality gravel on top of fill; \$1000 lengthen sewer; \$600 electrical, \$15,000 or more. Errors made, didn't plan on doing anything wrong. Very good about working with John and DNR since before we owned property. Also felt good that we could work with the grandfathered existing building in its place. Septic discussed lengthily before the auction before I bought it. As long as the trailer used as a part time residence and no bedrooms added, not year round, we didn't have to be changed it. Day John and I discussed the 2nd story as far as remodel I made an error there I guess. Chandler deal with concrete for septic systems to know what size is available, never put water to building before septic brought up to code. Fees cost \$1400-\$1700 on this, at your mercy. Map, didn't change sites. Anything I did wrong, misinterpreted building for site back and forth, my biggest sin. Ludeman – questions of Axel? Ludeman – indicated extend sewer, sewer from new building to existing? Hansen – no water in building, won't do anything with sewer. Ludeman – cost? Hansen – distance, more distance. Biren – regard to septic system, I think the board realizes what is out there. What we have out there is a tank and drainfield. Sure drainfield is not in compliance. Early on according to Axel's statements, I would have been fine with a holding tank, could have serve that. With the structure that was there before. When you don't use much water or when you are there on the weekends it would be better to handle it as a holding tank rather than a drainfield because you are going to have troubles with a drainfield. Not used hard enough. Early on one of the proposals was actually building a new house out there so I thought you were throwing good money after bad by building a new septic system with new house potentially being built. That is where those statements came from, clarify that. Another thing I want to talk to the board is notion of being after the fact, punishment for after the fact in our ordinance is doubling fees. Axel has done that. We need to ask question why this building should be placed here or why not, focus. Physical attributes. Axel mentioned a few of those. That is what we want to pull out when we go through the Findings of Fact to grant/deny this. Ludeman – public hearing any comments from public? No comments. Biren – township's position changed since your affidavit? Troy Wendland – I have not really talked to the board about that. Rock Lake Township Board, we had a few phone calls this week that is why I am in attendance here today. My opinion is that maybe it changed a little bit, first signed off on this didn't realize exactly what was going on. We get these letters and we cannot meet in time, due back before we meet. I have to run around and have other two sign it. We are not hard to deal with. Had some comments about the 130' variance big variance. Biren – from the township's perspective as well. Axel mentioned the footage of lakeshore. To create a development out there it would be very difficult to do a subdivision, road will never be a township responsibility. Minimum lot size on a natural environmental lake is real close to two acres and he has 2.8 acres. Going through like a Friese development did with the township's involvement potentially owning road some day that will never be the case here. Unless he would buy some land from Taveirne to create the needed room. Wendland – my position neutral on matter. Ludeman – back to when Jeff was here, concerned on the understanding of remodeling and updating and the footprint. To us the scope of the structure changed significantly from

garage to garage plus potential living quarters. Why we didn't make a decision at that point in time. Hansen – in addressing that, I would never thought of going up if not for Jim Seihl saying yes you could go up and John telling me yes you could go up. I wanted a garage where it was at. Because I can walk out of my trailer up to garage without going through water. Got to thinking what Jim had said and knowing that evening comes get done with dinner, Jeff and family take off go home, I got to thinking it really would be nice what Jim said. Would I have the chance now to say no loft versus no garage. There would not be a loft there. Guarantee you that. Done deal, did I shoot myself in the foot, I had help loading the gun, the way I feel about it. I wish I hadn't put the loft on, don't think we would have been here because you yourself remember from the minutes of the first meeting that if it were a garage it would be okay. Buesing said had a chance to deal with it, dealt with it maybe not the same as hoped but could have lived with garage. I think John and I got comfortable talking about it so many times that we forgot what we needed to do. Point moving garage and siting that. Generate more income through taxes and I won't have to spend a ton of money on another garage for watercraft, 4-wheelers or whatever. Lulled myself to sleep and shot myself in the foot, felt had help loading the gun. Don't want to be punished 100% if I don't have to be. Nelson – who is Jim Seihl? Hansen - DNR representative at that point. Youngsma here now, don't know when they changed jobs. Jim is a very reputable man. John can back me up as far as his conversations at lake. Biren – Jim and I met out there together. Zimmer – Lucas has his job now. Hansen – didn't go back to DNR because I was told what I could do and I didn't do anything different than he told me. Biren – conversations since brought to the board between Axel and I, we have had numerous conversations since this was brought to us last summer. Apparent to me that my definition of a remodel and what I was portraying to Axel and what was in mind were two different things. That is where things got off on the wrong foot. One thing that I said a couple different times I didn't document but you have to look a group of 5 people what I was meaning was this 5 people in the eye and say it was a remodel not a new building. That word grandfather I feel Axel took that to mean have a structure here not encroaching any further, I am using that grandfather as my way. Maybe adding more than Axel would say. That is the way I feel we got off on the wrong foot. I did hand Axel a copy of the ordinance and I won't do that again. Gave him a copy of the shoreland ordinance and there are components in the shoreland ordinance that if you read a statement on its own, gives you more glimmers of hope to do something like that until you read further on. That is something I would do different too. Read through it rather than just giving it to them. Getting myself off the hook. Hansen – John did you not tell me I could move the garage off and save garage? Biren – that was after it was done. Hansen – the day before, day we talked about the 2nd story. Biren – don't recall, very well could have, don't remember the content of that. Not going to deny that. Don't know what I was thinking at that time. Thooft – in your plan with loft, kitchenette or bathroom planned? Hansen – bathroom yes, you guys told me not to put the kitchen up there. Thooft – I don't know what the plans are. Hansen – developed for a place for my grandsons who are 10 year old twins and a 5 year old to stay at the lake with their parents and as time goes on I hope they bring their friends out there and stay instead of getting hooked up and going some place drinking where grandpa doesn't know what they are up to. I want them around as much as possible. We bought that for our family. If they have a place to go with grandpa and grandma looking over their shoulders they are going to be more apt to bring friends out there than stay at a place that they shouldn't be. I wanted a garage but people told me I could have more. Mrs. Hansen – you guys have been out there, you know what it like. There is a playset for kids. We have a pontoon to go fishing with our grandkids, it is a place for family. Not a place for something to have gone

wrong. Thooft – a bathroom and kitchen, if the plans are there, then we get into an issue of two residences on a small property. Ludeman - density issue. Thooft – something we kind of talked about at our other meeting. If okayed and variance granted that we could have a possibility of having two residences out there that would cause problems. Hansen – without putting a kitchen in, it is not a residence right? Board – right. Thooft – one or the other, right Tric? Zimmer – both. Don't know what discussion there has been with you about a trade off removing the trailer home that is out there if you want to further develop. Hansen – at this point I want a garage and trailer house. In the future to put a residence out there it would go back 150'. I don't want to commit to getting rid of my trailer house at this point. I'm 63 years old, I wouldn't have built a stairway to climb at 63 years old, I built that for young people. I did not build that for myself. I don't want to have my residence be something that I cannot get up to in 5-6-7 years. Not the smartest thing I have done. Here for suggestions. Ludeman – our challenge is to wrestle the law and regulations make sure we are complying as well as you can so treating people uniformly across the board. Go through Findings of Fact again. Biren – I did ask for reasons why that structure should be there or should not be there. I was out there Friday and we did a survey. I don't want to seem like I am a proponent of this but I think that would be a good piece of information to show. Hansen – don't think I have that piece of paper with me. Biren – on Friday I surveyed to show where this was built in reference to elevation of lake and rest of lot. Survey indicated that where this was built was definitely the highest part of lot, 3 1/2 feet higher or so. Hansen – I raised the question of where it should be, how much fill would have to come in. We were right on the water level, few inches below. (High water mark). Biren – built a new home 150' back, bottom floor needs to be 3 feet above OHWM. To do that have to put in a tremendous amount of fill in there. Ludeman – whole board has been out there. Questions or clarifications? Zimmer – couple of things. In gathering information for this, with this being the classification of lake that you are on. Concern is of course the runoff of structure to the lake and future impact that it might have. You indicated that you were planning on putting/adding some gutters and down spouts. Hansen – as long as the water doesn't touch anything could be piped right into lake. Ludeman – don't think so, taxpayers are spending million dollars on Lake Shetek State Park Campground to make water run away from the lake. Hansen – doesn't touch ground, piped. Ludeman – making sure all the water, stormwater from campers away. Existing that runs down to lake rerouting. Hansen – surface ground. Ludeman – Shetek don't think stormwater even off the roof. Zimmer – plans for adding trees, can you talk about that a little bit more? Hansen – evergreens back on the property line at the angle there facing garage to property line down to the water. Hide something in plain sight, if you have something that draws their attention. Right now in summer leaf those colors match the tree bark, have to look for it, need to know what you are looking for, not sticking out eye sore. Ludeman – integrity of shoreline, trees there now, those die what's going to happens roots hold that. Hansen – plant now, different diseases, multiple kinds fill gap. Biren – roof water what damage it is going to cause out there is going over the top of bank. Ideally adopt this can be as restrictive as you want, perfect world collect and use for garden. Rain barrel, rain garden for it go into. Hansen – put rural water out of business, go back to old cistern style. Biren – water you use out there, option. Vroman – Axel not really wanting to move trailer house. Offer variance/CUP one of the conditions, cannot have everything you have now plus leave trailer house. Hansen – 1975 trailer house, not going to last forever. Vroman – problem, they get run down, not taken care of. I don't like them. Ludeman – Axel preference to keep trailer and have garage. Trailer house grandfathered in. Hansen – at this point. 1975 trailer not going to last forever. Vroman – like building, doesn't meet all of the

exact requirements, home/house but potential to be that. Hansen – how much work can I do on that if you tell me that has to be my home? Vroman – permit to do that. Nassif – add onto it? Hansen – not going to make the top my home, make the bottom my home? Ludeman – more changing. Permit for new structure footprint per say garage, remodeled/fixed up. Have allowed fairly loose interpretation, almost strip it down to nothing and start over, as long as you stayed in the footprint, pretty close to what you did with small alterations. Old door handle qualifies. Hansen – don't know how far you go with that, hear some horror stories. Plywood from the walls in the ceiling and roof from the lean to, door reused, bits and pieces. Someone leave a corner post and building a mason. That is why I talked to John so much, whether John can admit it or not, he told me I could move the garage. That is when I said this is wonderful. Get all this other stuff by saving that garage, don't need a watercraft shed, don't need a storage shed. I don't need a lot of things, save some money. Build this building, guest house came into play after you hear what you can do, you don't know what you can do legally and I did not research that further as far as guest house, I have enough square footage and shoreline for that. Less than 15' but unfortunately it sets on top of a 9.5' wall. Biren – comes down to new structures over 400 square feet, need to be 150' back. Here for the variance today. Saying that this is a new structure. Arguments both ways. Action of this board saying that this is a new structure. Acting on a variance from that lake shore. If Axel wanted to make that a living quarters, we could not do that if this variance is not granted. If he did do that, out of compliance, two densities, some enforcement on that trailer out of there either or. Hansen – build garage inside building now okay? Biren – rip siding off, strengthen, same structure, 2x4 walls, reroof. Build it inside, partition up inside and put bedrooms or whatever you wanted to, not both kitchen and bathroom. Asking if tore the roof off and set a structure inside then tore the wall off, new structure. Hansen – spent one hour in your office, we went over this big time. I am the lay person; you deal with this every day. Maybe if I am real lucky deal with this twice in my life time out there. I feel that there should have been some things that Axel you have to do this, you have to do that. Need to apply for whatever in your office. I did some things wrong, looking for salvation not condemnation when I spent so much time working on this with the DNR and Zoning Administrator. Zimmer – information with survey, saying that it would be very difficult to move a structure back? Biren – argument I thought Axel would make would be that would be the best place to build a structure, highest point on property. Zimmer – current location of the structure is the best place on this piece of property. Biren – argument I would have made with that survey. Definitely on the highest part of that property. Want view, stronger foundation that kind of stuff, arguments for that. Not trying to make Axel's argument for him. Vroman – not remodel, all new, old garage on trailer. Hansen – remodel, no more, John said continue to remodel, new building with old materials from lean to. Argue point through all conversations I know now, when talking building more than site. Nassif – both, confusion here, build/remodel, get building permit, may need variance. Hansen – where do I need to get that? Where was I? Vroman – permit or variance? Hansen – I talked to him about what I needed to do, I don't want to lay blame anywhere but I don't want to take all the blame. John has admitted that we had 20 visits, something we overlooked. When it starts out a remodel I didn't know needed a building permit. Nassif – one reason to get one even if, then you know you are going to be in compliance, inspect it and make sure. Inspect construction make sure it is alright. That is what a building permit is good for. Good for us and good for you. Hansen – I understand that now. Nassif – this is a real problem. You are not going to be happy no matter what we decide. I can tell you right now legally you cannot have both structures on that property. Don't know what we are going to do. Make you move garage or get rid of the trailer, I

don't know. Give you a choice maybe. I have put in many hours of looking, I have been out to your place a couple of times. It is beautiful. I see your argument that can hardly see it through the trees, I believe that you did a good job on the colors. It is just so far out of compliance with ordinance we have to do something. Variance we are pretty easy to work with if you have an issue on your property. Try to work with people so everyone comes out ahead. Didn't happen. What ever reasons, doesn't matter. Like you said hindsight 20/20. What in the heck are we going to do with this? Buesing – one possibility, new structure strictly storage building, never be a bathroom put upstairs, bottom garage, use upstairs for storage and call it storage. Zimmer – options are: deny variance, take enforcement action or grant variance and include stipulations. Stipulations could be what you do whether you grant or deny the variance, need to have reasons and justified. If you decide to grant the variance with the stipulations reasons rationally related to the ordinance or it could be the concerns brought up by the DNR with regard to runoff. You could require that Mr. Hanson takes steps to control the runoff from the new structure or if the mobile home plus the new structure is the issue, you need to address that whether you are going to ask him to move the mobile home or if you want to limit future development of that new structure. I see that as an option too. Biren – the issue with the mobile home to me when looking at the shoreland protection is impervious surface. Things that water cannot drain through (roof, concrete) what looking at when you have square foot of garage, mobile home. Taking one of them out of there, lot less area that is not impervious to me more the reason rather than the density issue. Hansen – same impervious amount before we built the building. Biren – right, that would be your argument. I understand that argument. Zimmer – my long answer to your question is a yes – short answer to your question. Ludeman – Board review Findings of Fact.

1. Is the request a substantial variation from the intent of the zoning ordinance?

Vroman – 20' compared to 150' substantial. Consider on high bluff, does not bother like the development on the other side of lake, land slopes towards lake. No. Nassif – substantial 130', 90% of setback, best site on property to build. No. Thooft – prior meeting, intent of ordinance is health, safety, welfare. This building basically the same roof line. If variance is granted we can put eve spouts make sure the water does not go this one where we could not have done that on the other one. Protect the water better control having more control, how the water is taken care of. Trees have to be there for erosion. Better place to build on. No. Benefit to control pollution. Buesing – no.

Yes _____ No X

Why or why not? Better run-off control, natural building area on this site for a structure.

2. Will the request have an adverse effect on government services? Ludeman – same as last time.

Yes _____ No X

Why or why not? Government services are in existence. Not changing road or power.

3. Will the requested variance effect a substantial change in the character of the neighborhood or will it result in a substantial detriment to neighboring properties? Ludeman – same as last time.

Yes _____ No X

Why or why not? New structure looks better than the one it replaced.

4. Is there a feasible method to alleviate the practical difficulty without need of a variance?

(Economic considerations play a role in the analysis under this factor). Vroman – over \$15,000 to move. Nassif – penalty over and above damage done, don't know what you could do to eliminate need for variance. Nelson – Stadvold case money involved for moving, about the same? Zimmer – brand new structure, large lake home. Nelson – more involved.

Yes _____ No X

Why or why not? Economic consideration, cost of moving structure is significant. Land is lower on other areas of parcel.

5. Did the applicant create the need for the variance? Nelson – accept footprint former garage, didn't need variance. Ludeman – changed structure, just rebuilt garage answer no. Substantial difference, garage plus. Nassif – garage plus, 400' living space. Look down, no more square feet of land used. Vroman – after the fact create need. Hansen – what deems variance, change structure, legal to go up, not understanding what the variance is? Biren – saying this is a new structure, new structure should have been 150' back from the OHWM. Variance is putting that new structure closer. Hansen – why talking about 2nd story being part of variance then? Biren – gets fuzzy. Hansen – I don't know what this stuff means when you read it. New building, looking for a variance because changed building. Look down green, not color it was. Ludeman – more usable space. Hansen – usable space, same as use as before, less space, same footprint. Mrs. Hansen – we didn't want to do anything wrong. Hansen – top would not have been there if I had known create a monster. Nassif – don't question your sincerity or intentions. Hansen – John told us you can build whatever you want 150' back. Could have built a bunkhouse for summer use rather than 2x6 wall and \$30,000 building for someone to sleep in with air conditioner in the window. Could have built something cheaper and saved myself a nightmare, time and trouble. Terminology I don't understand. When two Senators and Law Professor say what they say about not being able to understand it, they are not lying, I guarantee that because I am walking in dark here. Zimmer – some times you are going to run into situations where you could answer yes or no and I think you are at a point that you could answer one or the other so you need to make a decision on that and make sure on whatever decision you make you are pointing to the factors of why you are choosing that. If you are going to decide no he didn't create need for the variance then you need to list it for the record why you are leaning that way. Is it because what Mike pointed out that the applicant believed in building in the same exact spot. Point to what about the situation is making you choose the yes or no. Nassif – before the fact, probably wouldn't have been granted. Vroman – look at this one individually. Hansen – same drift I got from Glen Peterson. Questioning variance, after the fact building permit, grandfathered site, gets to be a real jumbled up mess. Passed over whatever time frame, did not get a building permit but we weren't doing things wrong because we did things above what we could do below. Use it as a bedroom or toy shop. Nassif – no. One hand built it, other hand built it thinking he was doing right. Vroman – John told him many times he wasn't. Mrs. Hansen – John did you tell us, we weren't doing things right? Biren – the one thing that I said many times was draw it up on a piece of paper what you want to do. That never happened. One thing that I learned through this. That was a strong recommendation on my part. That is going to be mandatory from here on out. When you are dealing with something like this, draw it on a piece of paper before I say anything, I want to see it on a piece of paper. Are you building in the structure, is it a remodel, is it not, I need that drawn on a piece of paper so I can say yes or no. When you start talking over the course of 5 year, doing this or doing that. To me a loft is different than what was built out there. Loft thinking a place you crawl up, and over look something. Not thinking a structure on top. Nassif – Axel did not intend to violate law. John told him, but it didn't communicate, didn't go back, partly our fault. Not putting blame on anyone, don't really care at this point. Buesing – go back and look at ordinance this winter. Biren – this winter legislature is going to address this. Zimmer – refer to the Stadsvold case, another recent case came out, talked about in the article sited by Axel. Variances are a hot topic right now. Dealt with municipalities. Could

affect counties. There is confusion. Will probably be looking at some changes. Biren – variance aspect lakeshore. Ludeman - Nassif – no. Vroman - no. Buesing – no. Thooft – don't know. Nelson – defined as a garage with bunkhouse, CUP bunkhouse no facilities kitchen that would sell this. Vroman – what do with trailer house? Nelson – if this is a bunkhouse, replaced mobile home built 150' back. Mrs. Hansen – have nice place along Hwy 23, not moving permanently to lake. Nelson – as far as damaging lake with high bank there, place to put it. Ludeman – no, with stipulations, majority.

Yes _____ No X

Explain. Best of intentions. Miscommunication between applicant and zoning administrator as what applicant needed to do.

6. In light of all of the above factors, would denying a variance serve the interests of justice?

Yes _____ No X

Why or why not? Not intentionally circumvent law, communication issue. Current structure does not meet the definition of a dwelling unit.

Ludeman – want to add some stipulations. Hansen – variance granted? Ludeman – all answered no, will be making a motion with some stipulations. Biren – suggest we work on stipulations before we make a motion. Ludeman – look at possible stipulations. Biren - #1. Get a 90 mile hour wind and ice blows up and wrecks it, going back 150' from OHWM. If the shoreline erodes and it all falls in, not going to say the county gave us a permit, it is our fault. Yours to deal with, what it is saying. 2. July 1, 2011, arbitrary date. Oakland – just for mobile home? Ludeman – will look at later. Ludeman - 3. Willing to pay for meeting today. Thooft – paid today. Ritter – #2, why after the fact for the septic system? Biren – because the system we have in there now when you have a property transfer should be inspected at that time. This one wasn't because at that time we were talking possibly a new structure out there. I give that leeway often, maybe I shouldn't, going to build a new one foolish to put something in that you are going to replace right away. Why I did it that way. This has gone on long enough need to get a new system in there. Should have been done. Why doing it that way. Ritter – don't agree charging after the fact fee. What is the normal fee? Biren - Holding tank \$100, complete system \$200. Depends what we are going to put in there, don't know yet. Either \$200 or \$400 the way this is written. Hansen – from date of purchase, determined if there is water or not in the new building? Something at purchase date that should have been said. You have to have that done by certain date. Ludeman – 6 months or so after purchased. Nassif – John was giving you time to make plans, not saying you don't have to have it. Ritter - justified doubled? Biren – board decision. Ludeman – board's view? Vroman – should be in there. Ludeman – agree. 4 years owned property, buyers responsibility septic brought up to code. Nassif – agree. Ludeman – Look at both 4&5. What you intend to do with this new structure? Stay as sleeping quarters density issue no problem. Biren – page 11 of definitions. Biren – both bathroom and complete kitchen, dwelling. Make meal, wash dishes, eat it there. Mrs. Hansen – if you have kids up there, going to eat up there, complete kitchen? Biren – bring a hotdog and hamburger up there and eat up there, I don't care about that. Microwave to make popcorn not a complete kitchen. Mrs. Hansen – just want to clarify. Ludeman - sink, refrigerator, stove created a kitchen. Zimmer – complete kitchen going to have an oven/stove, sink, everything. Just microwave and small dorm fridge that doesn't sound like to me a complete kitchen. Thooft – specific for them and us for clarification. Ludeman – really wrestling with is #5 don't want this to become another residence in addition to mobile home. Then have a density issue. Can create that and have two but then you need to

secure a density from someone else within the section. Buesing – what if he puts wheels on the mobile home and puts it in the garage? Board – won't fit. Vroman – still acceptable to have mobile home. Thooft – density only come up if it is living quarters. Biren – correct, if it is a dwelling. Reason why I mentioned trailer house to Axel wasn't the density came up at one of our meetings, the real reason I was looking at it was run off from the two buildings. Impervious surface issue rather than the dwelling. Protection of lake. Hansen – as long as you don't exceed 25% impervious area, still okay on bluff. 40,000 square feet, not close. Biren – on the other hand, that was intended to be the larger structure, 150' back. Making argument for lake. Ludeman – take out density language and don't say anything about moving mobile home. Hansen – I prefer that and if we ever do anything else back 150'. Ludeman – remove mobile home and want to put another then back 150'. Oakland – need to decide is it going to be a residence? Hansen – if I can get a double density then sure. Oakland – that you are not going to know until another meeting, not decided today. Biren – just don't put the refrigerator, stove and make it kitchen first then you would. If you come to us and ask us before you do it, no. If you do it after you put whole kitchen facilities in, then after the fact. Vroman – 6. addresses that well. Biren – I am not going to be out there checking to see if there is kitchen facilities in there, that is put on the homeowner. Hansen – patio door, not hard to do, run up and down the stairs and check. Ludeman – 4., 5. and 6. Nassif – take #5 out. Hansen – what if I apply right now? Nassif – not going to talk about it today. Vroman – do that on the right time line no additional fees, come before this board at our monthly meeting. Nassif - # 5 or rewritten, if garage structure becomes living quarters (full kitchen facilities i.e., stove, refrigerator, sink, countertop/cupboards and full bathroom facilities then defined as a residence), has those, then have a density problem. Understand what we are saying. No questions arise. Vroman – must remove mobile home from property if structure becomes a dwelling unit. Zimmer – if I am hearing you correct, what you are saying is you are not going to require the mobile home to be removed at this time because the structure as is right now does not meet the definition of dwelling unit, what you are saying? Nassif – yes, if it does, mobile home goes. Zimmer – I don't know how we can possibly address that right now. If this structure is going to become a dwelling unit, that needs to be dealt with before that happens. If the Hansen's decide that they would like for this new structure to become a dwelling unit, you need to come in and meet with John first because you are going to need to decide are you doing to do a density transfer or are you going to remove the mobile home, some questions that need to be answered because you cannot have both. Hansen – dwelling meaning full kitchen and bathroom. Zimmer – permanently installed individual bathrooms and complete kitchen facilities. Nassif – remove wording must remove mobile home from property. Zimmer – I don't think density is an issue right now. Nassif – but if it is. Zimmer – they are going to have to come in. I don't know how we can possibly address density in this right now. Ludeman – say something more general. Substantial changes i.e. bathroom/kitchen added to this non-conforming structure, must be approved, in a separate permit. Can have one or the other okay. Ludeman – back up to #4. Must obtain an after the fact building permit for this structure. Make #6, #5. Must obtain written approval from Zoning Administrator prior to any building of structures or alterations to structures on this tract of land. 6. If intend to make structure a residence (dwelling unit), then we need to deal with density issue. Biren – for discussion here, cannot speak for future boards, this variance for this density is going to be a tough issue, not a 5 acres lot to begin with, not 1/80, if you would subdivide this, not 2 lots that meet the shoreline definitions of 80,000 square feet. To get a second density going to be an uphill battle. Hansen – looking at it as a guest house? Oakland – distance from lake? Hansen – or through summer leaf

vegetation doesn't say and, says or. Another place may want to look at. Doorway is open a little bit there. I do have the square footage and shoreline. Tough call, not black and white cannot do it. Biren – easiest way for you to get density would be to buy property from Greg Taveirne and get the density from him. Easiest way for you. Hansen – need to address the density issue in this at all? Nassif – I think it is addressed well by what we are now calling #5. Not meeting density, not going to get building permit. Buesing – 5 years down road, build onto this structure? Has to come back in. Biren – decision of future board at that time. I would not give him a permit for that, variance. Permit if only variance is granted. Nassif – density issue is covered by having written approval, making him aware, variance for any addition, make it a dwelling unit, mobile home has to go more than likely, unless buy density or meet requirements. Ludeman - #4, strike 5 and make 6, 5. Nothing on density. Oakland – do you want to put something that this building is not a permanent residence. Ludeman – make new 6, so clear. Biren – or make statement one building eligibility with this property. Zimmer – what the chairman has previously said for #6 if applicant wants to make the structure a dwelling unit, must meet with Zoning Administrator prior to beginning any work and obtain necessary permit. Nassif – number 5 now. That covers it. Zimmer – makes it a dwelling unit if adding bathroom plus full kitchen unit. Hansen – make it clear now, putting in bathroom, no kitchen. Zimmer – stating his intent to have a bathroom but not a full complete kitchen facility. Add it to the findings. Current structure does not meet the definition of a dwelling unit. Nassif - the current structure is not a dwelling unit. Thooft – add to stipulation also. A lot of communication issues in this whole thing, spelled out. Zimmer – add to #6. The current structure is not a dwelling unit. Mrs. Hansen – have to get okay to say it is a bathroom? Buesing – septic system. Hansen – right. Biren – on building permit I am going to require that you draw footprint of what is going to be inside, staple to building permit. Zimmer – just so everyone is clear, because of the miscommunication issues does this board want then any time they make an alteration to come in and John will look at their written plan and say yes this is a permanently installed bathroom it is not a kitchen facility, okay, go ahead because that is allowed in the ordinance without further need for a variance. Is that what the board wants? Ludeman – I think that we do because it is a non-conforming structure. Mrs. Hansen – have to come in and ask for a bathroom? Zimmer – show John what the plan is so that he can look at it. Still within the ordinance without need for further variance. Mrs. Hansen – just clarifying bathroom issue. Nassif – read #5. Everyone is clear. Ludeman - 7. intend to plant trees, vegetation, will do that. Nassif – as stipulated by DNR. Thooft – plant trees that close DNR thing? Biren – no, no permits required, a plus. Not listing specific kind of trees. Ludeman #8. downspouts run away from the lake. Nassif – put gutters on trailer? Mrs. Hansen – there are gutters on the trailer. Nassif – run away from lake or towards lake? Hansen – uphill to lake, cannot get to lake. Ludeman – 9. okay. Vroman – well covered, fair though. 10. Zoning Administrator to review in a year with this board to see if meeting requirements.

____ Nassif _____ moved, seconded by _____ Vroman _____ to grant an after the fact variance request to Axel Hansen for a new non-conforming structure (garage with living quarters) which replaced a previously existing non-conforming structure (garage). Structure was built approximately twenty feet (20') from the OHWM. This is a one hundred thirty foot (130') variance. Property is a tract of land located in Government Lot One, Section Six, Rock Lake Township. With the following stipulations:

1. That if any of the work performed as allowed by the granting of this variance is ever impacted or if required to be moved or relocated the cost of such impact shall be borne by applicant. Lyon County is not responsible for structural integrity.
2. Property must be serviced by a complying septic system by September 1, 2011. Septic system to be installed by an approved contractor and inspected by Lyon County. An after the fact permit fee to be charged for this permit.
3. Applicant to pay Lyon County \$500.00 for continuing the November 9th regular meeting.
4. Must obtain an after the fact building permit for this structure.
5. Must obtain written approval from Zoning Administrator prior to any building of structures or alterations to structures on this tract of land. Current structure is not a dwelling unit as defined in the Lyon County Zoning Ordinance.
6. Minimize structure view from lake, i.e. plant trees for screening and plant vegetation.
7. Minimize structure runoff, downspouts that run away from lake.
8. Adopt Findings of Fact as part of Motion.
9. A copy of this Motion shall be filed with the County Recorder's Office along with the legal description of the affected properties. Additional fees to be paid by the applicant for the actual costs incurred by the county for the recording fees.
10. Zoning Administrator to review this with the Board of Adjustments in one year to see if applicant is meeting requirements.

VOTING FOR: Nassif, Vroman, Thooft, Buesing, Ludeman

OPPOSED: None

ABSTAINED: None

ABSENT: None

Meeting adjourned.

Respectfully submitted,

Sandy Ludeman, Chairman
Planning Commission/Board of Adjustments

Carol Oakland, Secretary
Planning Commission/Board of Adjustments