

Vilas County Board of Adjustment  
Natural Lakes Owners Advancement  
Association Administrative Appeal  
Hearing Minutes  
June 12, 2008  
Presque Isle Community Center



Members Present:

Gyln Roberts – Chairman  
Donald Huntley – Vice Chair  
Richard Peterson  
Joy Hanser  
Martin Ketterer

Others Present:

Martha Milanowski  
Mary Greenman  
Tammy Baughman  
James Janet

Bob Ford

Dick Fields  
John Summerkamp

Andy Lynch

Roger Martin

Sue Minnis  
Bob Brekhus  
Millie Brekhus  
Dr. W.L. Potucek

Diana L. Potucek

Jay Schmidt

Vilas County Corporation Counsel  
Vilas County Assistant Zoning Administrator  
Board of Adjustment Secretary  
Vilas County Deputy Zoning Administrator  
330 Court St. Eagle River, WI 54521  
9430 Bobcat Rd  
Presque Isle, WI 54557  
Presque Isle, WI 54557  
9608 Mallard Landing  
Presque Isle, WI 54557  
9348 Blue Heron Rd.  
Presque Isle, WI 54557  
9339 Blad Eagle Rd.  
Presque Isle, WI 54557  
Presque Isle, WI 54557  
Presque Isle, WI 54557  
Presque Isle, WI 54557  
7322 Bear Trail  
Presque Isle, WI 54557  
7322 Bear Trail  
Presque Isle, WI 54557  
1409 W. Wausau Ave.  
Wausau, WI 54401

Mr. Roberts, Chairman, calls the Vilas County Board of Adjustment (The Board) to order at 9:30 am. For the record, this meeting has duly been called to order in accordance with the Wisconsin Open Meeting Law.

Mr. Roberts explains that the Board is in session to hear and render a decision on an Administrative Appeal of the Vilas County Deputy Zoning Administrator's interpretation of the Vilas County General Zoning Ordinance (The Ordinance). He also explains that, as Administrative Appeals are rare, Vilas County Corporation Counsel Martha Milanowski will guide the proceedings.

Ms. Milanowski explains that she will not be making any decisions and will only be making sure that the Board makes their decisions within the requirements of the law. She then goes on to state that in this case, the reasonableness of the Vilas County Zoning Department's (Zoning Office) order is being challenged, and in exercising their authority today the Board is not authorized to release the applicant from or modify the terms of the Ordinance, but merely needs to determine if the interpretation of the Zoning Office is in line with the Ordinance itself.

Ms. Milanowski explains the interpretation that is at issue. The Zoning Permit Application in question was to install a gate next to Morton Lake and was denied per Vilas County General Ordinance Article 5.12B(1):

**Article 5.12B(1) No fences are permitted between 0 and 35 feet from the shoreline.**

and Vilas County General Ordinance 11, which in part defines a fence:

**Article 11: Fence: Structure or barrier making a boundary constructed of link or woven wire, post, wood, plastic, fiberglass, concrete products and commonly accepted practices within the community.**

Ms. Milanowski then explains that this means that the Zoning Office felt that the gate met the definition of a fence as it would form a barrier when closed. This is from the letter of denial from the Zoning Office. She then states that this hearing is being held because the Natural Lakes Owners Advancement Association (NLOAA) takes issue with the interpretation.

Ms. Milanowski then explains that the first job of the Board is to determine if the language of the Ordinance is ambiguous. If the Ordinance is not clear then The Board needs to take evidence beyond the Ordinance itself and go into the intent of the Ordinance.

Ms. Milanowski then explains that the Board is not a court of law and that if there is a disagreement with the Board's decision then an appeal may be filed with the Circuit Court within 30 days of the decision's filing.

Ms. Milanowski answers questions pertaining to the process of appeal.

Mr. Huntley reads the Public Notice.

Mr. Huntley swear in Mr. Bob Ford, Natural Lakes member, of Presque Isle, WI.

Mr. Ford related that the NLOAA has formed a committee to deal with Aquatic Invasive Species (AIS) which followed several steps to help stop the spread of invasive species

within the Natural Lakes Private Preserve (Natural Lakes). He states that the methods in use were not working so the committee looked to gates as a way to help stop the spread of the invasive species to the lakes within the preserve. He explains that the NLOAA Board and members gave unanimous consent to erect the gates. He states that the committee did not realize that permits were needed because they were on private property. He admits that this thinking was in error. He explains that once discovering that permits were required the gates were removed and permits applied for; this is when his permit was denied.

Mr. Ford goes on to state that the major argument of the NLOAA is that a gate is not a fence. He also notes that the idea of the gate at the boat launch is in line with the idea of the Ordinance because both aim to protect the environment and the lakes in particular. He states that Webster's Dictionary defines a gate as being attached to a fence, and as such the structure that was erected does not even constitute a gate. He notes that the gate does not hinder personal access to the lake; it only prevents non-Natural Lakes members from accessing the lake with trailered boats. He states that nowhere in the Ordinance is a gate defined. He asks Ms. Milanowski what is meant by "Policy History" on the Board's Administrative Appeal form.

Ms. Milanowski responds that that speaks to what policies were behind the language of the Ordinance; that it speaks to intent.

Mr. Ford states that he feels that if boathouses are allowed on the shoreline that these gates should be allowed on the shoreline as well. He states that he feels NLOAA has a strong argument for each of the three public hearing decision criteria. He states that due to the fact that these lakes are on private property the responsibility of controlling invasive species is solely on the landowners, and that no state or Wisconsin Department of Natural Resources (DNR) funding will be available to help alleviate costs. He also states that these gates will not restrict access on foot to lakes and would only be utilized from May to October. He also states that moving the gate back 35 ft. is impossible because it would restrict vehicle turnaround, create access problems for private residential driveways, and hinder emergency services.

Mr. Ketterer asks if Mr. Ford is saying that as gate is not a barrier.

Mr. Ford responds that the gate can be opened for residents but does not bar access to the lake except for trespassers who attempt to use trailered boats.

Mr. Ketterer asks if trespassing is a problem.

The public in attendance states that it is.

Mr. Ketterer asks about the reasons why the gate cannot be moved beyond 35 ft..

A large map of the Natural Lakes Private Preserve is entered as Exhibit 1.

Mr. Ford shows the Board on the map how moving the gates back to the 35 ft. mark would hinder private driveway access.

Ms. Milanowski reminds the Board that they are only to decide whether or not the Ordinance is clear or unclear. She advises them to refrain from attempting to find other options as this is not a variance hearing.

Mr. Huntley swears in Mr. John Summerkamp, NLOAA Agent, of Presque Isle, WI.

Mr. Summerkamp states that while the proposed gate can be defined as a structure, it does not meet the definition of a gate or a fence. He notes that boathouses, piers, etc. are covered under a separate section of the ordinance and are generally allowed, while their gates take up far less space, as they are a single pipe similar in style to what the DNR uses to control vehicular traffic. He states that their intent is to protect the lakes and that the gate is not creating a barrier to those people who have the right to use the lakes in question. He states that the public cannot be restricted from entering the preserve and as such anyone who goes beyond the guard shack can launch a boat on any of the landings. He explains that NLOAA members are issued keys for the gates so it does not pose a barrier to them; it is only a barrier to trespassers.

Ms. Hanser states that it is a vehicular barrier not a walking barrier.

Mr. Summerkamp states that is correct.

Ms. Milanowski asks if the gate to which he speaks is one of the gates that was erected and then removed.

Mr. Summerkamp answers yes.

Ms. Milanowski states that the appeal is only for the one gate at the one landing. She asks if the gates at the other landings will be able to comply with the Ordinance.

Mr. Summerkamp states that it is his understanding that the Board cannot make a decision on whether or not the gates can be used.

Ms. Milanowski responds that the Board cannot go beyond the Ordinance itself unless it is found to be ambiguous and then the Board may go into legislative intent.

Mr. Summerkamp states that Natural Lakes contains four similar landings at which similar gates would be erected. He states that NLOAA applied for a permit for one landing only because there is a fee of \$550 for each variance and they were told that they would have to go for a separate variance for each one. He states that they went for an administrative appeal for the definition of a gate so it would cover all four gates they intend to erect.

Mr. Summerkamp states that he lives next to Mallard Landing, and the year before the gates were erected he saw many cars at the landing without Natural Lakes stickers on their vehicles despite No Trespassing signs. He states that the year the gates were erected there was significant drop in vehicular traffic at the landing and boat traffic on the lake.

Mr. Huntley swears in Mr. Roger Martin, Natural Lakes member, of Presque Isle, WI.

Copies of newspaper articles detailing responses to and problems with AIS are entered as Exhibit 2.

Mr. Martin discusses some of the articles included in Exhibit 2 and discusses how people who don't have a vested interest in the health of the lakes in Natural Lakes are often the ones bringing in the invasive species. He states that the contour of the OHWM creates a situation where the gate cannot practically be moved beyond 35 ft.

Mr. Martin states that all Natural Lakes members, local fire departments, the DNR, and the Vilas County Sheriff were issued keys to the gates in question when they were erected and still retain possession of these keys.

Mr. Huntley asks how long the gates have been in place.

Mr. Martin states that they were erected in 2007 and were taken down at the end of the summer after a complaint was registered and they were informed that a permit was needed.

Mr. Huntley asks if the gates are keyed so that one key fits each gate.

Mr. Martin responds that is correct and that the keys cannot be duplicated except by the company that created them with NLOAA Board approval.

Mr. Ketterer states that the DNR or Vilas County will not close access to any public landing because of AIS.

Mr. Martin responds that the NLOAA is not a lake association which has public access to their lake; it is a private association that controls access to their lakes.

Ms. Hanser states that the problem is that when the Ordinance was written there were no issues with AIS and so the Ordinance does not take that into consideration. She states that by allowing a gate within 35 ft. of the OHWM on Natural Lakes private property the Board is actually saying that it is okay to put a gate within the 35 ft. setback anyplace on any lake because the Board is making a decision for Vilas County, not just the property in question.

Mr. Martin asks if that pertains to private land as well.

Ms. Hanser responds that it is for all areas within 35 ft.. of a lake within the county.

Ms. Milanowski responds that the Ordinance applies to all property within Vilas County.

Ms. Hanser reiterates that the decisions made today set a precedent for all area within 35 ft. of the OHWM and that the Board cannot make a specific exemption as this is an Administrative Appeal. She states that all the Board can do is interpret the Ordinance as it was written.

Mr. Ford reiterates the arguments by NLOAA that the gate is not a barrier.

Ms. Hanser responds that NLOAA is referring to use of the gate whereas the Board is referring to the structure itself. She states that as a Board they must make a decision that is a countywide decision and that if they say that NLOAA can put up a gate then they are saying that anyone in the county can put up a gate within 35 ft. of OHWM and that the debate has nothing to do with private vs. public property.

Ms. Milanowski states that Mr. Ford is correct and the Board must decide if the gate is a fence or a barrier but that testimony must finish being taken first.

Mr. Huntley swears in Mr. Andy Lynch, Natural Lakes member, Presque Isle, WI.

Mr. Lynch states that he feels there is ambiguity in the Ordinance as there is no specific definition of a gate. He reiterates that Webster's Dictionary says that if one does not have a fence one cannot have a gate. He states that history must be taken into account when looking into the intent of the Ordinance, which was to protect water and wildlife quality, and that there is nothing in law that would prohibit steps to protect lakes. He states that the state allows many more intrusive things within the 35 ft. area around lakes.

Paper circles representing the size of the gate posts are entered as Exhibit 3.

Mr. Lynch explains that two posts of the size shown in Exhibit 3 are the size of the impact that the gate in question would have on the lakefront. He states that he does not feel that the case at hand has impacts countywide; that the Board's bylaws require each case to be decided upon its own merits. He states that he feels this case is unique because it is involving a private association looking at the impacts on particular boat landings and that he is not certain a decision made pertaining to their land would be applicable countywide.

Mr. Peterson swears in Dr. W.L. Potucek, Natural Lakes member, of Presque Isle, WI.

Dr. Potucek states that many of the points he would like to discuss have already been addressed. He notes that NLOAA is the largest homeowners association in the state and attempts to control access to Natural Lakes but it is impossible. He states that the state does not control invasive species in lakes and waterways and that grant money is running out for invasive species control. He states that this is much of the driving force behind the desire to erect this gate.

Mr. Peterson asks why a gate is not erected on the road entering Natural Lakes.

Dr. Potucek responds that Frontier Lakes uses the same road to access their property.

Mr. Peterson asks if they have the same problem.

Dr. Potucek answers that they have a gate at the entrance to their private lands three miles north of the entrance to Natural Lakes and have an easement to travel across Natural Lakes. He states that NLOAA would move their gate back to 35 ft.. if the terrain and land around the landing allowed.

Mr. Peterson asks if people who trespass at Natural Lakes can be fined for trespassing.

Dr. Potucek states that they can be fined but must be caught first.

Mr. Huntley swears in Ms. Sue Minnis, Natural Lakes member, Presque Isle, WI.

Ms. Minnis states that Natural Lakes consists of 3600 acres which makes tracking trespassers very difficult.

Correspondence consists of a letter from Tom Blake of the DNR. Mr. Huntley reads this letter.

The letter from Mr. Blake stating the position of the DNR is entered as Exhibit 4.

Mr. Huntley swears in Mr. Jim Janet, Vilas County Deputy Zoning Administrator, of Eagle River, WI.

Mr. Janet states that the issue of the need for a fence or a gate at the landing in question is not the issue before the Board. He states that the issue is his interpretation of the Ordinance and its pertinence to the gate that NLOAA intends to erect. He states that the true definition of a barrier is anything that bars passage; when the gate is in its closed position it is a barrier. He notes that the hearing today is not a variance so any hardships mentioned are not relevant. Mr. Janet states that a fence is defined in the Ordinance as a structure or a barrier and the Zoning Office is bound by the Ordinance. He states that while the structure in question is being called a gate, a gate is an opening in a fence and perhaps the gate is part of a very short fence. He states that when in its closed and locked position, the gate is a barrier and the intent behind it is to bar passage for boat trailers and it thus meets the county's definition of a fence.

Mr. Roberts states that the words barrier, fence, and gate as defined by Webster's New World Dictionary and Readers Digest Dictionary have interchangeable definitions.

Copies of the definition of a barrier, fence, and gate from Webster's New World Dictionary and the Readers Digest Dictionary are entered as Exhibit 5.

Mr. Roberts reads from Exhibit 5.

Mr. Huntley swears in Ms. Dawn Schmidt, Vilas County Zoning Administrator, of Crandon, WI.

Ms. Schmidt states that NLOAA failed to consider aesthetics when erecting their gates. She states that gates near the water are not aesthetically pleasing and that aesthetics as well as impact are an important part of the Ordinance

Mr. Summerkamp asks how a boathouse is considered more aesthetically pleasing than a gate when placed on the edge of a lake.

Ms. Schmidt responds that state statute NR 115 does allow for boathouses and that she did not write the Ordinance and so cannot speak for that. She also reiterates that the hearing is for an administrative appeal and not a variance.

Ms. Milanowski again describes the process of deliberation for an administrative appeal.

Mr. Huntley swears in Ms. Mary Greenman, Vilas County Assistant Zoning Administrator, of Clearwater Lake, WI.

Ms. Greenman states that the purpose of the hearing is to hear an administrative appeal on an interpretation of the Ordinance by the Zoning Office. She notes the definition of an administrative appeal and notes the procedures for decision. She also states that the applicant has the burden of proof as to whether the decision was incorrect or not.

Mr. Huntley swears in Mr. Jay Schmidt, Natural Lakes member, of Wausau, WI.

Mr. Schmidt states that he believes NLOAA does not have a consensus as to whether or not these gates are wanted. He states that he has run into many Natural Lakes members who do not feel that gates are a good idea. He states that they are barriers to his enjoyment of the water and that he feels that owners on the water are trying to eliminate off-water landowners from using the lakes.

Ms. Hanser asks if Mr. Schmidt has a key for the gates.

Mr. Schmidt answers that he does have a key but every time he wants to use the lake he has to contend with these gates. He also states that the gates are still in place and are only removed when it is convenient for the landowners on the water. He reiterates that he does not feel the NLOAA has a consensus and that he does not feel the gates are effective at stopping the spread of AIS. He states that a gate can be erected at the entrance to Natural Lakes so everyone has the inconvenience of dealing with it.

Mr. Martin states that the association has over 300 members, and that over 30% attended the meeting at which the gates were discussed and voted on, with 100% approval from the NLOAA board and the members attending.

Mr. Schmidt notes that not everyone is able to attend NLOAA meeting because of various reasons and that something of this importance should be put on a general vote by the membership.

Ms. Milanowski recommends that the Board close the public discussion and presentation of evidence.

Mr. Martin notes that a survey was circulated after the removal of the gates and found 85% support for the gates.

Mr. Lynch comments on Exhibit 4.

Mr. Roberts closes public discussion and the presentation of evidence.

Ms. Hanser states that this is an administrative appeal so the Board's decision must be based on whether they feel that the Ordinance was interpreted properly and whether or not the Ordinance is ambiguous. She states that she feels if the Ordinance is not ambiguous then the Deputy Zoning Administrator did his job in denying the permit. She also states that if the applicants really want these gates they should be going for a variance and not an administrative appeal. She opines that as a Board a recommendation to the Vilas County Zoning Board could be made to start considering issues such as the one before them. She states that the appeal should be denied because the Deputy Zoning Administrator did interpret the ordinance correctly.

Mr. Peterson states that he feels the gate is a structure and structures are not allowed within 35 ft. of the OHWM.

Mr. Huntley states that he feels that the Deputy Zoning Administrator was correct in calling the gate a barrier but that the Ordinance is ambiguous. He also states that he still feels that the appeal should be denied.

Mr. Peterson agrees.

Ms. Hanser states that many issues that will have to be dealt with in the future are still unknown. She states that, as a Board, it is their responsibility to direct these issues to the Zoning Committee to address them within the Ordinance.

Ms. Milanowski states that Mr. Huntley feels the Ordinance language is ambiguous and if that is the general consensus the Board must look into things further. She states that before a motion to grant or deny the appeal is made the Board needs to determine if the Ordinance language is ambiguous.

Mr. Roberts states that the Ordinance is explicit in defining a barrier.

Roll call on whether the Board thinks the Vilas County General Zoning Ordinance Article 5.12B (1) and Vilas County General Zoning Ordinance Article 11 are ambiguous.

Glyn Roberts – Nay  
Don Huntley – Aye  
Dick Peterson – Nay  
Joy Hanser – Nay  
Marty Ketterer – Nay

Vilas County Board of Adjustment finds Ordinance in question to not be ambiguous (4-1).

Mr. Roberts states that he feels it is important to notify the Zoning Office of the problems at hand.

Mr. Ketterer states that he feels this is an important situation. He states that he sees gates on other lands that create a barrier but he cannot make a decision based on his sympathies for AIS, he must make his decision based on the Ordinance as it is written and intended.

Ms. Hanser motions that Vilas County General Zoning Ordinance Article 5.12B(1) and Vilas County General Zoning Ordinance Article 11 pertaining to the definition of a fence are not ambiguous, are applicable to both public and private situations, and prohibit the gate in question, and as such the administrative appeal by the Natural Lakes Owners Advancement Association be denied . Mr. Peterson seconds.

Glyn Roberts – Aye  
Don Huntley – Aye  
Dick Peterson – Aye  
Joy Hanser – Aye  
Marty Ketterer – Aye

Motion passes (5-0). Appeal denied.

Ms. Hanser motions that the Vilas County Board of Adjustment recommend that the Vilas County Zoning and Planning Committee review their ordinance concerning gates within 35 ft. setback from OHWM. Mr. Peterson seconds.

Ms. Hanser states that she sees a place for gates in such a situation. She states that this has been an issue in the past, that AIS is a problem, and that the Ordinance needs to address this situation. She states that this is a recommendation for the Zoning Commission to look deeper into the issue.

Ms. Schmidt states that she does not feel that the committee can do anything more because the County cannot be less restrictive than NR 115, which states that no structures are allowed within 35 ft.. of OHWM. She states that the county cannot rewrite the Ordinance to allow gates such as this because the state statutes prohibit it.

Ms. Hanser states that a motion, while possibly not bearing fruits, would at least put the issue in front of those who are in charge of writing NR 115.

Roll call vote on motion before the Board.

Glyn Roberts – Aye

Don Huntley – Aye

Richard Peterson – Aye

Joy Hanser – Aye

Martin Ketterer – Aye

Motion passes (5-0).

Mr. Peterson motions to adjourn. Mr. Huntley seconds.

Glyn Roberts – Aye

Don Huntley – Aye

Richard Peterson – Aye

Joy Hanser – Aye

Martin Ketterer – Aye

Motion passes (5-0). Hearing adjourned at 11:15 am.