

Vilas County Board of Adjustment  
Natural Lakes Owners Advancement Association  
Bobcat Landing Rehearing Minutes  
September 24, 2009  
Presque Isle Community Center



**Members Present:**

Glyn Roberts – Chair  
Don Huntley – Vice-Chair  
Dick Peterson  
Joy Hanser  
Marty Ketterer

**Others Present:**

John Summerkamp Agent	9608 Mallard Landing PO Box 824 Boulder Jct, WI 54512
Tom Lawrence Attorney Natural Lakes Owners Advancement Association	8617 Hwy 51 Minocqua, WI 54548
James Nelson Assistant Fire Chief Presque Isle Fire Department	7077 CTH P Presque Isle, WI 54557
Bob Ford President Natural Lakes Owners Advancement Association	9430 Bobcat Landing 1941 Orth Dr. Wheaton, IL 60187
Roger Martin	9339 Bald Eagle PO Box 388 Boulder Jct, WI 54512
Chuck Terrile	9584 Red Fox Rd PO Box 168 Boulder Jct, WI 54512
Raymond Trottier	9538 Snowshoe Rd PO Box 655 Boulder Jct, WI 54512

Norman Petersen	9530 Snowshoe Rd. PO Box 376 Boulder Jct, WI 54512
Dr. William Potucek	7322 Bear Tr. PO Box 318 Boulder Jct, WI 54512
Diana Potucek	7322 Bear Tr. PO Box 318 Boulder Jct, WI 54512
Richard W. Fields	7234 Bear Tr. PO Box 256 Boulder Jct, WI 54512
David Foster	7274 Bear Tr. PO Box 349 Boulder Jct, WI 54512
Andy Lynch	9341 Blue Heron PO Box 911 Boulder Jct, WI 54512
Jeff Thiel	9440 Natural Springs Rd PO Box 482 Boulder Jct, WI 54512
Martha Milanowski Vilas County Corporation Counsel	330 Court St. Eagle River, WI 54521
Mary Greenman Vilas County Assistant Zoning Administrator	330 Court St. Eagle River, WI 54521
Jim Janet Vilas County Deputy Zoning Administrator	330 Court St. Eagle River, WI 54521
David Sadenwasser Board of Adjustment Secretary	330 Court St. Eagle River, WI 54521

Mr. Roberts calls the meeting to order at 10:07 a.m.

Mr. Roberts explains the reasons for holding this hearing.

Mr. Huntley reads the public notice.

Mr. Roberts explains that an onsite inspection has been held by the Vilas County Board of Adjustment (the Board) and explains the rules governing the meeting.

Mr. Huntley swears in Tom Lawrence, attorney for the Natural Lakes Owners Advancement Association (NLOAA), of Minocqua, WI.

Mr. Lawrence states that he will be appearing today on behalf of the NLOAA, and proceeds to state the case for the reconsideration of the denied variance, including the timeline of the determination of the Ordinary High Water Mark (OHWM) around Bobcat Landing (the Landing). He notes that new facts preclude the placement of a gate at the location discovered during the first variance hearing.

Mr. Lawrence states that there are many NLOAA members and a representative from the Presque Isle Fire Department (PIFD) present to testify regarding the reconsideration.

Mr. Lawrence enters Exhibit 2A, a color map showing the Natural Lakes Private Preserve (Natural Lakes) and the need for fire department access to water at the Landing.

Mr. Huntley swears in Mr. James Nelson, Assistant Chief, Presque Isle Fire Department, of Presque Isle, WI.

Mr. Lawrence asks Mr. Nelson to explain the intentions and position of the PIFD.

Mr. Nelson states that the PIFD has submitted an application for grant money to place a dry hydrant in the Natural Lakes area, and that at a joint meeting with the Boulder Junction Fire Department (BJFD) approximately one month ago it was decided that, due to water depth requirements and lift capability limitations, Bobcat Landing would be the best location for that dry hydrant, should the grant be awarded.

Mr. Nelson states that the PIFD feels that any gate limiting their access to the water is a problem. He notes that the ridge running along the OHWM would preclude them from reaching the water without opening the gate unless it is placed at the proposed location. He states that the PIFD would be in favor of locating the gate at the OHWM.

Ms. Hanser asks what a dry hydrant is.

Mr. Nelson explains the use and construction of a typical dry hydrant.

Mr. Ketterer asks what the fire department would do if they encountered a gate or cable across a private drive when responding to a fire.

Mr. Nelson responds that the fire department would do whatever was needed to open that gate.

Mr. Ketterer asks if the fire department carries equipment or tools for this on their trucks.

Mr. Nelson states that there are cable and bolt cutters on some trucks.

Mr. Ketterer asks if they would do the same if faced with a gate at the Landing.

Mr. Nelson states that is correct.

Mr. Lawrence asks Mr. Nelson if his response would be different if the fire department were just accessing water as opposed to accessing a fire.

Mr. Nelson states that the fire department would do whatever it needed to access water in the fastest way possible. He notes that any locked gate would cause a delay.

Mr. Ketterer asks if the PIFD would have a key for the proposed gate.

Mr. Nelson assumes so. He notes that there are other locations where a gate must be accessed and that in those instances it still causes a delay.

Ms. Hanser asks Mr. Nelson to opine how much of a delay opening a gate would cause.

Mr. Nelson states that generally the PIFD would send its tanker truck to get water, which is more likely not equipped with a bolt cutter. He notes that there are an infinite combination of vehicles and drivers and that the first vehicle and driver out may not have the means to open a gate.

Mr. Peterson asks if Mr. Nelson contends that a gate at the proposed location would not have to be opened for the fire department to access the water.

Mr. Nelson states that is correct.

Mr. Peterson states that there is also an appropriate turnaround for emergency vehicles at the proposed location.

Mr. Nelson agrees.

Mr. Huntley asks if all the PIFD vehicles would be able to turn around in the area near the OHWM at the Landing.

Mr. Nelson states that is correct.

Ms. Hanser asks how the PIFD accesses water in the winter.

Mr. Nelson states that in instances where there is no dry hydrant present, a hole is drilled in the ice and a portable pump is used to draw water.

Mr. Huntley swears in Robert Ford, NLOAA President, of Wheaton, IL.

Mr. Ford begins by stating that he has concerns regarding the safety of any gate placed on the curve in the roadway at the Landing, and that neither he nor the NLOAA Board can support any gate at that location because of safety and liability issues. He goes on to note that the area the Board identified as a possible turnaround near the curve is not large enough to easily accommodate vehicles with trailers.

Mr. Ford then asks that the proposed gate at the Landing be allowed to be closed for a longer period of time than the variances previously granted so that they cover the entire fishing season.

Mr. Lawrence asks Mr. Ford to describe his meeting with Vilas County Deputy Zoning Administrator Jim Janet at the Landing.

Mr. Ford states that the NLOAA asked Mr. Janet to visit the site and delineate where the proposed gate could be placed per the original variance hearing. He states that at the meeting it was determined that the Landing was a peninsula, and the NLOAA realized they could ask for a reconsideration of the denied variance request.

Mr. Lawrence asks if the NLOAA made a determination regarding putting a turnaround area in the permitted area following the meeting with Mr. Janet.

Mr. Ford states that while there is an existing turnaround area near the curve in the access road, any possible location of the proposed gate would make it very difficult for a vehicle to turn around in that location, and as the owner of the adjacent property he would expect to see a large number of vehicles turning around in his private driveway.

Mr. Ketterer asks if the property line lies approximately where the "Private Drive" sign is located at the Landing.

Mr. Ford discusses with the Board the features and location of the property line using Exhibit 2B.

Mr. Ford states that the driveway narrows at the property line and that the wide area where the vehicles were parked at the onsite inspection is NLOAA property.

Mr. Lawrence notes that the 35 foot setback is not shown on Exhibit 2B.

Mr. Huntley swears in Dr. William Potucek, NLOAA member, of Presque Isle, WI.

Dr. Potucek notes that if a gate were to be placed on or near the curve in the road a contractor would be needed to excavate and fill for a turnaround area, which would be costly.

Mr. Huntley explains that the Board cannot consider cost when deciding on a variance but notes that they have heard the monetary concerns of the NLOAA.

Exhibit 2C, a letter from Dan Houston, Aquatic Habitat Expert, Wisconsin Department of Natural Resources (DNR), regarding his determination of the OHWM at the Landing is entered and read into the record.

Exhibit 2D, a letter from Marcus Poplawski, NLOAA member, speaking against the variance is entered and read into the record.

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

Mr. Janet states that he has gone to the Landing twice since the original variance hearing: once with John Summerkamp, NLOAA Agent, and some of the NLOAA members, and once with Mr. Houston of the DNR. He explained that he determined the OHWM of Morton Lake then transferred that by elevation into the wetland area along the road. He states that he found surface water in the wetland area with no apparent "surface break" from the water in Morton Lake. He states that he set the OHWM in the wetland, marked it with flags, and measured from the flags to the edge of the chip-sealed road.

Mr. Janet states that after the meeting described above the Board asked the DNR to verify his findings, so he met with Mr. Houston several weeks later and went through the above events with him. He states that Mr. Houston understood the methods used by Mr. Janet, but that the "competent man test" needed to be done and so he could not determine the OHWM at that time. He states that Mr. Houston returned to the site at a later time and that the results of that visit are outlined in Exhibit 2C.

Mr. Roberts states that the reason he asked for the opinion of the DNR was in order to make sure that the methods and reasoning that Mr. Janet used were sound.

Ms. Hanser asks how long the beaver dam has been in place and if the DNR intends to remove it.

Mr. Janet responds that the dam has been in place for some time, and that in the past the lake levels had dropped when the dam was not maintained.

Mr. Janet goes on to state that on the straight stretch of road between the curve and the actual landing there is a place where a gate could be located to meet all applicable setbacks. He notes, however, that he would not be able to allow filling, grading, or dredging at that location to create a turnaround area.

Mr. Lawrence asks Mr. Janet if his meeting with the NLOAA representatives at the landing site came before the request for reconsideration of the variance.

Mr. Janet states that is correct.

Mr. Lawrence recaps with Mr. Janet the timeline of events and meetings concerning the reconsideration request and the determination of the OHWM.

Mr. Lawrence asks if it is the understanding of the NLOAA that Mr. Janet is now saying that there is no setback from the wetlands on the east side of the road.

Mr. Janet states that after conversing with his bosses the Vilas County Zoning and Planning Department (Zoning) is standing behind his determination of the OHWM.

Mr. Lawrence re-asks the position of Zoning regarding the lake bed determination on the east side of the road at the Landing.

Mr. Janet replies that Zoning considers the OHWM determination he made to be correct.

Mr. Janet reads from Vilas County Shoreland Zoning Ordinance (the Ordinance) Article III, Sec 3.3 (B) regarding the authority to determine the OHWM.

Mr. Peterson asks where the beaver dam is located.

Mr. Janet and Mr. Ford use Exhibit 2A to clarify the location of the beaver dam for the Board.

Mr. Ford states that Morton Lake dropped one to two feet for approximately five years when the beavers left. He states that the beavers returned about five years ago.

Mr. Peterson asks how the lowering of the lakes affected the contested wetland area.

Mr. Ford replies that the wetland area dried up.

The board discusses the history and future of the beaver dam with the NLOAA members.

Mr. Huntley swears in Mary Greenman, Vilas County Assistant Administrator, of Eagle River, WI.

Ms. Greenman recaps the events that have led to this hearing, and reiterates that the Vilas County Zoning Administrator or her designee has the ability to determine the OHWM, which the DNR accepted as part of the Ordinance when it was passed. She speaks to what the Board must consider in their deliberations and recaps some of the testimony already given.

Mr. Huntley swears in Jeff Thiel, NLOAA Member, of Presque Isle, WI.

Mr. Thiel states that there is a discrepancy regarding the "Private Drive" sign and its location relative to the property line. He then notes that Mr. Janet stated there is a location where a gate could be located beyond the 35 foot setback.

Vilas County Corporation Counsel Martha Milanowski enters Exhibit 2E, Field notes made by Mr. Janet when determining the OHWM at Bobcat Landing.

Mr. Janet uses Exhibit 2E to show the Board possible locations for a gate outside of the 35 foot setback.

Ms. Hanser asks if excavation would be required to place a gate at any of those locations..

Mr. Janet states that excavation would not be needed for a gate, but that there would be no space at that location for a turnaround area.

Mr. Peterson agrees.

Mr. Janet states that no filling of the wetland would be allowed to create an appropriately sized turnaround at that location.

Mr. Thiel states that if the gate were placed at the allowed location people with keys that are launching boats can open the gate, proceed through, and turn around in the existing area near the OHWM. He notes that people who do not have a key can back up and turn around near the corner of the road.

Ms. Hanser asks if Mr. Thiel is concerned with public safety regarding fire department access.

Mr. Thiel states that any gate causes a concern for the fire department.

Ms. Hanser asks if Mr. Thiel feels a gate at the proposed location near the water would be a problem if a dry hydrant were installed at the landing.

Mr. Thiel responds that dry hydrants often do not work. He states that he used to be on the BJFD and in Boulder Jct approximately 50% of their dry hydrants do not function properly.

Mr. Thiel then explains how the fire department draws water from the lake using their tanker trucks and how a gate at the OHWM would hinder that operation.

Mr. Ford responds that someone without a key cannot go through the gate, so there is an issue with backing up. He also states that the BJFD and PIFD both want a dry hydrant at that location.

Ms. Hanser and Mr. Roberts question Mr. Nelson on the construction of dry hydrants and experiences that the PIFD have had with them in the past.

Mr. Lawrence reviews the NLOAA position regarding each of the three steps in the three-step test: The unnecessary hardship is in the construction of the landing on a peninsula, the unique physical features preclude the location of a gate in a safe location, and that the public interest in question is the interest of the NLOAA and that 80% of their board supports the proposed gate.

Mr. Roberts closes the meeting to public comment.

Ms. Hanser states that she would like to begin by discussing public safety, specifically regarding fire and rescue. She notes that she is worried about general safety issues with citizens backing up, the location of the curve, and people blocking access to the private driveway when parking at the turnaround area at the curve in the road.

Mr. Huntley states that there is a very high possibility that people using the turnaround will just drive through the private pull-through drive.

Ms. Hanser agrees and states that the private property will likely be opened to inappropriate use if the variance is not granted.

Mr. Peterson states that he agrees and notes that a gate would be an improvement to the public interest by helping to curb possible Aquatic Invasive Species (AIS) infestation.

Mr. Roberts states that there is a very unique topography on the property that limits possible solutions. He notes that the lakes are public waters and that the Board is responsible for AIS issues, even though the access is a legal private access. He states that speed in accessing water is essential for the fire department. He opines that a gate located near the curve in the road would be impractical and that the proposed location allows the gate to work as well as it can.

Mr. Huntley state that he agrees with the other comments from the Board. He states that with the new information presented as a result of Mr. Janet determining the OHWM and the inability to create a turnaround area it makes him willing to grant this variance.

Mr. Ketterer states that he feels this situation is very similar to other situations where a private citizen erects a gate or chain across their driveway in order to keep out trespassers and that if gates are an impediment to fire departments they should not be allowed anywhere. He also notes that although there is no public access, these are still public waters and that many public waters in the state do not have protection for AIS.

Mr. Ketterer states that the difference between the DNR and Vilas County Zoning Department determinations of the OHWM does not bother him. He then outlines what he feels is a reasonable plan for placing a gate at the location detailed outside the 35 foot setback area, stating that he does not believe that the sharp curve is an issue, and noting that signs warning of curves and dangers ahead are common and a sign could be erected in advance of a gate. He states that a gate at that location would keep the AIS out of the lake, and would not violate the Ordinance which the Board is supposed to uphold.

Mr. Hanser states that there is a difference between gating a driveway to a private home and gating access to water, noting that a gate barring access to water for a fire department would affect many homes.

Mr. Ketterer states that he is not in favor of gates at any landings. He notes that there are other ways to deal with the potential of AIS and speaks to AIS issues throughout Vilas County and public efforts to deal with those issues.

Mr. Huntley states that those dealing with lakes that are already infested with AIS are being reactive, while the NLOAA is attempting to be proactive.

Mr. Ketterer notes that between points four and five as shown on Exhibit 2E there is a site that allows a gate to be placed within the bounds of the Ordinance with a proper turnaround available for ingress/egress.

Ms. Hanser discusses her concerns with the potential to block the private driveway access.

Mr. Ketterer disagrees.

Ms. Hanser notes that a gate across the road would change the road dynamic with respect to trucks and trailers. She also states that the swing of the gate must be considered when discussing parking.

Mr. Ketterer and Ms. Hanser continue to discuss potential parking issues.

Ms. Hanser states that the unnecessary hardship is a moving OHWM in a wetland that is affected by beaver activity. She states that this is not self-created; it is mostly due to the property features. She opines that common sense says the gate should be located at the water and it would also be unnecessarily burdensome to ask fire and rescue units to contend with the proposed gate.

Mr. Roberts suggests the Board move on to considering unique property features, noting that the circumstances of property owner are generally fixed.

Ms. Hanser states that the property is a peninsula with a high slope on one side of the road and a wetland on the other side.

Mr. Peterson notes that there is no room for a turnaround without extensive excavation.

Mr. Huntley states that the layout of the property is very narrow and there is no way to forecast in what ways the public will respond to a gate in such a narrow location. He also states that he feels no solution outside the requested variance will solve the situation so the variance should be granted.

Mr. Roberts suggests the Board move on to discussing potential impacts on the public interest.

Mr. Peterson states that he feels that the water quality of the lake will be helped by the proposed gate because it will help prevent AIS to a greater extent than having no gate at all.

Ms. Hanser states that she is worried about the public health and welfare in terms of emergency vehicles reaching the waters edge as quickly as possible. She states that if a dry hydrant is installed and the variance granted the fire department would not have to open any gates in order to access the lake. She also states that she does not like the idea of anyone backing up a road for any distance with the potential of any other traffic approaching them; this creates a road hazard.

Mr. Peterson moves to grant the variance because unnecessary hardship is present in that proper safety features cannot be maintained without granting of the variance, unique property features exist based on high hills, lake bed, and the peninsular shape of the property, and that there will be no detriment to the public interest because it will help maintain water quality and it will not harm the safety and welfare of the public.

The Board discusses the motion made by Mr. Peterson.

Mr. Peterson withdraws his motion.

Ms. Hanser moves to grant the variance request because unnecessary hardship is present due to limitations of the existing road, impediments to firefighter and rescue efforts, and the lack of a reasonable location for a gate beyond the applicable setback area, unique property features exist because of high banks along one side of the property and lake bed along the other side, and because the public interest will not be harmed as the proposed location of the gate would increase visibility of stopped vehicles and increase road safety by allowing vehicles ingress and egress to the proposed gate without backing up, there will be little to no increase in runoff, and the green color of the proposed gate will blend in with the natural surroundings with the condition that the gate be left open to public access from November 1 through May 1. Mr. Huntley seconds.

The Board discusses the motion made by Ms. Hanser.

Roll call vote on motion to grant the variance request with conditions:

Glyn Roberts -	In favor
Don Huntley -	In favor
Dick Peterson -	In favor
Joy Hanser -	In favor
Marty Ketterer -	Opposed

Motion carried (4-1). Variance granted with conditions.

Mr. Peterson moves to adjourn. Mr. Ketterer seconds.

Roll call vote on motion to adjourn:

Glyn Roberts - In favor

Don Huntley - In favor

Dick Peterson - In favor

Joy Hanser - In favor

Marty Ketterer - In favor

Motion carried (5-0). Hearing adjourned at 12:07 pm.