

DICKINSON COUNTY BOARD OF ADJUSTMENT
Wednesday, July 20, 2011
7:00 P.M.

The Dickinson County Board of Adjustment met Wednesday, July 20, 2011 at 7:00 p.m. in the community room of the Dickinson County Courthouse.

Members present were Don Oleson, Jeff Ashland, Dennis Jackson, Bob Duncan and Mary Dannatt.

Don Oleson, Chairman, called the meeting to order at 7:00 p.m.

First on the agenda was roll call.

Second on the agenda was new business.

- 1st item of new business was Michael and Rose Marie Anthony, continuation of a variance in East Okoboji Beach, Unit 1, Blk. 8, Lot 11. Oleson read the description of the variance.

Anthony submitted photos of their lot after last week's heavy rain event. The photo showed the green area where they want to build, surrounded by water. Their seasonal cabin was completely surrounded by water.

Oleson said he drove out after Thursday's rain. The county had blocked off the road because of lots of water coming through there.

Anthony said they need some retention areas to the north to slow the release of water.

Anthony had talked to Brad Beck of Beck Engineering. They've never had water inside the seasonal cabin and there was no water in the last event either. That shows that building up the lot helps. Besides Brad Beck and Dan Eckert, Jim Birch with Geo-Tek took a 21 1/2" drill to check the ground in two spots. Birch says the lot is buildable if the footings are put in on rock. Some water may set on the rock, but that is no problem.

Anthony addressed the driveway. There was concern it was going to cause some problems with flooding. He talked to Dan Eckert and Jeff Phelps of the DNR. They okayed the location of a culvert for the driveway with no concerns of dumping water on the neighbors. They have over 8' to their lot line but need to address proper landscaping around the areas.

Anthony said another concern the board had was the size of the house. They have made some minor changes to the house and twisted the house somewhat. Beck had concern with the closeness to the creek. He said the house should be a least 6 feet away from the creek. They measured and were 5' 2" from dirt level of the creek. They had talked about moving the bridge, but Beck said the bridge has a history of its own and has worked for 25 years, so he would say don't touch it.

Anthony said this is a unique lot with the creek and angled lot lines. He took the three lot lines which were substandard, took a 14' x 75' parcel from Lot 14 and added to Lot 11. This allows for a 25 feet rear yard on Lot 14 and a 20 feet rear yard on Lot 11, requiring no rear yard variance. This way they would wind up with two decent lots to build on instead of three small lots. Lot 11 would now be 7,564 square feet. Lots 14 and 15 would have 8,670 square feet.

Jackson said they are eliminating the rear yard variance, so are only asking for a front yard variance of 15 feet.

Oleson said he is still concerned with the size of the house. He still has a nagging environmental concern with the problems that could happen during construction. He

asked Anthony what additional things he will do to guarantee nothing will go into the lake.

Anthony said he will install an orange fence to catch any debris.

Oleson said he would like to see a dual silt fence and would like no stockpiling of dirt on that lot. They also make a straw mat that rolls out on excavated land during construction, a type of soil stabilizer.

Anthony said he talked to Hawn Brothers and they said all dirt will be taken away. Originally he had wanted to help the neighbors build up their lots, but they are not going to do that now.

Anthony said they are working with Brad Beck on placing the lot pins and the layout and he will give them guidance on anything they need. Beck will work with them with Geo Tek and the foundation. Hawn's will come in and make sure the silt fence is in. He said it is a great idea to go with a second silt fence 3 feet away from the first.

Oleson said there will be material brought in – lumber, rocks, will be a constant influx of materials coming in.

Anthony pointed on the map where he would like to store the materials.

Oleson said he wants to see a concrete plan before he is comfortable with this. He asked Anthony if he considered downsizing the home.

Anthony said that's why they added the additional square footage to the lot, so they could keep the house plan. They wanted to keep the front alignment. They downsized the size of the screened in porch area. They are trying to blend in with the other houses in the neighborhood. People aren't going to want to build a fishing shack. They want a two car garage and somewhere to get away from mosquitoes.

Duncan asked Anthony if he knew some history of the creek.

Anthony said the depth of it goes up and down according to water that goes through. It's been that way for the 25 years he has owned the property. Nothing was changed except rocking of the area. In August and September it dries up. That's why they wanted to get the plan in place so they have a dry period in there for building.

Ashland asked Anthony when he talked to Brad Beck did he have any concrete ideas on what to do to keep the water from causing any problems.

Anthony said nobody was really concerned with the water because of the height of the lot. They will get in and do the excavating and get right out of there. He would go along with any stipulations the board has. If he needs a plan to make the stipulations work, he will work through Beck.

Saunders said one of the requirements could be to submit a plan to the zoning office that meets or exceed the Board's specifications.

Oleson proposed the following stipulations:

- 1) At the bare minimum, two silt fences are required to be installed 3' apart and maintained.
- 2) Orange safety debris fencing 5' to 6' tall installed inside of the silt fence.
- 3) No stockpiles of soil onsite. All is to be removed off site.
- 4) The minute any disturbance is done on the lot, excelsior, horsehair, or straw mat is to be put on there to hold soil in place.
- 5) Provide a flood plain certificate from Beck Engineering that states the house is constructed 1' above the flood plain.

Oleson read a statement that he wants on the record for himself:

He understands the Anthony's have a legal right to build something there. He wants to make it clear that he doesn't agree with the lot being improved. He wants all liability to the Board of Adjustment or to the county to be released.

Duncan commented on liability to the neighbors if they get water pushed on them.

Anthony said Beck said there should be no liability coming back to them from below.

Saunders said he doesn't think Anthony is accepting any more liability than he ordinarily had anyway.

Jackson moved to vote on the five proposed stipulations. Ashland seconded. All were in favor.

Ashland moved to vote on the application as amended adding the 14' x 75' area on the rear and removing the rear yard variance, and with the five stipulations as approved. Duncan seconded. All were in favor.

The vote was recorded as Ashland, Jackson, Dannatt, Duncan – approve. Oleson – deny. Oleson read from the vote result form and the deadline for construction to be completed.

- 2nd item of new business was Ted Weissman, Next Era Energy – Request for extension of Zoning Compliance Permits for High Point Wind Farm. Dick Lozier, attorney from Des Moines, was also present.

Lozier said he was representing High Point Wind. They appeared before the board on June 28, 2010 to get a conditional use for a proposed wind farm on land in Osceola, Clay and Dickinson Counties. They planned 49 turbines in Dickinson County with access roads and connection lines. They were granted the conditional use permit one year ago and the Board of Adjustment gave them a one year extension to get the zoning compliance permits. They sent a letter saying they were not able to start yet. They are here tonight to request an additional extension of time of 24 months.

- 1) Since the recession began in 2008, today there are few if any new projects underway.
- 2) The capacity and condition of transmission lines in Iowa requires further study. In Iowa there are no buyers and the condition of the transmission lines do not permit electricity generated in Iowa to be easily transmitted to other areas. The planning process began four years ago when the recession was not foreseen. The difficulty with the transmission line was not fully understood at the time. The capacity of transmission lines is studied by a company called MISO. The process is long and laborious.

These variable factors were not foreseen. The ability to proceed depends on market forces beyond their control.

It is best to leave the plans approved as they are rather than go through the whole process again. If the conditional use were to expire, they would have to start over again. This would cost them and the county more money. Therefore, they would request an additional 24 months.

The board said their letter of June 22, 2011 asked for a 12 month extension.

Lozier said they would like to amend the request to 24 months. Neither the county or Nextera would lose anything by waiting.

Jackson said he disagrees that there are few new projects. He asked why Nextera wouldn't have had the financing and sales contracts signed before they came to the board.

Oleson said in the past, the board was pummeled with speculative projects. They decided that projects must be firm when they come to the Board of Adjustment.

Jackson asked if any buyers might back out.

Weissman said the first question they are asked is, do you have a conditional use permit in place? It must look speculative, but it is the way it has progressed for them. They have with the landowners lease options that say they will be cooperative during the use permit process. These may be five year leases and allow for renewals. The landowners exercise those options when construction begins.

Oleson said the Board of Adjustment granted the conditional use permit June 28, 2010 with an additional one year to get the permits.

Kohlhaase said it was a two year process. One year to get the permits and one year to construct.

Kohlhaase asked for clarification. Were they asking for 24 months to complete the project or 24 months to get the permits?

Losier said 24 months to get the building permits and 12 months to build.

Oleson asked about Osceola and Clay Counties. Have they granted extensions?

Losier said they don't have time deadlines. They have looked at other county ordinances and only two counties have time line requirements.

Jackson moved to grant a 12 month extension of the Conditional Use Permit. Duncan seconded. All were in favor.

- 3rd item of new business was Alfred V. Steiner appeal of Zoning Administrator's decision. Saunders said he had spoken with Steiner's attorney. He is working with Mr. Steiner on an agreement and asked to postpone to the August meeting. The Board of Adjustment members agreed.

Third on the agenda was approval of the minutes of June 27, 2011. Duncan moved to approve the minutes as written. Ashland seconded. All were in favor.

Fourth on the agenda was communications. There were none.

Fifth on the agenda was report of officers and committees. There were none.

Sixth on the agenda was old business. The next meeting is August 22, 2011 and there are two variances on the agenda.

Seventh on the agenda was other. There was nothing.

Jackson moved to adjourn. Duncan seconded. All were in favor. The meeting was adjourned at 8:15 p.m.