

LINCOLN COUNTY PLANNING BOARD

Meeting Minutes

June 21, 2011

1. 5:35 – Meeting Called to Order by Chair, Joe Kelly

Present: Mark Romey, Frank Dierman, Ted Clarke, Dave Johnson, Joe Kelly

Staff: Kristin Smith

Not Present: Paul Tisher, Ted Anderson

Other: Amy Guth, Richard & Diane Carter, Greg and Cheralyn Steed, Tiffin Hall, Rick Vredenberg

2. Approval of Minutes from March 15th – Mark moved to approve, Frank seconded.

Motion carried

3. Approval of Minutes from May 17th – Frank moved to approve, Dave seconded. Motion carried

4. Public Comment on Non-Agenda Planning Board Items – NONE

5. Agenda

a. Lakeshore Permit – Agather (Bull Lake)

Kristin presented the project – a cedar dock meeting the standards. Joe asked if Mr. Agather was present – he was not. Joe asked for any comments from the public. There were none. Joe asked the Board if they had reviewed the application and stated he saw no problems with it. Ted Clarke moved to recommend approval of the permit, Dave seconded. Motion carried.

b. Lakeshore Permit – Carter (Glen Lake)

Several letters were received and were made part of the record. These are available in the Planning Department.

Joe started by stating that he understood there had been some litigation with the parties, but that he expected everyone to be civil or he would instill order in the meeting. He asked Kristin for the staff report. Kristin presented the project starting with the location and the background information associated with the easement across Mr. & Mrs. Steed's property to which Mr. Carter has access along with 5 other properties. Other information has been provided by parties not affiliated with the applicant. Kristin showed several photos of the area. Kristin then explained her reasons for recommending denial based on the Lakeshore Protection Regulations. The reasons being that it would cause a public nuisance due to the narrowness of the easement and the number of people that would potentially have access to it; that it would interfere with navigation given the proximity of the underlying and adjacent lakeshore property owners' docks.

Joe asked Mr. Carter if would like to speak. Mr. Carter deferred to his attorney, Amy Guth who explained the history of the easement, the property transfers and the court cases; and the letter she submitted into the record. The easement was not extinguished by the

Supreme Court. She stated that it was an application from Mr. Carter for stairs and not a dock and made a comparison to selling land or dividing land with a road easement on it. She stated the application would improve safety down the bank to the lake.

Joe asked her to clarify that only Mr. Carter was applying for the dock because if the County grants the permit then everyone with the easement has access. Amy stated that yes, it was just Mr. Carter and she did not if the other easement holders would use the stairs since they were not paying for it.

Mark asked if all the other easement holders use the stairs who becomes liable since the landowner gave the right to use the property? Amy stated that if a person is injured using their own easement they are the responsible party. Ted Clarke asked that since the Steeds own the property, as the taxpayer, wouldn't he become liable?

Mark asked what if the easement holders don't want to have the stairs? Amy stated that Mr. Carter has a non-exclusive easement and could grant the others permission to use the stairs. Amy listed the other easement holders that participated in the lawsuit.

Frank asked how many people have easement rights? Upon hearing the number of property owners he stated that all of them would have access to use the stairs. He further stated that Mr. Casazza rents his place. Who will enforce whether renters use or do not use the easement? Amy claimed she did not think people would go wandering through private property looking for an easement since Mr. Casazza's property was a little ways away. Mark disagreed.

Mark asked Mr. Carter to clarify that the application was for stairs and not a dock. He then asked if the stairs necessitated the platform to which Mr. Carter said yes.

Kristin read into the record the definition of a dock from the Lakeshore Protection Regulations, which include that portion of the stairs that Mr. Carter referred to as a platform.

Joe asked for comments from the Steeds and Sanguines. Tiffin Hall spoke on their behalf. He responded to some of Amy's comments. He stated that Mr. Casazza sent an e-mail to Mr. Steed announcing that he intended to park a paddle boat at the platform. He also contradicted the statement that Mr. Casazza wouldn't let his renters use the easement. Tiffin stated that he and the Steeds understood Mr. Casazza's intentions were to allow his renters to use the easement.

Mr. Hall noted that the question of liability was an important one that while the Steeds might not have liability they would likely incur legal fees defending their position in such an event.

Mr. Hall recounted the County's position on Mr. Casazza's permit request from 2008 in which he was instructed to obtain the signatures of all the easement holders before proceeding with the application. To date no additional easement holders have signed on to the application.

Mr. Steed then spoke on his behalf and reiterated the process of whittling down the number of easement holders over the years through the litigation. He quoted the Supreme Court's ruling on the County's authority to review the permit. He questioned how someone

could stay within 6 feet once the stairs would be in with their boats, etc. Mr. Steed reiterated that the easement was held by *lots* not people, which would lead to an unknown number of people.

Bill Sanguine wanted to point out that one of the pictures showed how Mr. Casazza removed boulders from the Sanguine property which undermined the big tree that has since toppled. He wanted the material put back to prevent erosion. He also pointed out that there was a public boat dock across the lake.

Mr. Vredenberg with Tobacco Plains Realty has worked with both the Sanguines and the Steeds on their property. He stated that the lack of sanitation facilities to serve the number of people from the properties using the easement was a significant concern.

Joe asked to look at the photos again. Mr. Carter explained the proposal for installing the stairs and dock and how part of the bank would be excavated to install

Mrs. Carter stated she just wanted to put a canoe on the shore. Joe asked if she would pack the canoe down or come from the public boat launch. She answered she would pack it down.

There was some discussion about access to the ordinary high water from the lake according to state law.

Ted Clarke commented on the surveyors report about the steepness of the bank and that the easement states that it is for ingress/egress to the lake, which could be construed to be stairs.

Amy asked the discussion would be the same if the stairway did not have dock at the end of it. Mark said that was a good question, but he wanted to see all the easement holders signatures on the application.

Ted Clarke referred to Title 85 of the MCA which states that only landowners can build wharves and docks on navigable waters.

There was more discussion about liability if the Board did not approve the stairs. Tiffin stated that the condition of the bank is worse since it has been altered.

Kristin stated that just because an easement exists does not mean that its intended purpose meets the regulations. She gave an example of a property owner that wants to subdivide and they may have a road easement to their property, but if it is insufficient for the intended use, the owner either has to acquire additional easement or they cannot do the project. She also raised the question about the sufficiency of the width of the easement to install the stairs without encroaching.

Joe asked if there were any more questions.

Cheralyn Steed commented on the steepness of the bank and that erosion and runoff was occurring into the lake. Joe stated that the FWP does not like that.

Dave asked how they intended to address the steepness of the slope with the stairs – will it be like a ladder? Mr. Carter stated there were no plans to alter the grade.

Mr. Steed read into the record the section from the Lakeshore Protection Regulations on stairs.

Frank stated that there was the possibility for all property owners to be there at the same time.

Joe advised the audience to attend the Commissioners meeting tomorrow for the final decision.

Mark moved to accept the staff report and recommend denying the stairs. Ted stated that there could be more than 6 different families using the stairs, making it a public nuisance. He seconded the motion.

Motion carried.

6. Planning Department Report

Kristin commented on the Stimson/TPL Conservation easement activity. She intends to have some maps for the Board to assist in their review and comment on it when it gets to that point.

She announced that since Heather Carvey had been out of contact and not attending she was removed from the Board according to the bylaws. The Commissioners appointed Bonnie Peterson to fill the position.

7. Planning Board Comments and Questions

Ted Clarke wanted to propose adding language to the Lakeshore Protection Regulations that prevented easement holders from applying for lakeshore construction permits.

8. 7:30 – Meeting Adjourned