

Houston County Board of Adjustment
January 28, 2016

Approved on February 18, 2016 by Tim Orr and Larry Hafner

The Houston County Board of Adjustment met at 6:30 p.m. on Thursday, January 28, 2016. A summary of the meeting follows.

The meeting was called to order by Vice Chairman Myhre. Members present were Greg Myhre, Tim Orr and Kent Holen (alternate). Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning. See sign in sheet for others present.

Zoning Administrator Lacher indicated to Vice Chair Myhre that Glenn Kruse has recused himself from the public hearing. Vice Chair Myhre authorized Kent Holen to be a voting member in this public hearing.

Election of Chairperson for the meeting took place. Tim Orr nominated Greg Myhre for Chairperson, Kent Holen seconded. There were no other nominations. Motion carried unanimously.

Tim Orr made the motion to approve the summary minutes of the November 19, 2015 meeting. Greg Myhre seconded it. Motion carried.

Election of Vice Chairperson for the meeting took place. Greg Myhre nominated Tim Orr for Vice Chairperson, Kent Holen seconded. There were no other nominations. Motion carried unanimously.

Bruce Kuehmichel called for point of order asking if the Chairperson elected was for the year or just this meeting. Chairperson Myhre indicated it would be for this meeting only. Attorney Sam Jandt indicated it was proper.

At this time, Zoning Administrator Lacher informed the board there had been a complaint cited against alternate Holen's participation in the public hearing this evening. The complainant questioned Mr. Holen's ability to remain impartial due to letters to the editor he authored. Attorney Jandt then asked Mr. Holen: 1) Do you believe that your participation tonight will actively promote public confidence in county government. Mr. Holen indicated it would. 2) Do you believe you have maintained a respectful attitude towards employees, other public officials, colleagues and associates. Mr. Holen indicated he had. 3) Do you believe you have engaged in outside interests that are not compatible with the impartial and objective performance of your duties. Mr. Holen he had not. 4) Do you agree that you will only make your decisions on the matters that come before this board that

allows you and other members to consider. Mr. Holen indicated he would. Attorney Jandt then outlined State Statute 394.27 Subd. 2 under Procedure and Qualification that requires the board to vote whether there is a conflict barring him from participating. Attorney Jandt suggested that a vote be taken. Tim Orr made the motion to recuse Kent Holen from voting due to the conflict of interest. Greg Myhre seconded. Greg Myhre stated the articles that were written and lack of respect for county officials were reasons he felt were reasons. Tim Orr said the editorials were reasons as well as a previous appeal Mr. Holen was involved in.

Ken Tschumper asked if this would be considered a quorum. Attorney Jandt indicated it was a quorum.

Chairperson Myhre read guidelines for the hearing.

Notice of **Public Hearing No. 428** was read. **Houston County Protectors** on behalf of: **Rosemary Iversen**, 2835 Casco Point Road, Wayzata, MN 55391, **Cory and Jackie Baker**, 22848 State 16, Rushford, MN 55971 and **Bryan and Susan Van Gorp**, 4382 Ferndale Road, Rushford, MN 55971. For a Zoning Appeal of an Administrative Decision as per Houston County Developmental Code (**0110.1104 POWERS AND APPEALS - Subd. 2 Appeals**: The Board of Adjustment shall act upon all questions as they may arise in the administration of any ordinance or official control, and it shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with enforcing any ordinance adopted pursuant to the provisions of Section 394.27 Subdivision 6).

Aaron Lacher, Zoning Administrator, commented on the application:

- Petitioners object to County actions relative to a mineral extraction site (hence forth the mine) owned by Tracie and Michelle Erickson. Petitioners request that the Board of Adjustment (BOA) review numerous actions taken by county officials that petitioners describe as culminating in the renewal of a Conditional Use Permit (CUP) for a mine issued to Tracie and Michelle Erikson. In addition, petitioners are appealing numerous decisions made by the Zoning Administrator relating to enforcement of the Houston County Zoning Ordinance.

The complaints can be summarized by the following six complaints:

- The Zoning Administrator failed to enforce County Ordinances, State Statutes and the conditions of the conditional use permit;
- The Zoning Administrator misrepresented facts in past proceedings;
- The Zoning Administrator took action on a permit while an Environmental Review was pending;
- The Zoning Administrator denied petitioners' appeal to the Board of Adjustment; and,

- The Zoning Administrator practiced favoritism in carrying out duties. In addition, petitioners charge that there are:
- Unresolved issues with the original Conditional use Permit.

At this time County Attorney Jandt to read the guidelines for the Findings of Fact at stated in Minnesota Statute 394.27 Subd. 6 Appeals – The board of adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit. The reasons of the board’s decision shall be stated in writing.

Chairman Myhre asked the applicants to do their presentation.

Bryan Van Gorp stated he objects on Mr. Holen being removed. He is not aware of any issue that Mr. Holen has addressed that would affect his decision making ability.

Mr. Van Gorp read from his submittal listed below.

We want to make it clear we are not the enemies of local government. We are simply trying to hold our government accountable to its own rules. Every citizen should support this.

We are appealing the Zoning Administrator’s decision not to enforce the Ordinances, Statute, and conditions of the CUP on the Erickson mine. 16 different violations have occurred and 7 of them are repeated with every load of silica sand hauled out. 7 of these have occurred repeatedly after a recent meeting to “bring the mine into compliance”. Several of these violations have been acknowledged as true yet the Zoning Administrator refuses to enforce the law. We ask that because of the long history of violations and malfeasance of this mine that the permit be terminated as required by the ordinance 0110.0608.

The 5 of us are the Petitioners or Complainants and the County is the Respondent or Defendant in this case. No one else is a party in this case. Everyone else is limited to a public comment.

For clarification, this case frequently refers to the Zoning Administrator. That reference is to the persons serving as Zoning Administrator for the previous several years. We want to make it clear we are not talking about Mr. Lacher who was only recently appointed and not responsible for the lack of enforcement.

There will be people who say all we want is to put an end to mining in Houston County. That is false. I live on a gravel road, have a gravel driveway, and a septic system and I am not stupid. This case is about a particular mine not being able to operate within the law and the need to have the Ordinances, Statute, and conditions of the CUP enforced.

We also want it on the record that we have submitted a 26 page document that fully lists all the charges and another approximately 200 pages (54 items) of evidence to validate each claim. Because of time limits we will briefly summarize our case. Please realize that because of time limitations we will have to leave out many details and much evidence. It is all available to anyone who asks for it including the press.

We have listed numerous Ordinances and Statutes that make it clear it is the Zoning Administrator's responsibility to enforce the Ordinances, Statutes, and conditions of the CUP and that failure to comply with the terms of the permit shall result in termination.

0110.1001 Subd. 1 Enforcement. This Ordinance shall be administered and enforced by the Zoning Administrator, who is hereby designated the enforcing officer.

0110.0608 Compliance – Any use permitted under the terms of any Conditional Use Permit shall be established and conducted in conformity to the terms of such permit and of any conditions designated in connection therewith. Failure to comply with the terms of the permit shall cause automatic termination of the permit and the use may not be continued or re-started without County Board approval.

The Houston County Zoning Administrator has demonstrated lack of enforcement and malfeasance regarding this permit in the following ways:

1. Failure to enforce County Ordinances, State Statute and the conditions of the CUP,
2. Misrepresentation of facts by the Zoning Administrator saying at each step of the "renewal" process that there were no violations,
3. Took action on the permit while environmental review was pending in violation of State Statute 4410.3100,
4. Denied appeal to the Board of Adjustment constituting denial of due process,
5. Documented favoritism as disclosed in the independent investigation of Mr. Scanlan.
6. Unresolved issues with the original CUP.

Each of these should have been adequate grounds for staying the process prior to the "renewal" in 2014. "Renewing" the permit was a malfeasant action and no valid permit exists today. The chronic and repeated nature of the violations shows a willful disregard for the law and the Zoning Administrator has and is enabling the violations to continue even after acknowledging they exist.

1. **Failure to enforce County Ordinances, State Statute and the conditions of the CUP.** In this section we list 16 different violations each with the exact details of how it is a violation and proof of the violation. These are as clear as the violation of the 50 foot setback to the Baker's property and the Erickson's loss in Court that validated they attempted to frac sand mine without an appropriate permit. 14 of these violations occurred before the permit renewal and 6 of those occurred with every load of silica sand that was mined. 9 different violations occurred after the 2014 "renewal", 7 of those with every load hauled out. Numerous formal complaints were filed by multiple citizens to the Zoning Administrator, Environmental Services Director, County Attorney, Board of Commissioners, and Chair of the Planning Commission both before and after the renewal. At no time were any of our complaints acknowledged as valid. We even had an Attorney write a formal letter of complaint addressing past and current violations and the reoccurring nature of the violations and the past record of bias and conflicts of interest in this case. Nothing has been resolved to date. I was told by Mr. Frank that "he had made his decision and if we didn't like it we could go to the Board of Adjustment". Well here we are. After a meeting at the Erickson mine to supposedly bring them into compliance there have been 4 more episodes of mining over about 3 months in which all the same violations were repeated. This demonstrates a clear pattern of behavior that disregards the law and neighbor's land rights.

In the County's staff report the defendant's position is to only acknowledge 2 of 16 complaints. Then they suggest that only those violations that are continually observable should be addressed. They only address 2 of 7 of the continuous violations. They choose to ignore such things as digging test wells without a permit, violating the moratorium, beginning a frac mine without proper permits, and a direct violation of the conditions of the CUP. This is not right. If I only rob a liquor store once and it was in the past is it not breaking the law? No, breaking the law should have consequences. There are 16 violations and of them 7 are still occurring with every load of sand. We demand they all be addressed.

2. **Misrepresentation of facts by the Zoning Administrator saying at each step of the "renewal" process that there were no violations.** At each step of the legal process, at the EQB hearing, Planning Commission hearing, and the County Board hearing, the facts of the case were misrepresented. At each step it was repeated by the Zoning Administrator that there were no violations. This was an obvious lie and the Zoning Administrator knew it. If the violations had been acknowledged the permit would not have been able to be "renewed". It is a misdemeanor to misrepresent the facts. In the County's staff report their position is to recommend you ignore this point because it was a Board decision and not an Administrative decision. Ridiculous, if the Zoning Administrator misrepresents the facts to the Board that is a decision of the Zoning Administrator not the Board. The Administrator made a decision to not tell the truth and that changed everything.
3. **Took action on the permit while environmental review was pending in violation of State Statute 4410.3100.** We have signed letters and/or video recorded evidence of all the following parties saying an EAW was pending at the time of the "renewal" and in fact still is, the DNR, MPCA, EQB, County Board, Mr. Squires, former Board Chair Miller, Mr. Scanlan, Mr. Frank, Mr. Wieser, Mr. Griffin, and Attorney Peters. We also have the petition with the required signatures. Minnesota Statute is quite clear that an EAW can only be released through certain actions and none of those were performed. Therefore the EAW was in place at the time of the "renewal" and still is. The EAW (pending environmental review) prevented any action including "renewal" on this permit. Mining while there is pending environmental review constitutes the 16th violation. This permit was conditional on following all State and Federal laws. The Zoning Administrator failed to enforce the State Statute. Again the County's position in the staff report is to recommend you ignore this point because it was a Board decision and not an Administrative decision. Again the Administrator makes a decision to mislead the Board by saying the environmental review no longer applied because it was for the larger combined project. That was never true; the EAW was only for the Erickson mine. Who made the decision not to enforce State Statute as required by the CUP? Again, this was an Administrative decision. We want accountability.
4. **Denied appeal to the Board of Adjustment constituting denial of due process.** Several citizens made a good faith appeal to the Board of Adjustment before the "renewal" appealing the Zoning Administrator's decision that there were no violations and that there was pending

environmental review. The Environmental Services Director made the decision not to allow the appeal. That was a denial of due process. It was also a factor in our losing the Mandamus hearing because we had not exhausted all other avenues, though we had tried. Again the County's position in the staff report is to recommend you ignore this point because it was a Board decision and not an Administrative decision. We were appealing the Zoning Administrators decisions and it was the Environmental Services Director who decided not to allow us due process. Those are Administrative decisions. Second, the appeal was filed before the Planning Commission hearing so it could not have been appealing the board decision. This is illogical and incorrect. This is a blatant attempt to avoid responsibility and misrepresent the facts.

5. **Documented favoritism as disclosed in the independent investigation of Mr. Scanlan.** Things happen in a context. Regarding this permit there has been numerous examples of bias, retaliation, and discrimination. Examples include Mr. Scanlan being in charge of this case at a time he was proven by independent investigation to have extreme bias and favoritism toward approving the permit and retaliating against anyone who was against it. Instead of acting as a gate keeper he facilitated wrong doing and advocated on behalf of Erickson's. The investigating legal firm concluded that Mr. Scanlan, "Gave preferential treatment, favoritism, used his position to gain advantages, facilitated retaliation, special treatment, secured advantages for, advocated with other governmental entities on behalf of the Erickson permit and was not neutral". In a separate note they conclude, "Without question the complaints can cite several instances where Mr. Scanlan has interpreted an ordinance in a manner that benefits mining interests. Mr. Scanlan's opinion appears unsound. Mr. Scanlan's definition is not supported by the plain language in the ordinance". These are Administrative decisions. Based on the official investigation report by Lockridge Grindal Nauen it is clear that the Erickson's worked in cooperation with Mr. Scanlan to retaliate against and intimidate neighbors who opposed the "renewal" of the Erickson permit. Mr. Schuldt made a motion to process the "renewal" when Houston County was not even the RGU. This is not legal. Mr. Griffin, in his position as Chair of the Planning Commission attempted to coerce opponents into going along with the "renewal". He had his mind made up before the hearing as evidenced by his statement that it would pass and there was nothing we could do about it. Mr. Griffin would not allow open discussion at the public hearing, even having someone removed for bringing up the pending EAW. The "renewal" was used to expand the permit from a total of 8-10,000 yards to 10,000 per year. It should be noted that throughout this process Erickson's have never gotten a letter on noncompliance. All 5 of us have received one or more for things that were not even true, or were trumped up to shut us up, or very questionable in nature. One wonders why the discrimination. Another Administrative decision. Again the County's position is to recommend you ignore this point because it was a Board decision and not an Administrative decision. Mr. Scanlan acting with bias, Mr. Schuldt acting without legal authority, Mr. Griffin acting to coerce opponents, and Mr. Frank's claim that there were no permit violations are not Board decisions. No, they are individual Administrative decisions designed to bring about an invalid Board decision. This must be considered. Intentional misrepresentation to the Board is not a Board decision.

6. **Unresolved issues with the original CUP.** The context here is that from day one in 1992 every aspect of this permit was mismanaged and misrepresented. We give numerous examples of false statements in the original permitting process. It was the Zoning Administrator's decision to accept an incomplete application for the original permit. It was also his decision not to do the required EAW at that time. There was a complete lack of due diligence on the part of the Zoning Administrator, a simple drive by would have revealed the false statement. 11 of the 15 Criteria for Granting a CUP were not in compliance. It was obvious then and has been proven to be the case now. Who locates a mine along a Scenic Byway and less than ¼ mile from a Golf Course? The original permit says right on it "This permit is not transferable". That was never challenged and is the plain language of the CUP. Since it is written on the CUP it is reasonable to think it is a condition of the CUP. M. S. 394.301 Subd. 2 states the body issuing a CUP may impose such restrictions on a CUP. Again the County attempts to minimize these issues by claiming they are Board decisions and should not be considered by the Board of Adjustment. It was the Zoning Administrator, not a Board, who suggested the statement, "This permit is not transferable" should be ignored. It was the Zoning Administrator who chose not to enforce any of these issues. Minnesota case law has examples of permits being terminated even after a use is established when in violation of the Ordinance. Even if you think every word we have spoken is a lie, what have the defendants already admitted to as lack of enforcement? They acknowledge 2 of the 7 violations that occur with every load of sand and of the 16 violations that we document. They admit being in error by failing to certify non-compliance to the County Board. They do not even attempt to challenge any of the charges, evidence or offer evidence to the contrary. Instead they incorrectly say some of our charges should not be considered because they were not Board decisions. I believe we have successfully shown that the majority were in fact administrative decisions. The defendants also show a conflict of interest in recommending a course of action to the Board of Adjustment. The accused do not usually decide the outcome of the case. The legal issues here are obvious and numerous. But this is about more than that; it is about a County Government that does not treat all citizens equally. Every aspect of this permit has been mishandled since day one and is still being mishandled. There has been a great deal of strife in this County because the Ordinances are not being applied fairly or enforced. Will you begin coming into compliance with the law today? Why is this illegal behavior being enabled by County officials? In the County's staff report written by the same people who failed to apply and enforce the Ordinances, Statute, and conditions of the CUP, they make a preliminary recommendation of partial granting of the appeal. This is a blatant conflict of interest. You on the Board of Adjustment are being told what to do by the very people who are the defendants here. You on the Board of Adjustment are responsible to find justice in this mess. What they are attempting to do is create a work around that allows the Erickson mine to continue without experiencing the full consequences of enforcement. You may well be able to nibble at the edges of a couple of these issues. But there are literally a hundred issues listed in the complaint nearly all of which are above questioning. Remember it only takes one violation to force termination of the permit, we have listed 16. Ask yourself if you saw this case for the first time and had no bias what would you think? What does the preponderance of evidence show? Attorney Peters warns, "The Board of Adjustment must be unbiased and take a hard look at the relevant issues

in a zoning decision or otherwise the decision is arbitrary so that the Court will vacate the decision". Do not take the County's position in the staff report at face value. It is misleading. In our closing statement we list several Ordinances and Statutes that show this permit should be revoked. We want to be very clear that based on the Ordinances, Statutes, and conditions of the CUP, the only lawful remedy is to terminate the Erickson's permit. Again, 0110.0608 Compliance – Any use permitted under the terms of any Conditional Use Permit shall be established and conducted in conformity to the terms of such permit and of any conditions designated in connection therewith. Failure to comply with the terms of the permit shall cause automatic termination of the permit and the use may not be continued or re-started without County Board approval. M.S. 394.301 subd. 3 – A conditional Use Permit shall remain in effect so long as the conditions agreed upon are observed. There must be consequences for almost 4 years of total disregard for local and state laws and neighbors rights. If someone is a repeat offender of any law or an offender of multiple laws the consequences become more severe with each offense. The only consequence that would be appropriate in this case is the termination of this illegal and frequently violated permit.

Susan Van Gorp had some questions. She questioned why has there been favoritism been shown to the Erickson's and their mine. Why people are willing to lose their jobs and do unethical things over this mine. Why after several violations does the zoning office continue to enable this behavior. She believes the Erickson's stated with a permit that was not transferrable. She is looking for justice in the matter.

Rosemary Iversen added that she owns the property next to Erickson's since 1999. She feels you should be able to look to local government when things are not right but doesn't feel that she has gotten this from Houston County. She is protective of her property and supports the facts presented today and trusts the BOA will make the right decision.

Jackie Baker stated she also supports the facts presented.

Zoning Administrator Lacher outlined the County's position on the appeal.

1. Complaints (b), (c), (d), and (f) focus on decisions made by the County Board and not decisions made by an administrative official. Because of this, the Board of Adjustment is not empowered to hear appeals on Complaints (b), (c), (d), and (f).
2. The arguments offered to substantiate Complaint (e) involve both board and administrative official decisions. The Board of Adjustment may hear appeals of decisions made by administrative officials, thus only the portion of Complaint (e) involving administrative officials can be considered. The arguments offered to establish Complaint (e) can be summarized as failures to enforce the County Zoning Ordinance, and as such are better addressed with Complaint (a).
3. The County does acknowledge the lack of screening along the easterly property line.

4. The County does acknowledge that due to the location of the access road, the mine operation has and continues to encroach on the easterly property owner's setback by seven feet according to the zoning ordinance in 1992. The setback was 30 feet at the time the initial Conditional Use Permit was granted in 1992. The County Zoning Ordinance required a setback of 30 feet. (The Ordinance was updated in 1998 to require a setback of 50 feet.)
5. Due to the aforementioned violations (3 and 4) the county does acknowledge the zoning administrator was in error in not certifying non-compliance to the County Board.

Bryan Van Gorp wanted to add that the original conditions of the CUP were violated due to screening that was cut down between the mine and the highway (Photos were submitted to support this.) He is perplexed that an appeal that was filed before a board hearing is invalid because it was appealing a board hearing.

Jackie Baker wanted clarification on the access road setback measurements. Zoning Administrator Lacher indicated the mining road encroaches approximately 7 feet and requires a 30 foot setback; therefore it encroaches 23 feet from the centerline. Bryan Van Gorp stated the current setback is 50 feet in the current ordinance and the original setback was not met. Attorney Jandt stated the reasoning behind the 30 foot setback. Jackie Baker stated the intent of ordinance is for protection and why the measurement is from the center of the road. It was stated these are approximate measurements.

At this time public comments were accepted.

John Jordan believes the land that we use to support our existence needs to be passed on to future generations in the better shape than what we have.

Gretchen Cook believes the mine is in violation of 11 of 15 criteria. It goes against the county land use. Does the proposed use degrade the water; the DNR requires a trout stream setback requirement. The soil is prone to erosion. Dust, noise and water are issues that are not addressed. The access road is in violation of setback requirements. Silica dust is a threat to neighborhood children. The 1992 permit was flawed and is not transferable.

Bruce Kuehmicel commented. Below is what he read.

The issue before this Board of Adjustment is whether or not the Zoning and Environmental Services Departments have failed in their duties to strictly apply the provisions of the Zoning Ordinance regarding the ongoing Tracie Erickson Mine violations. I am not concerned as to how many or how few violations are found against the mine. Two will suffice as described by the Houston County Staff Report of January 26, 2016. This report is in front of us in this proceeding. Quoting from this Staff Report on page 3 items 3 and 4: 3. Due to the lack of screening along the easterly property line, the mine operation has and

continues to violate Section 0110.2706, Sub.6. 4. Due to the location of the access road, the mine operation has and continues to encroach on the easterly property owner's setback by twenty-seven feet according to Section 0110.2706, Subd. 7..." The Houston County Zoning Ordinance is very specific as to the consequent prescribed action of enforcement when violations are discovered and reported. Quoting from Section 6 - CONDITIONAL USE PERMITS, 0110.0608 COMPLIANCE, "Any use permitted under the terms of any Conditional Use Permit shall be established and conducted in conformity to the terms of such permit and of any conditions designated in connection therewith. Failure to comply with the terms of the permit shall cause automatic termination of the permit and the use may not be continued or re-started without County Board approval." This legal language couldn't be more straightforward as to how one, or many violations, by a mine owner, should be handled by the ordinance enforcement staff. So the question is why the termination of the Erickson Mine C.U.P. has not occurred, when the Staff Report clearly indicates the long enduring above cited two violations. The answer is indicated in item 5, page 4 of the Staff Report and I quote: "The Zoning Administrator was in error in not certifying non-compliance of the aforementioned violations to the County Board, as required by the Section 0110.2712 of the County Zoning Ordinance." As you, sirs, appointed to the Board of Adjustment at the pleasure of the County Board of Commissioners, you are required to rule on the decisions of the zoning enforcement staff such that the integrity of the Board is maintained, that their duties are allowed to be exercised in this matter to sit in hearing on the Tracie Erickson Mine violations, that the laws of the Zoning Ordinance are not abrogated or discounted by enforcement failures. The evidence on the two violations is abundantly clear, the Zoning Ordinance legal provisions regarding mine violations is also clear. Your only reasonable and logical remedy to this problem of law is to find a certification of non-compliance, of the Tracie Erickson Mine violations. You should also find that the violations trigger an immediate automatic termination of the Conditional Use Permit.

Ken Tschumper commented. Below is what he read.

My name is Ken Tschumper. I live in La Crescent Township. Along with many other people I have been involved in scrutinizing the application of the county zoning ordinance to the Erickson mine for three years.

I have these comments on the Staff Report from Houston County Environmental Services for this hearing.

1. In the Evaluation section of the Staff Report, the staff makes an arbitrary distinction between violations that are continuously observable and those that are periodically observable. This doesn't make any sense. For example the Zoning Ordinance requirements for a reclamation plan and a performance bond are one time only requirements, but none-the-less enforceable requirements. Just because it is only "observable" once doesn't mean it isn't required. It is just a nonsensical thing to say continuous and periodical violations are different and the idea of this should just be completely dismissed.

2. In the same section of the Staff Report, the staff conveniently and beneficially dismisses a large segment of the petitioners concerns, much of which deals with questionable, improper actions of the staff over the last three years. This is extremely self-serving by the staff given that the staff is claiming the Staff Report is an "objective recommendation" to the Board of Adjustment for deciding this appeal. Such a claim of objectivity is an absurd.

3. In the Conclusion section of the Staff Report, the staff makes a clear misreading of the Zoning Ordinance in two regards. Let me explain.

First, the Board of Adjustment has two duties specified in 0110.1204. One is to consider variances to a specific requirement in the Ordinance and the other is to consider who is correct when someone disagrees with an administrative action.

Subd. 1 under 0110.1204 deals with granting a variance.

Subd. 2 under 0110.1204 deals with appealing administrative actions.

If you read through all of Section 12-Board of Adjustment from the Zoning Ordinance carefully, contrary to what the staff asserts, Section 0110.1207 does not even apply to the BOA actions when they consider an appeal of an administrative action. It only applies when the BOA looks at a variance. Notice how it is laid out in the ordinance. The subdivisions following 1207 all relate clearly to the BOA granting a variance.

Because 0110.1207 does not apply to an appeal of an administrative decision, most importantly 0110.1207 does not restrict the BOA in considering an appellant's appeal of administrative actions affecting only property owned by the appellant. This is a red herring, a smoke screen. In fact, there is no language in 1207 that even remotely infers that conclusion. In fact, 0110.1204 Subd. 2 says clearly just the opposite in stating the specific criteria for appealing an administrative action. It says; "The Board of Adjustment shall act upon all questions as they may arise in the administration of any ordinance or official control, and it shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with enforcing any ordinance adopted pursuant to the provisions of Section 394.21 to 394.37, Minnesota Statutes, Chapter 559, Laws of 1959, as amended.

(Mr. Tschumper was told his time was up and was asked to stop. Below is also part of his submittal but was not read aloud.)

1. Any aggrieved person, firm or corporation objecting to the ruling of any administrative official on the administering of the provisions of this Ordinance or other ordinance adopted pursuant to the provisions of Section 394.21 to 394.3, Minnesota Statutes, Chapter 559, Laws of 1959, as amended, shall have the right to appeal to the Board of Adjustment.

Under 0110.1204, any aggrieved person can appeal an administrative decision of any kind not just people who own the property affected by the administrative action. A decision not to do something, not to enforce a provision of the CUP, by an administrative official is a decision none-the-less and so it is appealable.

In addition to these two glaring misinterpretations of the Ordinance in the Staff Report, it sort of appears that the staff is suggesting that the BOA can remedy the problem by some modification of the permit. Staff appears to dismiss 0110.1207 to create an opening for using MS 394.27 Subd 6 to somehow modify the permit. This would allow the BOA to allow the multiple violations of the Erickson Mine to continue. If this is what our County Attorney is intending to happen, it is legally wrong and pretty sleazy. If that is what anyone is thinking here, it is completely false. The BOA cannot resolve this by granting some sort of ad hoc variance to the mine owner. This hearing is only whether or not the office of the Zoning Administrator has correctly administered the ordinance relative to the Erickson Mine.

As a result of the above mistakes in the Staff Report the specific proposals in the Recommendation section are incorrect and will mislead the BOA in your decision-making process. At best this staff report is confused. At worst and probably more accurately I think it reflects the ongoing attempt by staff in the County Environmental Services Department and the County Attorney's office to intentionally mislead, cover up, misrepresent and manipulate every action by this county in dealing with the Erickson Mine.

Eric Johnson stated he believes the Erickson's have been harassed by the Houston County Protectors going on 4 years. He believes the protectors want to close down mining in the county and that other mines can pick up the slack. However a recent complaint states they want those to be shut down also. The Erickson's are only allowed to remove 10,000 yards per year used for cow bedding and septic systems in this county. The current neighbors knew this mine existed when they bought their land.

Dave Grahek stated he believes this is nothing but harassment toward the Erickson's. He objects that Houston County Protectors would be representing him in anyway as he lives in Houston County. The Erickson's are good people and this harassment needs to stop.

Larry Gaustad stated he has never seen this kind of complaining. All this is doing is breeding hatred amongst neighbors. This needs to stop and we all need to come together.

Kelley Stanage stated she is concerned about the legitimacy of the proceeding. She is of the understanding that the BOA must have at least 3 but not more than 7 members and one member shall be from the planning commission. She believes there is irregularity on a BOA member that cannot participate. She objects to previous comments of harassment and is concerned that government cannot carry out its duties. The denial of the appeal was not heard by the board so this is a misinformation. The ordinance requires compliance as it is updated from time to time so the 50 foot setback should apply.

Yvonne Krogstad stated she would like to address item (d) The Zoning Administrator denied petitioners' appeal to the Board of Adjustment. The petitioner's filed an appeal to the board of adjustment on 5-29-14. The petitioners were appealing the decision of Mr. Scanlan saying the EAW was not applicable and had the planning commission move the process forward on the renewal process. The appeal should have halted the renewal process until the appeal was heard by the board of adjustment. Instead the planning commission proceeded and the conditional use permit renewal was sent onto the board of commissioners. Rick Frank's letter dated 6-20-14 stated they could not appeal the actions of the county board. The setback requirement in 1992 was 30' and this setback was in violation in back in 1992.

Deb Dewey stated it is her understanding that the Erickson mine issue has already gone to the Minnesota Supreme Court and was thrown out. She believes we are spending a lot of tax payer dollars by continuing to discuss this matter. Mr. Myhre stated he agrees.

Lorraine Culver stated she is at a loss by the things being said. We should be following the ordinance and respect their concerns. The Planning Commission chair wrote off the entire anti frac sand effort saying it was a small group of individuals. There are approximately 18,000 people in Houston County and nearly 200 showed up to opposed frac sand mining. She believes this is a significant number of people.

Donna Buckbee stated she wrote the EAW worksheet with others. This had nothing to do with the other mines in the county or anyone else, only about the Erickson mine. She stated she was removed from the Planning Commission meeting by Chairperson Griffin because she stated that Houston County did not have authority to make a decision on the Erickson mine. The State of Minnesota (the EQB) said the EAW needed to be completed for this mine. They simply want to bring the mines of Houston County into compliance with the law.

Michael Kruckow stated the 2 main issues being addresses are the road setback and screening. He presented an affidavit from the previous mine owner, Steve Thorson. This affidavit states the previous landowner prior to the Baker's (David Konkel) did not have an issue with the road or the setback. As well, the Baker's knew the road was there before they built their house; they even applied for a variance to build closer to the mine. The Baker's did not have any issues at that time and now 20 years later it is an issue, this seems to be a disingenuous argument. He believes this is an estoppel issue. There is more screening there now than when the permit was issued in 1992. We cannot control Mother Nature and sometimes trees die and need to be cut down, so others can grow. Some of these same issues were raised and affirmed by the Minnesota Court of Appeals and the Minnesota Supreme Court; the Conditional Use Permit for this mine is valid. The EAW was not an issued, the Court of Appeals dealt with that issue. They have met with the Zoning Department/Rick Frank on the possibility of moving the road over, once they were passed the gate. They could move the road over, but then they would need to cut down existing screening, so they would ultimately be violating their own CUP.

Chair Myhre asked for clarification on the Baker's needing a variance. Michael Kruckow stated they applied for a variance in 2005 to build their house closer to the mine.

(The affidavit is listed below.)

STATE OF MINNESOTA

COUNTY OF Fillmore

Affidavit of Steven Thorson

I, Steven Thorson, being first duly sworn under the penalties of perjury state that:

1. I reside at 65 McIntosh Road East, La Crescent MN 55947.
2. I am the previous owner of the 43-acre property at 23148 State 16, Rushford MN 55971 (Parcel ID 170039000), currently owned by Tracie and Michelle Erickson.
3. I applied for and was granted a Conditional Use Permit (Document 166747) in 1992 to mine sand on this property now owned by the Ericksons.
4. At the time, there was a pre-existing driveway running north approximately 25 feet from the eastern property line. This driveway is subject to an easement I granted, allowing access to a neighbor's cabin north of the property. For aesthetic reasons, and to preserve screening, I intended this driveway to also be used as the access road to the mine.
5. This pre-existing driveway ran along the neighboring property then owned by David Konkel at 22848 State 16, Rushford MN 55971 (Parcel ID 170037001).
6. Prior to receiving the Conditional Use Permit, I asked David Konkel if he had any issue with me using this driveway in its current location as the access road into the mine.
7. David Konkel told me he had no problem with the current location of the driveway, and that he was okay with me using this driveway as the access road into the mine.
8. The Houston County Planning Commission then approved the site, along with the location of this driveway as the access road into the mine, and recommended approval of the Conditional Use Permit on January 9, 1992. No concerns were raised at the hearing regarding the location and use of this driveway/access road.
9. The Conditional Use Permit was then subsequently approved and granted by the Houston County Board of Commissioners on January 14, 1992.
10. David Konkel eventually sold his property to Cory and Jacqueline Baker.
11. I never received a single complaint regarding the location of this access road into the mine, which has been used since 1992.

To the best of my knowledge, all of the facts in this Affidavit are true.

Dated this 20 day of Jan, 2016.


 Steven Thorson, *Affiant*

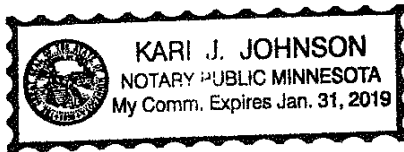
STATE OF MINNESOTA

ss.

COUNTY OF Fillmore

SWORN TO AND SUBSCRIBED before me on January 20, 2016
 Date

by Steven Thorson, *Affiant*.




 SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

Bryan Van Gorp presented an additional handout at this time. (The submittal is titled "BBB"). He stated the road did not exist when the mine started, the mine was in a different location. The road they are currently using did not exist. The Baker's are the current owners and did not give permission. The variance the Baker's went through was never required; it was not reciprocal to build closer to a mine. They started complaining about his 3½ years ago, it is not new as Mr. Kruckow stated. The trees that were cut were in violation of the CUP, they were live trees, not dead trees, photos were submitted to show this. The EAW was not dealt with in the Supreme Court case; it was the trout stream setback only.

Jackie Baker stated the screening requirement is in violation because there is a lack of screening between the mine and the adjacent property Section 0110.2706, Subd. 6. The screening Mr. Kruckow referred to is different screening. Bryan Van Gorp said there are 2 screenings required, in front of the mine and along the adjacent property line.

Bryan Van Gorp said he is not against mining; he would like mining to occur in compliance with the law.

Jackie Baker asked for the exploratory borings that were conducted on the property and stated the road is not paved, it is a graveled road.

Chairman Myhre asked Attorney Jandt to go over the Findings of Fact.

Attorney Jandt indicated, in the matter of the pending appeal filed by Bryan Van Gorp and all, state statutes and the Houston County Zoning Ordinance restrict the options available to the Board. Generally speaking, the Board's options are limited to affirming or reversing the decisions of the zoning administrator. If the Board affirms the Zoning Administrator's decisions, this means that the Board believes that the Zoning Administer was correct in his determination that there were no violations of the zoning ordinance. An affirmation by the Board of Adjustment would close the matter. Petitioners would have the option to appeal to district court.

However, if the Board reverses the zoning administrator's decisions, this means that the Board believes that the Zoning Administer was incorrect in his determination that there were no violations of the zoning ordinance. The Board would then assume the powers of the Zoning Administrator. The authority for this is found in Minnesota Statute §394.27 Subd. 6. Appeals"

Which says The board of adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit ... The reasons for the board's decision need to be in writing.

In this case, acting as the Zoning Administrator, the Board of Adjustment is only empowered to certify violations to the County Board. *See, §0110.2712 of the Houston County Ordinance.* The Board of Adjustment thus does not have the power to proscribe corrective measures because zoning administrator does not have such powers.

Our proposed findings would be:

1. M.S. 294.27 allows the Board of Adjustment to hear appeals of decisions made by administrative officials.
2. Section 0110.2706, Subd. 6 of the County Zoning Ordinance requires the planting of fast-growing trees to serve as screening between mining operations and adjacent residences for the purpose of minimizing problems with dust and noise.
3. Screening required under Section 0110.2706, Subd. 6 has not been established.

4. At the time the original Conditional Use Permit was issued, Section 0110.2706, Subd. 7 of the County Zoning Ordinance requires that mining operations be setback no less than thirty feet from adjoining property lines.
5. Section 0110.0306 of the County Zoning Ordinance defines mining to include the removal of material from the site.
6. Using the County's mapping software, a measurement from the center of the mining site access road to the easterly property line, taken at the point at which the road appears closest to the property line, shows the distance to be approximately twenty-three feet.
7. The County has no documentation that the property owner to the east of the mine has consented to the setback encroachment in writing, either the current property owner or the prior one.
8. Section 0110.2712 of the County Zoning Ordinance requires the Zoning Administrator to certify non-compliance of any portion of the provisions of the County Zoning Ordinance to the County Board of Commissioners.

Order:

The Zoning Administrator's decisions regarding the permit holder's compliance with the County Zoning Ordinance are hereby reversed, in part, to recognize non-compliance with Section 0110.2706, Subdivisions 6 & 7. Further, this non-compliance is hereby certified to the County Board of Commissioners in accordance with Section 0110.2712. It is understood that the County Board will notify the permit holder and schedule a hearing to determine the appropriate action.

Tim Orr stated he believes their hands are tied. Attorney Jandt stated the Board of Adjustment would be deciding whether there were violations or no violations. They would certify any violations and the County Board could terminate Conditional Use Permit or issue corrective measures.

Chairperson Myhre asked for a motion on the appeal.

Tim Orr believes there are 2 issues at hand and doesn't think they have much choice other than to turn it over to the county board. The 2 issues are the road and the screening. Tim commented on sand use in the county and the importance of sand use. Tim made a motion that the Board of Adjustment reverse the Zoning Administrator's decision on those 2 issues, the road and the trees.

Attorney Jandt asked if that included certifying the board of adjustment's decision and this would then go back to the county board for corrective measures. Tim Orr indicated that was correct.

Chairperson Myhre would like to table the hearing for further research until February 18, 2016. Tim Orr made motion to table the appeal until February 18, 2016, Greg seconded. Motion carried.

Tim Orr made the motion to adjourn the meeting and Greg Myhre seconded it. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on February 1, 2016.

Houston County Board of Adjustment
February 18, 2016

Approved on March 24, 2016 by Tim Orr and Larry Hafner

The Houston County Board of Adjustment met at 6:30 p.m. on Thursday, February 18, 2016. A summary of the meeting follows.

The meeting was called to order by Chairman of the last meeting, Greg Myhre. Members present were Greg Myhre, Tim Orr and Larry Hafner. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning. See sign in sheet for others present.

At this time Aaron Lacher, Zoning Administrator read the meeting guidelines. It is my expectation that this meeting be conducted in a dignified and respectful manner. Achieving this requires that each of you not merely tolerate opinions that may differ from your own, but that you recognize and embrace the right of others to express opposing views. In order to facilitate a civil discussion on the matters before the Board tonight, I ask that you carefully consider your comments and demeanor. It is my expectation and hope that the guidelines for this evening's meeting which I am proposing will be self-enforcing.

1. Members of the audience are asked to show respect to the Board and others present by refraining from cross-talk and commentary.
 2. At all times, individuals will refrain from name calling, slander, vulgar language, derogatory remarks, finger pointing, or other inappropriate language or gestures.
 3. If the need arises, the Zoning Administrator will serve as the official time keeper.
 4. Once the meeting is adjourned, you are asked to promptly exit the building. This is not an appropriate time to engage Board Members.
 5. In the event that audience members fail to act according to these standards, warnings and ultimately removal may take place. It is worth restating that the expectation is that these guidelines will be self-enforcing.
- I submit that the Board adopt these rules for conducting tonight's meeting by majority vote.

Tim Orr made a motion to adopt the meeting guidelines. Larry Hafner seconded the motion. Motion carried.

Election of Chairperson for 2016 took place. Tim Orr nominated Greg Myhre for Chairperson, Larry Hafner seconded. There were no other nominations. Motion carried unanimously.

Notice of **Public Hearing No. 429** was read. **Dylan Becker**, 14109 Highway 76, Caledonia, MN 55921 is seeking a variance of 25 feet to meet the required 50 foot setback from the north property line to build an addition on an existing shed in Section 12 of Caledonia Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Mr. Becker owns property just north of the City of Caledonia.
- He is proposing a 30' x 50' shed addition on an existing shed.
- A dwelling and several outbuildings are located on the property.
- The site consists of two parcels totaling approximately 6 acres.
- The proposed shed addition will occupy space occupied by a previously demolished shed, as well as, additional space adjacent to the previous building.
- Slopes range from 3%-6%.
- The Caledonia Township board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked Dylan Becker if he had anything to add. Dylan indicated he did not.

Chairman Myhre asked if anyone wanted to speak. There were no comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No
- 2.) Will the variance have a negative effect on governmental services?
Answer: No
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No**

- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No**
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Larry Hafner made the motion to grant the variance as submitted. Tim Orr seconded. Motion carried.

County Attorney Jandt asked the board to share comments on their reasoning for granting the application. Larry Hafner asked Dylan Becker how much of the old structure he is replacing compared to what he is adding. Dylan indicated it is approximately twice the amount of space he is removing. Larry said he is basically updating his site then. Dylan said he needs additional storage, but is limited on space where he can build.

Notice of Continuation of **Public Hearing No. 428** was read. **Rosemary Iversen**, 2835 Casco Point Road, Wayzata, MN 55391, **Cory and Jackie Baker**, 22848 State 16, Rushford, MN 55971 and **Bryan and Susan Van Gorp**, 4382 Ferndale Road, Rushford, MN 55971. For a Zoning Appeal of an Administrative Decision as per Houston County Developmental Code (0110.1104 POWERS AND APPEALS - Subd. 2 Appeals: The Board of Adjustment shall act upon all questions as they may arise in the administration of any ordinance or official control, and it shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with enforcing any ordinance adopted pursuant to the provisions of Section 394.27 Subdivision 6).

Aaron Lacher, Zoning Administrator, asked Larry Hafner if he was present at the previous Board of Adjustment meeting on January 28, 2016 and if he saw and heard what occurred at that hearing. Larry indicated he was and he had. Aaron then asked Larry if he received all the information for the hearing, had time to review it and could make an informed decision after hearing the testimony this evening. Larry indicated he had and he would.

County Attorney, Sam Jandt, then notified the board members of allegations/conflicts of interest complaints issued against Greg Myhre and Tim Orr.

Attorney Jandt questioned Tim Orr on the following allegations issued:

Complainant A called and issued a complaint stating that both members breached Section 5 of the County Ethics Code by expressing their desire to protect farmers and townships.

Complainant B called and issued a complaint stating that both members demonstrated bias by stating that the hearing was a waste of time and taxpayer money and that having the Erickson Mine operating is good for farmers and townships.

Complainant C called and issued a complaint stating that both members stated their beliefs that the hearing was a waste of time and tax payer money. Mr. Kuehmichel believes this demonstrates disrespect for the right of citizens to appeal county government decisions. Secondly, that Mr. Orr and Mr. Myhre stated they wanted to keep the price of sand low for farmers and townships. Mr. Orr is a farmer.

Complainant D called and issued a complaint stating that both members exhibited bias, but provided no further details.

Complainant E called and issued a complaint stating that both members violated the Houston County Code of Ethics, but provided no further details.

Complainant F called and issued a complaint stating that both members stated their belief that the hearing was a waste of time and tax payer money. Ms. Stanage believes this demonstrates disrespect for the right of citizens to appeal county government decisions and shows that the board had prejudice regarding the issue.

Given those complaints, Attorney Jandt asked Tim Orr if he understood what his role was on the board of adjustment and if he could make appropriate decisions. Tim said he did and could. Attorney Jandt then indicated everyone has their personal beliefs and asked if he would he be able to set those beliefs aside in his decision making. Tim said he could.

Attorney Jandt then asked Larry Hafner and Greg Myhre to take a vote. Larry Hafner said he was at the last meeting and is comfortable with the comments that were made by Mr. Myhre and Mr. Orr. Larry Hafner made a motion that Tim Orr remain on the board. Greg Myhre seconded. Motion carried.

Attorney Jandt indicated to Greg Myhre that the same allegations/conflicts of interest complaints were issued against him. Attorney Jandt proceeded to ask Mr. Myhre if he understood what his role was on the board of adjustment and if he could make appropriate decisions. Greg said he did and could. Attorney Jandt then

indicated everyone has their personal beliefs and asked if he would be able to set those beliefs aside in his decision making. Greg said he could.

Attorney Jandt then asked Larry Hafner and Tim Orr to take a vote. Tim Orr made a motion that Greg Myhre remain on the board. Larry Hafner seconded. Motion carried. Larry Hafner again indicated he was at the last meeting and is comfortable with the comments that were made by Mr. Myhre and Mr. Orr.

At this time, Chairman Myhre asked Traci and Michelle Erickson if they wished to speak. Michelle Erickson read their statement as follows:

Good evening. I am Michelle Erickson, my husband Tracie and I are the mine owners. Michael Kruckow is here from Bonanza Grain, Inc., and as the leaseholder of our pit will address the screening and driveway issues specifically.

At this time, however, I would like to make a brief statement for the record.

In 1992, our mine was granted a CUP. There was a hearing, and anybody opposed to the mine had an opportunity to speak out. Mr. and Mrs. Van Gorp were neighbors at that time, and they did not object to the mine, nor voiced any concerns. Every five years there was a permit review and an opportunity for them to speak their concerns. They never did until now.

The Bakers built their house on neighboring land in 2005. At the time, it was believed that they needed a variance as they wanted to build 400 feet closer to our existing mine from the 1000-foot setback. I understand it has come to light that they did not need a variance, but that is not the point. The point is they wanted to build closer to our existing mine, and had no issue being closer to it and raised no complaints regarding the access road or screening.

It wasn't until 2012, these individuals began to take issue with our mine when we sought to do larger scale mining. In 2013, my husband and I dissolved our plans to do larger scale mining, in part to the harassment we were receiving. We simply wanted peace and to continue our small scale mining business as we had before.

Since then, we have been targets, with individuals making untrue statements and allegations of violations at our mine. We have documentation that every allegation brought forth by these individuals was dismissed, or found baseless. Yet, they continue to make these allegations in the papers, news, and board meetings. They seem determined to strip us of part of our livelihood.

We are not mining frac sand. We are in fact, the smallest, most regulated mine now in Houston County. This fight is not about these alleged violations, it is about shutting us down out of anger. But this won't end with us, the other mines already have become targets. The harassment has scared off two companies from doing business with us, and the Court granted us a harassment restraining order against Mr. Van Gorp due to his behavior.

At the January 28th meeting, we felt blindsided when the County went on record stating there were violations when we were continually told there were no violations, and these statements were made even when the zoning department, the water and soil department, the county engineer, and the county attorney visited our site with my husband and Gary Kruckow. We feel there was an

effort made to exclude us from presenting a true and accurate picture of the situation at the 28th meeting.

We are left to wonder, what is going on? Not a single complaint for 20 plus years, and then all of a sudden we are fighting ridiculous accusations and constantly receive dirty looks, insults, cameras in faces, harassing phone calls, character assassination, threatening letters, and for what. I ask that you listen to the facts presented next by Michael Kruckow, and we trust that you will put an end to this ongoing harassment and do what is reasonable and find no violations exist on our mine, just as the County Board found in 2014, as no violations exist. Thank you.

Chairman Myhre asked Traci Erickson how much sand they have sold. Traci said they have sold some, but didn't have records with.

Larry Hafner understood this mine is limited to 10,000 yards per year and calculated that being less than 4 loads a day average. Traci Erickson indicated that was correct.

Aaron Lacher indicated that the zoning office has a record on file for 2015 stating roughly 200 yards were taken out.

Chairman Myhre then asked Michael Kruckow if he wished to speak. Michael Kruckow of Kruckow Rock Products/Bonanza Grain stated they are the lease holder of the Erickson mine and they do not mine frac sand.

Michael stated he consulted with outside legal counsel on the Board of Adjustments limitations/powers after the January 28, 2016 hearing. The firm he consulted with Fox Rothschild LLP, Attorneys at Law of Minneapolis.

(Statement submitted for record)

Michael read from Page 2: *"we have analyzed the Board of Adjustment's powers under Minnesota state law as well as the Houston County Zoning Ordinance. Despite Mr. Jandt's contention to the contrary, the Board is not limited to merely affirming or reversing the Zoning Administrator's September 29 decision concerning whether to certify non-compliance with the CUP. Rather, the Board may consider arguments presented by all interested parties and has broad discretion to resolve the issues raised."*

Michael also read from Page 3: *"Section 12 of the Houston County Zoning Ordinance does not limit this broad grant of authority under state statute, but rather confirms that ".....There is no provision of the ordinance stating that the Board of Adjustment's power in hearing an appeal is limited to affirming or reversing the lower administrator's decision. Quite the contrary. The statutory provision that Mr. Jandt point to confirms that, in addition to its appellate authority, the Board of Adjustment also "shall have all the powers of the officer from whom the appeal was taken". Accordingly the Board may decide to affirm or*

reverse the Zoning Administrator's decision, but it also has the authority to modify the decision and resolve the matter differently in its appellate capacity."

Michael went on to discuss:

ISSUE ONE: Alleged Screening Violation

This alleged violation is a not a legitimate violation for the following reasons:

1. Ordinance states "a screening barrier shall be planted with species of fast-growing trees or shrubs. The screening shall be maintained between the following: 1. Residential and Commercial Properties. 2. Public Roads."
 - a. The neighboring properties are not zoned residential, but are zoned agricultural and seasonal-recreational.
2. The Board of Commissioners issued an Order on July 1, 2014, stating: "Existing vegetative screening at the Iversen and Baker property boundaries and within the 50-foot setback area on the Erickson property shall remain."

(Findings of Fact, Conclusions of Law, and Order dated July 1, 2014 was submitted).

- a. The screening has remained, as ordered, and Petitioners had 30 days to appeal the Board's Order, which they did not. Order does not state more screening.
3. The Conditional Use Permit states "Existing natural screening must remain in place."
 - a. There is more screening now than in 1992.
 - b. If trees or shrubs died, they were cut down for new growth to ensure the general screening remained.

For these reasons, the January 26th Staff Report is wrong when it states the lack of screening along the easterly property line is a violation of the Ordinance.

Section 0110.2706, subd. 6, does not apply in this case, as the adjoining properties are not zoned or classified as residential. Furthermore, the Board of Commissioners ruled on the screening issue in July 2014, and Petitioners had 30 days to appeal that Order, which they did not. Thus, the Zoning Administrator was not in error in not certifying non-compliance. The Zoning Administrator correctly determined that this is not a violation.

ISSUE TWO: Alleged Driveway-Access Road Violation

This alleged violation is not a legitimate violation for the following reasons:

1. Neighbors had actual notice that this driveway was intended to be used as the mine's access road, knew of its location, and it was continually approved by the Planning Commission and Board of Commissioners for 20 plus years. At each review, there were not complaints.
 - a. Actual notice in property is notice given by open possession and use. Due notice is notice that is sufficient and adequate under the circumstances.

- b. Affidavit of Steve Thorson states the easterly property neighbor in 1992, David Konkel, had no issue with the access road's location. This is further evidenced by the fact Mr. Konkel raised no issues at any time regarding the road's location.
 - c. There is an easement of record that not only prevents this access road from being moved, it further provides notice of its use.
 - d. The Bakers had no issue with the access road's location for years, even built their home closer to the existing mine and road without raising any complaints.
 - e. In 1992, the set-back requirement was 30-feet, and there is only an approximate finding based on a computer program that the access road appears to be at 23-feet. A violation such as this cannot be found on an approximate measurement when the County has access to a survey team which may find the road is in fact outside the 30-foot setback.
2. The Board of Commissioners issued an Order on July 1, 2014, stating: "Rick Frank, Director of Environmental Services, testified that he had personally inspected the property and found there is no evidence that violations exist that would preclude renewal or be a basis for hearings to review the existence of violations."
- a. The access road set-back was raised by Petitioners prior to this Order, and there has been no change, so the Petitioners had 30 days to appeal the Board's findings, which they did not.
3. Under certain circumstances, the Board may weigh the equities involved here and find that zoning estoppel prevents enforcement of a particular zoning provision in this case.
- a. If the Zoning Administrator did err, the Ericksons, and now us, relied on this err in good faith. This Board may then balance the equities involved and weigh in favor of estoppel.
 - b. For 20 plus years there were numerous reviews and inspections and the site was approved time and time again. The access road cannot be moved, and if it is not outside the 30-foot setback, it is within only a few feet, which means the access road would just need to be widened. For that reason, it is reasonable to find that even if the access road is within the 30-foot setback, its encroachment is minimal within a few feet with little to no detriment to the neighboring property. Because there were no complaints raised for years while the neighbors had actual notice of this road's use during that time, it is reasonable to estop the enforcement of this requirement of the Ordinance on this mine. In the interests of fairness and justice to the land owner, the equities weigh in favor of estoppel.

For these reasons, the January 26th Staff Report is wrong when it states the location of the access road along the easterly property line is a violation of the Ordinance.

Section 0110.2706, subd. 7, does not apply in this instance, as the adjoining property owners had actual notice of the access roads use and location, and the site was reviewed and continually renewed for 20 plus years without any complaints raised. An easement of

record also provides notice and prevents this access road from being moved. Furthermore, it is arguable that the Board of Commissioners ruled on the access road issue in July 2014, and Petitioners had 30 days to appeal that Order, which they did not. And finally, under the circumstances, without a survey by the County proving the access road is encroaching on the 30-foot setback, and if it is, only by a mere few feet, and the fact an easement prevents this road from being moved, the equities weigh in favor of zoning estoppel on this matter. Thus, the Zoning Administrator was not in error in not certifying non-compliance. The Zoning Administrator correctly determined that this is not a violation.

Michael Kruckow concluded stating this is a classic case of a chicken with it's head cut off. The setbacks keep changing. An official survey needs to be done. It is extremely hard to do business in this county because they keep changing their position on the matter. Was this negligence on the part of the county or was there an agenda at play here?

Chairman Myhre asked if there were additional questions from the board at this time. There were none.

Chairman Myhre asked Bryan Van Gorp if he would like to speak.

Bryan stated he would like to correct some issues. 1) He did not like the vote that took place where Mr. Myhre and Mr. Orr were able to vote, he feels this may be illegal and invalid. 2) It is odd to him that the Erickson's and Kruckow's were able to speak; they are not parties in this case. 3) He did not agree with Mr. Kruckow's statement on the Board of Adjustment abilities. 4) The tree screening requirements are valid on a neighboring "residence". The trees that were cut were live trees and the 50 setback is the requirement is actual requirement not 30 feet.

Bryan Van Gorp read the following statement:

We want to make sure several issues are part of the public record of our Appeal.

1. The variance to which Mr. Michael Krukow referred in his comment was never required. The Bakers were coerced into filing for it based on the misrepresentation of the Ordinance by Mr. Scanlan. They were lead to believe they could not build a house to replace the old house on their property unless they got a variance. In fact there is no such requirement when building a house when the neighboring property has a mine. A mine is required to get a variance to be within 1000 feet of a residence but there is no reciprocal language. Obviously the Bakers would not have spent time and money on getting a variance if the facts had not been misrepresented to them. Any wrong doing in this regard rests with Mr. Scanlan and not the Bakers. We have submitted evidence (EXHIBIT BBB) to validate this. This should be part of the record of our case.
2. Regarding Mr. Krukow's submission of the affidavit by Mr. Thorson, it is important to look at our evidence packet (EXHIBIT ZZ). You will find 2 different sets of

photographic evidence that contradicts his statement, one is from the USGS and the other is from google earth. You will also find a form from the MN Department of Transportation showing there was no access point to that driveway until the end of 1996. There is also a letter from the previous owner of the Iverson property (Ms. Matzke-Engrav) saying that driveway did not exist. That is also my memory of the situation. The point is moot anyway because that agreement was with David Konkell. The Bakers have a right to decide if they are willing to have their setback violated. They have chosen not to allow this.

3. While we are glad the defendants admit wrong doing on 3 counts we want to make it clear there were 16 violations not 2. We do not accept the defendant's version of what applies in this case. These include –

- a. Disposal of waste at the mine site. #
- b. Attempting to frac sand mine without appropriate permits. #
- c. Violation of County wide moratorium. #
- d. Drilling 2 test wells without permits, Ord. 1403 and 2802. #
- e. Violated conditions of CUP by removing live trees serving as screening along the highway.
- f. Encroached on Ms. Iversen's easement and Baker's setback with silt fence that failed to protect their property rights.*
- g. Caused erosion impacting Ms. Iversen's property, Ord.1404.
- h. Violated setback to Baker's property by mining within 50 ft. Ord. 2706.*#
- i. Failed to control dust, Ord. 2706 and 2912.*#
- j. Failed to provide screening for neighboring property, Ord. 2706.*#
- k. Failed to provide signage at ingress and egress to protect public from traffic danger, Ord. 2706 and 2707.*#
- l. Failed to provide performance bond, Ord. 2709.*#
- m. Failed to provide adequate distance from residence existing prior to implementation of reclamation plan creating a nuisance, Ord. 2706.*
- n. Failed to comply with operating hours limits, Ord. 2706.
- o. Mined without mechanism to monitor 10,000 yd. limit. #
- p. Mined while environmental review is pending, Stat. 4410.3100.*

10 of these violations indicated by # have been admitted to by the Zoning Administrator and Environmental Services Director in various letters that we have included in our evidence packet. It is illogical to admit to violations in writing and to now say they aren't violations. 8 of these violations indicated by * are ongoing at this point in time. All 16 of the violations either have to be acknowledged as true or evidence provided as to why they are not really violations. Saying there are only 2 violations does not make it so.

We understand the defendant's position in only acknowledging a couple of violations that can be corrected in the future and there by create another end run

around enforcement and the consequences of the totality of the wrong doing. We also understand that many other mines have similar violations because of lack of enforcement and the defendant wants to avoid the consequences of having to universally enforce the Ordinances on other mines. This in no way changes the requirements of the law. Frankly we should not be punished for past lack of enforcement by the defendant.

4. The defendant claims that other issues raised, 2-6 are not valid because they were Board decisions and not administrative decisions. Again no evidence or arguments are made to validate this claim. It is simple an attempt to be dismissive of the facts of the case.
 - a. Misrepresentation of the facts by the Zoning Administrator saying at each step of the “renewal” process that there were no violations. This is obviously a Zoning Administrative decision in an attempt to mislead the Board to enable the permit to be renewed. Misleading the Board is not a Board decision.
 - b. Took action on the permit while environmental review was pending in violation of the State Statute 4410.3100. While the Board did eventually take action on this issue, they did so upon the recommendation of the Zoning Administrator that it would be OK to do so. The Zoning Administrator’s decision to mislead the Board and the subsequent failure of due diligence by the Board led to an incorrect outcome. Again the decision of the Zoning Administrator to mislead is not a Board decision. If the Zoning Administrator had made a different recommendation the Board would likely have voted differently.
 - c. Denied appeal to the Board of Adjustment constituting a denial of due process. The Board never took this issue up. It was entirely an administrative decision. To fully appreciate who is involved here one must realize that both Mr. Scanlan and Mr. Frank have served as Zoning Administrators over the tenure of this wrong doing. While Mr. Scanlan was Zoning Administrator he reported to Mr. Frank the Environmental Services Director. They cooperated closely to enable non-enforcement, provide special treatment, and create work arounds to provide favoritism to the Erickson mine. We filed our appeal before the Board decision so obviously it was not appealing the Board decision. It was appealing the Zoning Administrator’s decision to let the case go forward with the reported violations and pending environmental review. Our appeal should have stayed the process. The renewal should not have occurred.
 - d. Documented favoritism as disclosed in the independent investigation of Mr. Scanlan. While it is true that some Board members also showed favoritism toward this permit in an attempt to hide past permitting mistakes and failure

of due diligence, we give numerous examples of things that are part of the public record of the Zoning Administrator and his supervisor specifically working on behalf of this permit. Reading the independent investigation report makes our case very clear. This was Mr. Scanlan's behavior that is judged inappropriate. This is not a Board decision.

- e. Unresolved issues with the original CUP. This speaks to the fact that lack of enforcement and lack of due diligence are long term problems in the Zoning Administrator's role regarding this permit. This permit has been mismanaged from the beginning in 1992. While not every mistake can be rectified at this time, some can and those should be.

Again like the violations each of these points must be addressed individually and either taken as valid or evidence and arguments given as to why they are not valid. A wholesale dismissal of these points in an attempt to minimize our case is not valid. It is clear all of these points are or involve administrative decisions. Sometimes those decisions did in fact impact Board decisions. That only makes those administrative decisions more egregious. We will not accept an end run that enables continued wrong doing. We are looking for justice, which means enforcement and consequences.

The Board of Adjustment can grant or deny our appeal for enforcement. If even one of the 16 violations is true, and we have evidence of the County admitting to 10 of the violations in letters and emails submitted in our evidence packet, our appeal must be granted. If even 1 of our 6 points demonstrating non-enforcement of malfeasance is true you must grant our appeal. If even one of the 6 major points of our case is valid no permit exists at this time because the renewal should have been stayed until those issues were dealt with making the "renewal" invalid.

The facts of the case clearly indicate our appeal should be granted. There are 16 violations and 6 malfeasant actions by the Zoning administrator all documented with evidence. Unless the County can refute each allegation with evidence our appeal must be granted. The law clearly indicates our appeal must be granted. What value is a law without enforcement?

Based on State Statute 394.301 subd. 3-A conditional use permit shall remain in effect so long as the conditions agreed upon are observed.

And Houston County Ordinance 0110.0608-Failure to comply with the permit shall cause automatic termination of the permit and the use may not be continued or re-started without County Board approval.

Since a County Ordinance cannot be less restrictive than the corresponding State Statute but can be more restrictive 0110.0608 must apply rather than 0110.2712 which is less restrictive.

This case is very simple. It is not about FSMing, or HCPs, or nonconforming mine or anything else. It is about whether or not to enforce the existing Ordinances as written on a particular mine. Will you enforce the law or not?

Granting our appeal means termination of the permit. No letter certifying non-compliance has been issued which in itself is an act of non-enforcement. You act in a quasi-

judicial role and your decision tonight is final short of an appeal to the District Court. You cannot refer this to the County Board. You must grant or deny our appeal and if you grant our appeal it means termination of the Erickson permit.

Jackie Baker wanted to make two points on them building closer to the mine. She stated their project was considered a rebuild. They rebuilt their home on an old existing site. Larry Hafner asked how far away they were from the mine. Jackie thought around 600-700 feet. Aaron Lacher stated it was approximately 595 feet. Jackie also believes that the Thorson CUP distance requirement was only 500 feet at that time (1992). Jackie also stated their additional exhibit shows where the original mining roads were located; there are other options then where the current road is.

Bryan Van Gorp also stated the reason there was no complaints from 1996 until 2012 was that there was almost no mining occurring during that time. Why would the Bakers complain if there were not any violations from the time they bought the property until 2012; once the mining started up we started complaining.

Michael Kruckow stated the ordinance does not state residence it states residential, that is a zoning district classification. The property is not zoned residential, it is zoned agricultural. The setback requirement as of the January 28, 2016 meeting stated the setback requirement was 30 feet. You cannot keep changing road placement setback requirements on existing mines. Even when an ordinance is updated certain setbacks remain. MN DOT did approve the new access road into the mine off the highway. The easement for Iverson also was used by Thorson. This is not a large scale mine. In 2015 only 19 load were taken out. He believes the Baker's built a new home knowing the mine was there; they even built an addition recently. He hopes the board closes this matter as it is not about the setback or the screening; it is about neighbors angry with neighbors.

At this time Chairman Myhre asked Aaron Lacher, Zoning Administrator to speak. Aaron assured the board and the public that they were genuine in applying the ordinance according to the facts that were presented. Staff previously recommended that the Board find the County in error in determining that there was no violation resulting from a lack of screening on the easterly property line of the mine. That recommendation can no longer be made with certainty, nor can a recommendation to the contrary be made.

The basis for the previous recommendation was that Section 0110.2706, Subd. 6 of the County Zoning Ordinance requires the planting of fast-growing trees to serve as screening between mining operations and adjacent residential and commercial properties. There is a residence on the adjacent property to the east of the mine. Yet the adjacent property to the east of the mine is zoned agricultural. The

question becomes: *what does the ordinance mean by the phrase residential properties.*

As a starting point, it is useful to read other references to residentially zoned districts within the Ordinance, and to look for any continuity in language use. A reading of the subdivisions immediately before and after the screening requirement reveal two references to residentially zoned districts; in each instance, the description in the Ordinance is specific and leaves no question—Subd. 5 refers to a “residential zone” while Subd. 7. refers to “residentially zoned.” Yet when establishing the screening requirement, Subd. 6 refers to residential properties and does not use the word “zone” or “district” in any form. This leads to the question: why would the County adopt dissimilar language to describe the same thing in such close proximity?

A second consideration is the practicality of the requirement. Subd. 6 states the goal of the requirement to be to minimize problems of dust and noise. Such a goal is equally useful and arguably necessary for residences in any district. Moreover, because mineral extraction is prohibited in both residential and commercial districts, an interpretation that “residential properties” should be read “residentially zoned properties” would mean that the screening requirement would only be applicable at the intersection of zoning districts.

Lastly, a third practicality consideration is necessary. A problem emerges if one is to believe that “residential property” means any parcel upon which a residence exists. Consider a hypothetical situation of two forty-acre parcels that share an east/west boarder. Imagine that the westerly parcel has a small mine on its westerly boarder, and that the easterly parcel has a residence on its easterly boarder, with the result being that the mine and the residence are separated by nearly ½ mile. In such an instance, would the Ordinance still require screening to be established on the shared boarder? Such a requirement would arguably serve no practical purpose.

Concerning the setback requirement: Section 0110.2706, Subd. 7 requires the following setback: “Adjoining Property Line. Not closer than fifty (50) feet to the boundary of an adjoining property line, unless the written consent of the owner of such adjoining property is first secured.”

On Complaint (a), due to the location of the access road, the mine operation has and continues to encroach on the easterly property owner’s setback by 27 feet. At the time the initial Conditional Use Permit was granted in 1992, the County Zoning Ordinance required a setback of 30 feet. The mine never complied with the 30 foot setback requirement. The Ordinance was updated in 1998 to require a setback of 50 feet. If the mine had conformed with the 30 foot requirement prior to 1998, a 30 foot setback could continue and would be considered legally non-conforming. However, because the mine was never in compliance with the 30 foot setback requirement, it cannot now be exempt from the requirements of the updated ordinance.

Regarding the affidavit of the prior mine owner, Steven Thorson, it is the county's position that the affidavit does not satisfy the requirement for permission for the following reason:

Foremost, the permission was not in writing, as is required. Secondly, the County never received notice of the permission. On the later point, consideration of the purpose of the written permission requirement is appropriate. The County has no interest in encouraging or discouraging land use agreements among landowners to be construed in a specific manner. For example, the County does not prescribe the form in which land rental agreements must be construed. Accordingly, it would be a mistake to view the County's requirement of written permission in this case to be chiefly for the benefit of the private parties involved—while it may, and likely would, be prudent for parties to formalize any agreement in writing, requiring this is beyond the County's purview.

The County does, however, have an innate interest in enforcing the laws of the County, including setback requirements. It is for this purpose that the written permission is required. Therefore, in order for the written permission requirement to be satisfied, it follows that documentation of the permission must be provided to the County. Indeed, the only plausible purpose for including the written permission requirement in the Zoning Ordinance is to ensure that the County is notified that a reduced setback requirement should be applied. Without knowledge of a reduced setback requirement, the County would inevitably determine that the mining operation had encroached.

Further support for this is found by the fact that the Ordinance requires that the permission not merely be written, but be "first secured"—that is to say, obtained from the landowner and provided to the County before the commencement of mining operations. Again, such a requirement would be necessary to enable the County to apply the correct setback requirement when determining compliance. Consideration of the converse—an after-the-fact notification to the County—suggests an administrative quandary where enforcement actions would be initiated, aborted, or perhaps unjustly carried out. Surely the County Board did not intend for such a situation. Therefore, it is staffs opinion that the written permission is required to be filed with the County concurrently with other necessary documents. This is in line with recent application of this requirement, during which the County has compelled applicants for mining operations to provide the County with written consent for reduced setbacks from adjoining property owners before issuing a permit.

County Attorney Jandt stated there were three positions presented tonight from the county, the Erickson's/Kruckow's and the petitioners. He encouraged the board to rely upon the submittals and take a vote on the information provided.

Bryan Van Gorp stated the neighbors were not notified of CUP renewals on the mine every 5 years.

Larry Hafner stated the road setback requirement is new to him; he's not aware that roads need setbacks. There is no survey. Is this road any different than farmer's driving on their farm roads; are we now to say they also need setbacks. When you are building a house, you can build a road right along the property line.

Bryan Van Gorp stated that mining activity is not allowed within 50 feet from the neighbor's property line, this includes sand removal.

Aaron Lacher stated the interpretation is that the mining site stops at the gate so the driveway from the gate to the road is not part of the mine site.

Jackie Baker wanted clarification on the setback. Bryan Van Gorp said there was never written permission from the Baker's to mine closer than 50 feet.

Greg Myhre asked Attorney Jandt to discuss the findings. Attorney Jandt encouraged the board to rely upon the submittals and take a vote on the information provided including the Fox Rothschild submittal from Erickson/Kruckow. There were three positions presented.

Chairman Myhre asked for the motion on the appeal as presented. Tim Orr made a motion to affirm the Zoning Administrator's decisions. Larry Hafner questioned what the county's position was. Greg Myhre seconded the motion.

Larry Hafner asked Aaron Lacher for explanation of the county's position. Aaron Lacher said two of the complaints were able to be reviewed being the screening requirements and the road setback requirement.

Larry Hafner wanted to know if the point was to shut the mine down or correct it. Bryan Van Gorp said they are asking that the ordinance be enforced and the mine will be shut down if they enforce the ordinance. Jackie Baker said the permit is not good.

Chairman Myhre indicated there was a motion and a second on the table and asked for a vote. A vote was taken, members voted 3-0 to affirm the Zoning Administrator's decision, motion carried.

County Attorney Jandt asked the members if they based their decision of affirming the Zoning Administrator's decision and relied on the evidence and testimony from the following: The document provided by Michael Kruckow dated February 17, 2016, the land is zoned agricultural according to the ordinance, the testimony and documents presented in both hearings, the Zoning Administrator's documentation on the alleged violations.

(Findings of Fact will be prepared by staff based on conclusions reached by the Board of Adjustment.) *(See attached Finding of Fact).*

Bryan Van Gorp stated the 60 rule had expired so their appeal is granted.

Tim Orr made a motion to approve minutes of January 28, 2016. Larry Hafner seconded. Motion carried.

Tim Orr made a motion to adjourn. Larry Hafner seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on February 19, 2016.

Houston County Board of Adjustment
March 24, 2016

Approved on April 28, 2016 by Tim Orr and Larry Hafner

The Houston County Board of Adjustment met at 6:45 p.m. on Thursday, March 24, 2016. A summary of the meeting follows.

The meeting was called to order by Chairman, Greg Myhre. Members present were Greg Myhre, Tim Orr and Larry Hafner. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning. See sign in sheet for others present.

Notice of **Public Hearing No. 430** was read. **Sheldon McElhiney**, 7474 County 24, La Crescent, MN 55947 is seeking a variance of 920 feet to meet the required $\frac{1}{4}$ mile setback for a new feedlot to an existing dwelling in Section 10 of Mound Prairie Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Mr. McElhiney is proposing to erect poultry barns he owns in Mound Prairie Township.
- The proposed building site is adjacent to existing agricultural buildings at an existing farm homestead. Mr. McElhiney is locating buildings and proposing operations so as to minimize impacts on his neighbors.
- Though not required to do so, Mr. McElhiney has completed a feedlot registration process with MPCA. This is in part due to plans to add additional poultry barns in the future.
- The proposed sites would be considered the logical expansion area of the existing farmyard. Slopes are approximately 6%. No sensitive features are located at the proposed site.
- There was a statement submitted from a neighbor.
- The Mound Prairie Township board and adjoining property owners were notified. There were 2 inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked Sheldon McElhiney if he had anything to add. Sheldon indicated he is seeking a variance from this closest neighbor and would like to establish an organic egg laying operation. The family farm hasn't been in use for approximately 35 years and they are seeking an operation that will work for the family. Organic Valley is interested in working with them.

Greg Myhre asked how many chickens Sheldon was looking at having. Sheldon said up to 21,000 laying hens and if they reach Phase 3 they would have a brooder house to raise 21,000 pullets also. He said they are planning for all three phases, but they may proceed with all three.

Aaron Lacher said Phase 1 would include up to 31.5 animal units (A.U.), Phase 2 would include up to 63 A.U. and Phase 3 would include up to 83 A.U.

Larry Hafner clarified if Sheldon was seeking Phase 1 and Phase 2 only. Sheldon said they are seeking all phases due to the ¼ mile setback.

Greg Myhre asked about the manure handling process. Sheldon said the manure is a very dry manure and is further dried by the tunnel ventilation system and is cleaned out once a year. It is not sold directly or spread on fields. It is stored inside the facility.

Larry Hafner asked what the percentage was of the variance needed. Aaron Lacher said Sheldon needed a 70% variance.

Larry Hafner asked if Sheldon has talked with his neighbors about his plans. Sheldon indicated he had talked them and that Fred Sandvik and Terry and Dawn Lewis were present this evening. He also spoke with Ted Von Arx, but not recently.

Larry Hafner asked if the family farm has been in Sheldon's family. Sheldon said it was his mother's home farm.

Aaron Lacher read a statement from a neighbor, Ted Von Arx. Ted was not in favor of the variance as he believes there would be adverse effects on real estate of all neighboring properties. Animal confinement odors and spread of disease are also issues of concern for him. Future owners have no obligation to follow the same operations plans. (Statement on file).

Greg Myhre asked how far away the Ted Von Arx residence was. Aaron Lacher said it is approximately 595 feet from nearest building.

Larry Hafner asked Sheldon if there are local examples of this type of operation or where he has seen an operation like this. Sheldon said he has a friend in Stoddard with the same set up and there is no discernible odor outside the building.

Greg Myhre asked if the manure could be used for organic crops. Sheldon said it would.

Larry Hafner asked if the eggs were organic also. Sheldon indicated they were.

Fred Sandvik stated he is the closest neighbor to Sheldon's site and is in favor of the operation. Some of the neighbors have met with Sheldon and he believes that Sheldon has addressed all their concerns. He said they trust Sheldon and believes he will run a good operation.

Yvonne Krogstad asked if there could be a stipulation on the permit that any new owner would carry through with the same operations in the future. Greg Myhre said they really could not guarantee the future.

Fred Sandvik stated they understood the farm would be kept in a trust and will stay in the family. He also wondered if a new owner would have to reapply. Aaron Lacher said the variance would stay in effect but if a new owner had different plans that could trigger additional permits. Sheldon's variance permit application is granting him permission to build closer.

Tim Orr asked if Sheldon is required to register if the animal units are under fifty. Aaron Lacher said technically not, but it's the animal confinement issue triggering it to be considered a feedlot.

Larry Hafner stated it's hard to put conditions on a new owner and saying that the smell will never be there. Feedlots by nature have odors.

Aaron Lacher asked Sheldon when he proposed to put the land in a trust. Sheldon it wouldn't happen until his mom passes.

Fred Sandvik stated they were comfortable with Sheldon being the operator and that there really isn't any other type of operation that can happen with the venue. They are comfortable with him proceeding.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

1.) Is there a substantial variation in relation to the requirement?

Answer: No. There are other feedlots in the area.

- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No. The neighborhood is agricultural.**
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No. No viable alternatives exist.**
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No. Density and nearby dwelling locations are factors.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Tim Orr made the motion to grant the variance as submitted. Larry Hafner seconded. Motion carried.

Aaron Lacher asked the board members if they were agreeable to the following statements:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property.
2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

The board members indicated they were.

Tim Orr made a motion to approve minutes of February 18, 2016. Larry Hafner seconded. Motion carried.

Tim Orr made a motion to adjourn. Larry Hafner seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on March 28, 2016.

Houston County Board of Adjustment
April 28, 2016

Approved on May 26, 2016 by Larry Hafner and Tim Orr

The Houston County Board of Adjustment met at 6:15 p.m. on Thursday, April 28, 2016. A summary of the meeting follows.

The meeting was called to order by Chairman, Greg Myhre. Members present were Greg Myhre, Tim Orr and Larry Hafner. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning. See sign in sheet for others present.

Notice of **Public Hearing No. 431** was read. **Dean Frank**, 11179 State 44, Caledonia, MN 55921 is seeking a variance of 30 feet to meet the required 50 foot setback from the south property line to build a pole shed in Section 31 of Union Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Mr. Frank is seeking a variance of 30 feet from the 50 foot setback requirement from the southern property line.
- The site is located on 35 acres.
- The site is located on ag land amongst production fields. The proposed site is currently in lawn and not ag production.
- Topography is the reason for the requested variance.
- The Union Township board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked Dean Frank if he had anything to add. Dean said he did not have anything additional to add.

Larry Hafner asked the dimensions of the proposed pole building. Dean said it is 30' x 40'.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No.**
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No. Locations are limited due to well and septic.**
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Larry Hafner made the motion to grant the variance as submitted. Tim Orr seconded. Motion carried.

Aaron Lacher asked the board members if they were agreeable to the following statements:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property. (The site is steep.)
2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant. (There are not any other buildings.)

The board members indicated they were.

Notice of **Public Hearing No. 432** was read. **Susan Huber**, 8990 Day Valley Drive, Houston, MN 55943 is seeking a variance of 28 feet to meet the required 65 foot setback from the centerline of a township road to build an addition on a dwelling in Section 15 of Mound Prairie Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Ms. Huber is seeking a variance of 28 feet to meet the 65 foot setback from the center of the township road for a proposed addition.
- The site is located on a 40 acre parcel.
- Two home in the same quarter quarter section; both existed prior to 1998.
- The building site is between road and ravine approximately 90 feet to the west. This limits building options.
- The Mound Prairie Township board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked Susan Huber if she had anything to add. Steve Scheu was there to represent his sister and spoke for her. He brought in plans for the addition. He said she owns property on both sides of the township road. The proposed addition is on the driveway side.

Todd Dawson, neighbor, wanted clarification that there was two dwellings in the same 80. Aaron Lacher said that was correct. Todd also had concerns that the addition is fairly close to the road.

Larry Hafner asked if they could expand a non-conforming use. Aaron Lacher said they are not expanding the use, this will continue to be a single family home.

Rick Frank, Environmental Services, indicated that this parcel split happened approximately 45 years ago and the site was in compliance with the zoning ordinance at the time. The 80 acre tract has two contiguous 40 acre parcels split the long way.

Steve Scheu said his sister is a handicapped vet and this will give her easier access to the home. The grade of the addition will be at the same level of the entrance. They are limited on where they can put the addition on due to the topography. It is the only available spot.

Greg Myhre asked what the addition will consist of. Steve said a bedroom addition.

Rick Frank said he was on the site. Due to the bedroom addition the septic system will need to be upgraded.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No.**
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No. Topography is the reason.**
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Aaron suggested that language could be added on the permit to protect the township from liability issues with snowplowing and road maintenance.

Greg Myhre added that the septic system would need to be updated too.

Aaron Lacher asked the board members if they were agreeable to the following statements:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property. (Topography)

2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant. (It will not.)

The board members indicated they were.

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Sheldon McElhiney of Mound Prairie Township spoke and said the township was in favor of the proposed project. The township does not feel the proposed addition will cause issue with road maintenance. Chairman Myhre asked if they would be in favor of adding language to protect the township, however. Sheldon indicated that was fine.

Tim Orr made the motion to grant the variance as submitted with the added language for township road maintenance protection and to upgrade the septic system. Larry Hafner seconded. Motion carried.

Notice of **Public Hearing No. 433** was read. **Lisa Brown**, 17674 County 11, Spring Grove, MN 55974 is seeking a variance of 25 feet to meet the required 25 foot setback from the toe of a bluff to build an earthen garage in Section 36 of Yucatan Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- The Brown's are seeking a variance of 25 feet to meet the 25 foot setback from the toe of a bluff.
- The Brown's are proposing to embed an earth building into the side of a bluff.
- Site work began without a permit and a stop-work order was issued. The stop-work order was complied with as well as the request to install silt fencing as a temporary erosion control measure.
- The building site is located on one three parcels totaling 160 acres. More than 50% of this acreage is bluff land. The building site is on the farmstead adjacent to existing buildings. The farmstead is situated between two bluffs, with the existing buildings and house occupying the area between the bluffs and cropland below.
- The Yucatan Township board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked Lisa Brown if she had anything to add. Mitch Brown, husband, spoke. He said he is looking for something to heat efficiently and there really aren't any other locations to build on the property.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No.**
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No. Topography is the reason.**
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Aaron Lacher recommended that the following conditions be met before a permit is issued: 1) Prior to commencing construction, the applicant shall provide design plans stamped by a professional engineer or architect licensed by the State of Minnesota. The plan shall include the building and any adjacent physical barriers utilized to stabilize soils or slopes. 2) Prior to commencing construction, the applicant shall submit and have approved an erosion control plan. The plan may compliment the design plans, and duplicate information submittal is not required.

Larry Hafner made the motion to grant the variance with the above mentioned conditions. Tim Orr seconded. Motion carried.

Aaron Lacher asked the board members if they were agreeable to the following statements:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property. (No other place to build)
2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

The board members indicated they were.

Tim Orr made a motion to approve minutes of March 24, 2016. Larry Hafner seconded. Motion carried.

Tim Orr made a motion to adjourn. Larry Hafner seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on May 2, 2016.

Houston County Board of Adjustment
May 26, 2016

Approved on July 28, 2016 by Tim Orr and Larry Hafner

The Houston County Board of Adjustment met at 6:30 p.m. on Thursday, May 26, 2016. A summary of the meeting follows.

The meeting was called to order by Chairman, Greg Myhre. Members present were Greg Myhre, Tim Orr and Larry Hafner. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning. See sign in sheet for others present.

Notice of **Public Hearing No. 434** was read. **Eric Jr. and Tammy Nelson**, 15071 Gap Drive, Caledonia, MN 55921 are seeking a variance of 250 feet to meet the required ¼ mile setback for a new dwelling to an existing feedlot in Section 33 of Caledonia Township. (The land is owned by Eric Sr. and Gail Nelson).

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner proposes building a dwelling on the southern half of an 80 acre parcel. There are no dwellings located within this quarter, quarter section.
- A variance is required to meet the setback from the neighbor's feedlot.
- Petitioner currently lives in temp farm housing in the north half of the proposed parcel, approximately ¼ mile to the north of his proposed building location. His current home is 160 feet from a feedlot he operates and 460 feet from the neighboring feedlot which he is currently seeking a variance from.
- If the variance is granted, the new house will be 1,070 feet from the feedlot, nearly 2.5X further than his current location.
- The proposed location was selected to avoid major snow drifting that has historically occurred to the south on the township road.
- In addition, the Petitioner has already submitted Septic and Erosion Control Plans for this site.
- The proposed site has slopes of <5% on class II soils.
- The Caledonia Township board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked the Nelson's if they had anything to add. Eric Nelson said he did not.

Larry Hafner asked if the other feedlot owner had any issues with them building. Eric wasn't aware that anyone did. Greg Myhre indicated he talked to Hendel's, the closest neighbors and feedlot owners, and they did not.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No.**
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No.**
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Larry Hafner asked what would happen to the trailer they are living in. Eric said it would remain as temp ag housing and someone else would move it.

Aaron said it would be a continuation of the current use or put a condition on it. The board agreed to leave it as temp ag housing.

Larry Hafner made the motion to grant the variance as submitted. Tim Orr seconded. Motion carried.

Aaron Lacher asked the board members if they were agreeable to the following statements:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property.
2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

The board members indicated they were.

Notice of **Public Hearing No. 435** was read. **Travis and Naaren Kingsley**, 9016 State 76, Caledonia, MN are seeking a variance of 87 feet to meet the required 150 foot requirement of road frontage to replace a home in Section 21 of Sheldon Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- This parcel was created by a parcel split in 2007 that split a 40 acre parcel into two 20 acre parcels.
- The Petitioners purchased the 20 acre parcel containing the original home farm, which post-split is considered a Non-Farm Dwelling because it is located on a parcel of less than 40 acres. (Non-Farm Dwellings require 150 feet of road frontage, yet the parcel split yielded only 64 feet.)
- The Petitioners are concurrently seeking to replace the existing home on the same site. The granting of this variance will enable them to seek a Conditional Use Permit needed to bring their current home into compliance with the HCZO.
- The site is an existing farmyard upon a narrow bench. The parcel has a pan-handled 64 feet wide extending along the driveway.
- The Sheldon Township board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked the Kingsley's if they had anything to add. Naaren Kingsley did not have anything else to add.

Larry Hafner asked if it should be 86 feet instead of 87 feet for the required road frontage measurement. Aaron corrected the measurement.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No.**
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No.**
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Larry asked if anyone else used the current driveway. Aaron indicated Chase Johnson has a dwelling in the back and used the road using a perpetual easement.

Larry asked if emergency vehicles could get back in there easily. For example, could two fire trucks meet on the road at the same time and would it be wide enough. They may want to consider putting on more gravel to widen the road.

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Tim Orr made the motion to grant the variance as submitted. Larry Hafner seconded. Motion carried.

Aaron Lacher asked the board members if they were agreeable to the following statements:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property.
2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

The board members indicated they were.

Larry Hafner made a motion to approve minutes of April 28, 2016. Tim Orr seconded. Motion carried.

Tim Orr made a motion to adjourn. Greg Myhre seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on May 27, 2016.

Houston County Board of Adjustment
July 28, 2016

Approved on August 25, 2016 by Tim Orr and Larry Hafner

The Houston County Board of Adjustment met at 6:45 p.m. on Thursday, July 28, 2016. A summary of the meeting follows.

The meeting was called to order by Chairman, Greg Myhre. Members present were Greg Myhre, Tim Orr and Larry Hafner. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning. See sign in sheet for others present.

Notice of Public Hearing No. 436 was read. **Dean and Diane Montgomery**, 17664 County 26, Houston, MN 55943, are seeking a variance of 42 feet to meet the required 50 foot setback requirement from a property line to build a tool shed - workshop addition on an existing garage and variances of setbacks required for existing buildings including a variance of 42 feet to meet the required 50 foot setback from a property line and a variance of 52 feet to meet the required 100 foot setback requirement from a county road in Section 7 of Money Creek Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- The petitioners are seeking variances from three setback requirements to bring existing buildings into compliance. First, a variance of 42' to meet the required 50' setback from a property line in a Ag District for an existing garage; second, a variance of 42' to meet the required 50' setback from a property line in a Ag District for an existing shed; third, a variance of 52' to meet the required 100' setback from a county road.
- The requested variances are necessary to cure non-conformities. If the variance is granted, the County intends to issue a permit allowing the applicant to add an addition on the rear of his garage.
- Petitioners requested a permit to build a shop addition on a garage. The permit request was denied due to a setback violation that was created in 1993 when the parcel was sold to the current owners (Montgomery).
- The current house was permitted in 1987 (#1126). At the time, the applicant owned approximately 190 contiguous acres and the house was considered a permitted use as a farm dwelling. The house built in 1987 replaced an existing house whose construction date is unknown, but likely prior to the adoption of official controls. It is assumed that this replacement was considered a continuation of a legal non-conforming use and thus a variance from the road setback was not required. An addition added in 2007 may have extinguished the legal non-conforming use status and created a need for a variance, however this is debatable. Because a variance is

already being sought for the property line setback, staff recommends that the applicant concurrently seek a variance from the road setback so that there will be no question as to the legality of the existing structures.

- The parcel (1.01 acres) became non-compliant in 1993 when it was sold to the Montgomery's, who did not own contiguous acres, and therefore required a Conditional Use Permit and a setback variance to become compliant. The necessary variances are currently being sought. Amendments currently proposed would eliminate the need for a Conditional Use Permit (note that the original house is understood to have been occupied up until the time of replacement). For this reason, staff is not requiring the applicant to pursue a Conditional Use Permit at this time. In the event the amendments are not adopted, staff would request that the petitioner apply for a Conditional Use Permit.
- The site is located in Money Creek valley along County 26. The dwelling is located on the site of the original home farm for this and the adjacent property. The structures are existing.
- The Money Creek board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked the Montgomery's if they had anything to add. Diane Montgomery said they are looking at building a 12' x 18' addition on the north side of their existing garage. They would not be building any closer to the property lines.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No.**
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No.**

- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Tim Orr made the motion to grant the variance as submitted. Larry Hafner seconded. Motion carried.

Aaron Lacher asked the board members if they were agreeable to the following statements:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property.
2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

The board members indicated they were.

Tim Orr made a motion to approve minutes of May 26, 2016. Larry Hafner seconded. Motion carried.

Larry Hafner made a motion to adjourn. Tim Orr seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on July 29, 2016.

Houston County Board of Adjustment
August 25, 2016

Approved on September 29, 2016 by Tim Orr and Larry Hafner

The Houston County Board of Adjustment met at 6:30 p.m. on Thursday, August 25, 2016. A summary of the meeting follows.

The meeting was called to order by Chairman, Greg Myhre. Members present were Greg Myhre, Tim Orr and Larry Hafner. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning. See sign in sheet for others present.

Notice of Public Hearing No. 437 was read. **Mark Von Arx**, 6122 Timber Oaks Road, Hokah, MN 55941, is seeking a variance of 25 feet from the north property line to meet the 50 feet setback requirement from a rear property line in a residential district to build a storage shed in Hokah Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner seeks a variance of 25 feet to meet the required 50 foot setback from the rear parcel line in a Residential District to build a shed.
- For the purposes of this analysis, the northern property line is considered the rear property line. This determination is subjective, yet it should be noted that the alternative determination (i.e. the west property line is the rear) would equally require an application for variance.
- The area of the proposed shed (192 square feet) is under the threshold requiring permitting; permanent cement foundation triggers the need for permitting.
- The site consists of an approximately ½ acre lot in a Residential District west of Hokah. The lot is part of the Timber Oaks subdivision. Steep slopes prevail throughout the neighborhood, limiting building sites. This is true for the eastern 1/3 of the Petitioner's lot, where slopes of 25% - 28% prohibit building. The proposed building site has a slope of 11%.
- The Hokah Township board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked Mark Von Arx if he had anything to add. Mark said has lived there for over 20 years and knows the slopes are hard to deal with and wishes to leave as many trees as possible. This is the best location and would like to use concrete for the base.

Larry Hafner asked what Mark planned to use the shed for. Mark said it's a storage shed for lawn equipment, snow plow, etc.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties? **Answer: No.**
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance? **Answer: No.**
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Larry Hafner made the motion to grant the variance as submitted. Tim Orr seconded. Motion carried.

Notice of Public Hearing No. 438 was read. **Craig Olson**, 7387 County 25, Caledonia, MN 55921, is seeking a variance of 12 feet from the west property line to meet the 50 foot setback requirement from a property line to build a shed in Union Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner seeks a variance of 12 feet from the west parcel line to meet the required 50 foot setback in an agricultural protection district to build a shed.

- In preparation for his application, petitioner had the location of the western parcel established by survey, and had an engineer assess the proposed location's suitability as a building site. The variance request of 12 feet is based on the 2016 survey. The engineer's report was necessary due to the proposed building location being atop an existing embankment. The report focuses on stability of the embankment, the pressures of upslope waters on the embankment, and how the embankment and incorporated spillways perform during rain events. The engineer concludes that the embankment is suitable for the proposed building.
- The proposed site is atop an existing embankment within a narrow draw approximately 150 feet wide. A pond created by the embankment holds water during rainy periods but is otherwise dry. The top of the embankment is 24 feet wide and flat. Additional information is provided in the engineer's report.
- The Union Township board and adjoining property owners were notified. There was one inquiry to the Zoning Office in regard to the application.

Chairman Myhre asked Craig Olson if he had anything to add. Craig spoke on the secondary spillway and how it currently exists and how the proposed building would affect that. Craig spoke on the 2007 flood how the embankment was tested. It did not affect the embankment but water went over the driveway and ruined it. SWCD made recommendations on putting another spillway further south.

Greg Myhre asked where the building would be located. Aaron Lacher indicated the location would be on the spillway.

Larry Hafner asked where the spillway empties. Craig showed on the mapping that it was just below it.

Greg Myhre asked where the pipe comes out and where water deferment will go. Craig indicated it runs close to his neighbor Jacob Olson's shed. He and Jacob have worked on trying to keep the water away.

Aaron Lacher indicated the dike had been there for many years. Craig said at least 60 years.

Greg Myhre asked how big of an area Craig would be working with. Craig said approximately 60 feet wide where the building would go.

Tim Orr asked what the dimensions of the proposed building would be. Craig said 32' x 64'.

Greg Myhre asked where the existing driveway was located. It was shown on the map.

Aaron Lacher spoke on the secondary spillway and that it will retain more water to help stop water going toward the neighbors.

Larry Hafner asked if vegetation is better or riprap. Craig said the engineering report indicates vegetation being important because right now it is clay.

Greg Myhre asked what the planned use of the shed was. Craig said it would be used for storage and there is no other location to build.

Chairman Myhre asked if anyone wanted to speak.

Nick Frank indicated he rents the cropland below the site and asked if the SWCD recommendations were available. Craig said Rich Stemper and Ron Meiners of SWCD were at the site but there was nothing in writing. After the '07 floods it was recommended he put in a second spillway, which he did. Aaron indicated there was a recent engineering report available.

Jacob Olson, neighbor, asked for clarification on the second spillway. Craig Olson indicated that it was designed because he wanted to keep the existing pond for wildlife and what was already there. Jacob also had concerns if the official survey and whether the property lines indicated are accurate. Craig said he has a copy of the survey done by Kleinschmidt Surveying. Jacob Olson said his main concerns are with the hydraulics.

Larry Hafner asked if the dike needed more work. Craig said he won't continue work on the dike if he doesn't build the shed.

There was discussion on having SWCD review the engineering plans. Aaron Lacher said the engineer is more apt to know if this is a suitable building site.

Jacob Olson indicated he still had concerns on where the property lines were. Craig Olson said he requested the 12 foot variance because he doesn't want to build closer to the pond and on less impacted soils. He could put the building there but the soils are not as good for building on.

Aaron Lacher asked Jacob Olson if he is in doubt because the survey has not been recorded. Jacob said they have never agreed on the survey lines. There was discussion on how the original property lines were marked 18 years ago.

Larry Hafner asked for clarification on where the variance line is being measured from, the survey line and or from where. Aaron Lacher said it's based on the recent survey.

Craig Olson said he has an official survey from Pete Kleinschmidt; however it is not totally finalized. Larry Hafner said for our purposes that is the line then.

Craig Olson indicated that Rick Frank said a survey was needed. There was a determination made that the survey needed to be recorded yet and this hearing is contingent on the survey being recorded.

There was discussion with Jacob Olson on whether the building would hurt his property and the hydraulics of the valley. Jacob said it would not; however, he wants the water to flow in the direction it is supposed to go.

There was further discussion on the need for the survey being recorded with the County.

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Tim Orr made the motion to table the variance as submitted until the survey has been recorded. Larry Hafner seconded. Motion carried.

Tim Orr made a motion to approve minutes of July 28, 2016. Larry Hafner seconded. Motion carried.

Tim Orr made a motion to adjourn. Larry Hafner seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on August 26, 2016.

Houston County Board of Adjustment
October 27, 2016

Approved by Larry Hafner and Ken Visger on March 23, 2017

The Houston County Board of Adjustment met at 6:00 p.m. on Thursday, October 27, 2016. A summary of the meeting follows.

The meeting was called to order by Chairman, Greg Myhre. Members present were Greg Myhre, Tim Orr and Larry Hafner. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning.

Notice of Public Hearing No. 440 was read. **Scott Prah**, 16380 County 4, Spring Grove, MN 55974, is seeking variances of 35 feet from the south and west property lines to meet the 50 foot setback requirement from property lines to install free standing solar panels in Black Hammer Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner is seeking a reduction of 35' from the 50' setback requirement from the South and West property lines to install free-standing solar panels.
- The panels will be mounted to poles sunk into the ground. The expected life of the panels is 25 years. The parcel is in compliance with the Zoning Ordinance.
- The site is atop a ridge approximately 3 miles north of Spring Grove. Slopes range from 0-4%. Soils are class III.
- The property consists of 3.5 acres that was split from a 32.5 acre parcel in existence at the adoption of official controls. The split occurred in 1997 when the Petitioner purchases the property. The home that sits on the property was built in 1915, thus it is considered a permitted use, even in light of the split. The Petitioner has obtained permits for a pole shed, garage, and various additions since the year 2000. A variance was previously granted to build a pole shed from the southern property line.
- The Black Hammer Township board and adjoining property owners were notified. The Zoning Office received two inquiries about the application from members of the public, but no opposition or support was expressed.

Chairman Myhre asked Scott Prah if he had anything additional to add. Scott said Aaron summed it up.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties?
Answer: No.
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance?
Answer: No.
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Larry Hafner made the motion to grant the variance as submitted. Tim Orr seconded. Motion carried.

Notice of Public Hearing No. 441 was read. **Brian Tostenson**, 11698 County 20, Caledonia, MN 55921, is seeking a variance of 20 feet to meet the 50 foot setback from the east side property line for an existing home and variance of 33 feet to meet the required 50 foot setback from the north side property line for an existing shed in Union Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner is seeking a variance of 20' to meet the required setback from the east property line for an existing house, a variance of 33' to meet the required 50' setback from the north property line for an existing shed, a variance of 40' to meet the required 50' setback from the east property line for a proposed garage, and a variance of 10 feet to meet the required 100' setback from a county highway for a proposed garage.
- The need for the variance primarily stems from a property split in 2003 that failed to provide the required setbacks. The current house was constructed in 1997, replacing a trailer house that was on site since at least 1985. That trailer house presumably replaced the original farm house, which was still on site 1992 and likely predated the adoption of official controls. To the best of staffs' knowledge, the site was continually inhabited. Thus, the site can continue as a permitted use.

- The site consists of 2.11 acres along County 20. Slopes range from 3%-6%. Soils are class II-III, but have not been in production for decades due to the presence of the farmstead/dwelling site. The area is not located in a floodplain.
- The County Engineer does not have an issue with the setback of the attached garage from the county road.
- The Union Township board and adjoining property owners were notified. There were no inquiries to the Zoning Office in regard to the application.

Chairman Myhre asked Brian Tostenson if he had anything additional to add. Brian said Aaron explained everything.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties?
Answer: No.
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance?
Answer: No.
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Larry Hafner made the motion to grant the variance as submitted. Tim Orr seconded. Motion carried.

Notice of Public Hearing No. 442 was read. **Tim and Kelly Meyer**, 712 East Grant Street, Caledonia, MN 55921, are seeking a variance of 3% slope from the 12% maximum slope to allow a 15% slope access road servicing a building site in Mayville Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner is seeking a variance to allow a driveway access road to exceed 12%.
- The applicants recently acquired this property and wish to construct an agricultural garage to be used recreationally; the garage would serve as the primary structure on the parcel and would not be associated with any dwelling. As such, the driveway is expected to see less usage than the typical driveway for a dwelling.
- The driveway slope was determined using a clinometer and verified by SWCD using a second clinometer. Looking at the driveway in thirds, the slopes are 13.5%, 15%, and 14% beginning at the bottom and moving uphill. This is consistent with the slope shown on GIS prior to the installation of the driveway.
- The access road was substantially installed by the previous owner, Karen Strub, who was informed by the County in a letter dated 2/26/15 (enclosed) that the driveway did not meet minimum standards; Mrs. Strub was also informed that the area was a bluff protection area and that any additional excavation would require a permit. Mrs. Strub sold the property to the Petitioner in March of 2016.
- Houston County Zoning Ordinance §0110.2919 subd. 3. states the following concerning driveways: Design Standards. The following design standards are general standards and may modified to meet site specific needs as determined by the jurisdiction. 1. Approach. The access approach immediately adjacent to the public right-of-way shall be a flat area twenty (20) feet wide and twenty (20) feet long. 2. Gradient. Driving Surface Gradient shall not exceed twelve (12) percent. 3. Width. The driveway shall have a width of not less than twelve (12) feet at the narrowest dimension. 4. Side Slopes. Driveway banks shall not exceed a 2:1 slope gradient.
- Reasons for limiting the slope of driveways are twofold: to ensure access for emergency vehicles and to prevent erosion. Staff contacted the City of Caledonia Fire Assistant Chief and the Ambulance Director seeking comments on the application. Both departments were familiar with the driveway, and neither objected to the granting of the variance.
- The site consists of two acres approximately 1.3 miles northeast of the City of Caledonia. The entire parcel is considered steep slopes (>12%), with pre-excavation slopes range from 17% - 23%. Soils are class VI. The property is not located in a floodplain.
- The Mayville Township board and adjoining property owners were notified. There were two inquiries to the Zoning Office in regard to the application. A letter is on file from Blaine Knutson.

Chairman Myhre asked Tim and Kelly Meyer if they had anything additional to add. They did not.

Chairman Myhre asked if anyone wanted to speak.

Joyce Knutson, adjacent property owner to the east, wanted it to be on record. In her opinion, there are no set property lines that she is aware of to establish setbacks in order for them to build.

Aaron Lacher clarified that this is not a hearing on setbacks for a building; it is for the slope of the driveway. The next step in the permit process would be for them to apply for a building permit and setbacks would be checked at that time.

Joyce Knutson continued that trees were removed and she doesn't want them building in her corn field. Aaron Lacher said he understood much of the land clearing was done by the previous owner.

Larry Hafner explained the necessary steps that need to be taken to determine property lines. He suggested they could split the cost of having a survey done.

Blake Knutson, son of Joyce Knutson, spoke. He indicated that the woods were cleared out and has concerns for their field and holding it where it is supposed to be.

Larry Hafner asked if the Meyer's wanted to respond to the statements on the land clearing. Kelly Meyer indicated that they added some dirt but did not cut any trees at the top. They did plant some new trees, however.

Aaron Lacher said he was of the understanding that the previous owner did much of the work to establish the site.

Greg Myhre asked if the county approved of the previous owner putting in the driveway. Aaron Lacher indicated the county did not approve it; they were told to stop.

Tim Orr clarified that this was not going to be a building site for a home. Aaron Lacher indicated it was not.

Larry Hafner asked for clarification on the previous owner putting in the driveway. Aaron Lacher said if the driveway is allowed then the building permit will be forth coming for an agricultural garage. Aaron stated that the zoning permit could indicate that no dwelling could be built on the site.

Bob Snodgrass, adjacent property owner to the south, wondered what the concern was if emergency services (fire and ambulance) had no issues with the driveway.

Alan Meyer indicated he was a builder for over forty years and had experience building on steeper slopes than at this site in many areas in the County and the surrounding area.

Mark Knutson stated he bought the farm from his Dad in 1988. When they came to plant their field in the spring the trees were gone. They tried to sell the Meyer's some land because he felt they were basically taking it.

There was brief discussion on where the property line pins were located and it was again determined that the purpose of the hearing was for the slope of the driveway only. Larry Hafner stated that stipulations can be added to the permit to address any concerns.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties?
Answer: No.
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance?
Answer: No.
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Tim Orr made the motion to grant the variance as submitted and cannot serve a residential dwelling. Larry Hafner seconded to include having a soil erosion plan with the driveway being served for recreational purposes only. Motion carried.

Notice of Continuation of Public Hearing No. 439 was read. **Cody Stuttgen**, 5946 State 76, Houston, MN 55943, is seeking a variance of 2,280 feet to meet the required ½ mile setback from an existing expanding feedlot to a corporate limit, variance of 2,280 feet to meet the required ½ mile setback from an existing expanding feedlot to a platted subdivision, variance of 1,650 feet to meet the required ½ mile setback from an existing expanding feedlot to a public park. Existing feedlot is registered for 50.3 animal units with proposed expansion to 200 animal units in Houston Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner is seeking multiple variances to expand an existing feedlot operation. The petitioner is seeking to increase to 200 AU to allow for 140 slaughter steers (140 AU) initially, with the potential to incorporate 60 additional slaughter steers (60 AU) in the future on a second lot.
- Petitioner recently purchased the property located at the intersection of State 16 and State 76 east of the City of Houston. The property consists of 17.9 acres (split from a 26 acre property). The City of Houston borders the property to the west.
- Minn. R. 7020.0300, subpart 15 provides a definition of new animal feedlots that includes sites that existed previously and have been unused for five or more years. The proposed site was registered in January of 2013 for 50.3 animal units (AU). The 2013 registration indicated that no animals were kept on site, and that animals had most recently been on site in 2011. The registration was updated when the property was recently purchased by the Petitioner; the updated registration indicated that no animals were kept on site.
Update: The Petitioner submitted the updated registration at the request of staff. Staff was in error in making this request—the appropriate form that should have been requested was a Change in Ownership form. It is staff's opinion that Petitioner did not intend to reduce AU capacity at the site by updating the registration, and intended only to change ownership of the site within the County's records. This is supported by the fact that the Petitioner contacted the County prior to purchase to inquire about registration capacity of the site. For the purposes of this analysis, December 31, 2011 is considered the most recent time animals were kept on site, thus, the registration of 50.3 AU constitutes an existing feedlot until December 31, 2016, unless the site is re-stocked before that time.
- **Update:** Petitioner has submitted a Good Neighbor Plan addressing control of odor, manure application, and roadway weight restrictions. The Plan is attached. The Feedlot Advisory Committee viewed the site on September 26, 2016. The County has requested that the Petitioner apply for an Interim Permit to operate at this site due to the potential for pollution per §0110.3307. After an application is received, a permit could be issued in conjunction with a BOA decision, whereby the animal units and other conditions could be made consistent. The DNR has indicated that there are questions regarding interior drainage areas within Zone X on the preliminary FIRMs, and that they need to verify the classification of these features. The County is recommending that this matter be tabled to provide time to address the above matters.
- Applicable language from the Ordinance includes: 0110.3316 GENERAL FEEDLOT LOCATION AND SETBACK STANDARDS: **Subd. 3. Feedlot Setback from Urban Development.** New feedlots, and the expansion of existing feedlots located within one-half, (½), mile of a school, church, platted subdivision, public park, or incorporated city limit, shall be reviewed as a site specific variance. **Subd. 5. Feedlot Setback from Residential Dwelling.** New feedlots and the expansion of existing feedlots located with one-fourth ¼ mile of dwellings, other than the owner's, operators, or their family member's dwelling, may be reviewed as a site specific variance.
- Houston Township and the City of Houston were notified. The 10 nearest property owners were notified. Two inquiries were received by the zoning office. One individual contacted the zoning office to express opposition to the variance. Houston Township has expressed support for the application. The City of Houston has expressed opposition to the application.
- The site is adjacent to the City of Houston. An agricultural field approximately 366' in width lies between the open lot and adjacent outbuildings and a subdivision on the eastern edge of the City of Houston. Within the subdivision, a dwelling was constructional in the lot nearest the feedlot in 2015; many of the other lots remain vacant.

- The site is located in Zone X because it is an area protected by levees from the 1% annual flood chance. The Minnesota Animal Feedlot Rules do not consider Zone X to be part of the flood plain. **Update:** According to the current FIRM maps, the site is substantially located in Zone X. The DNR has provided clarity regarding the current maps indicating that westerns portion of the north lot and building extend into the floodplain. Animals would be prohibited within these areas should any expansion occur. Note that the floodplain maps are being updated and new maps are expected to be adopted this year. On the new maps, the entire parcel is shown to be Zone X on the new maps. The DNR has further indicated that there will be interior drainage areas within Zone X, and that further research is necessary to determine if these areas are to be considered floodplain.
- **Stocking Density:** The proposed lot #1 consists of a combination of dirt/grass and concrete and is approximately 24,743 sq. ft. in area. A 3,960 sq. ft. barn is connected to the lot and will be utilized. The MPCA provides a typical stocking density of 200 sq. ft. per head on dirt lots, and 100 sq. ft. per head on paved lots. The petitioner is proposing a stocking density of 205 sq. ft. per head. **Update:** Lot #1 will consist entirely of pavement and measures 5906 sq. ft. The 3960 sq. ft. barn remains connected. This affords 70 sq. ft. per head at 140 head. The second future lot is entirely paved and is proposed to be stocked at 128 sq. ft. per head. **Update:** A portion of Lot #2 is located in the floodplain, and thus could not be utilized as part of an expansion under the current FIRM. **Management:** The Petitioner has communicated a plan calling for scraping the lot on a weekly basis. He has stated that manure will be spread on land owned and leased by his uncle (currently approximately 2,500 acres). No manure storage is planned at the site. **Update:** Should land not be accessible due to weather conditions, Petitioner will mound manure within the feedlot until such time that it can be land applied. This is not considered manure storage.
- The Odor from Feedlot Setback Estimate Tool (OFFSET) estimates the annoyance-free frequency for the nearest neighbor at 95%.
- **Update:** SWCD conducted a site visit and provided a feedlot review and conducted a preliminary MinnFarm assessment of buffers necessary for runoff treatment. Many assumptions were made during this process, and thus the MinnFarm results are subject to change with any modification within the variables. SWCD evaluated the site assuming 50 animal units in each lot, for a total of 100 animal units, and provided the buffer sizes needed necessary for compliance.
- Stocking density is one method of determining the number of animals that are appropriate for the site. On the animal unit calculator published by the MPCA, the stocking density for slaughter steers on paved lots is 100 sq ft per head. Using this figure, the identified lots and associated barns would accommodate 189 head, or 189 animal units.
An alternative method would be to look at what has previously been on site, and allow the owner to restock to that number. Of the previous registrations available, animal units peak at 70 in the year 200. Because the farm pre-dates the year 2000, it is reasonable to look to the infrastructure onsite and deduce the number of animals likely to been onsite in the past. The site has 48 milking stalls; dairies customarily have a combination of milking cows, heifers, calves, and steers, and the various outbuildings onsite suggest this type of proportionality. It would be reasonable to assume the following combination:

	Head Count	Animal Units
Dairy Cows	48	67.2
Dairy Dry Cows	7	9.8
Dairy Heifers	28	16.8
Dairy Calves	55	55
Slaughter Steers	27	27
		TOTAL A.U. = 134.6

- **Prevailing Winds**

Staff contacted Todd Shea, Warning and Coordination Meteorologist with the National Weather Service office in La Crosse regarding prevailing winds. Generally, in southeastern Minnesota, winds are out of the northwest in the winter and south in the summer. Local topography can cause variations, often channelizing winds within valleys. Specific data is not available for the City of Houston. Data collection sites are located in Preston, Winona, and Rochester. Data in the form of wind roses for these sites are included that chart historical wind data over decades.

- Updated MinnFarms were run on lot 1 using the following assumptions:

1. 112 slaughter steers (100 sq ft per head), avg. weight 1,200 lbs., avg. 15 hrs on lot per day
2. Feedlot area of 7,089 sq ft
3. 100% paved lot
4. Scrape lot every 14 days
5. 1% slope draining to the southwest
6. 60% snow removal from lot, 60% snow removal from Area 2
7. 4,361 sq ft of roof area draining into lot
8. 130' x 16' buffer draining to the southwest
9. 10,828 sq ft of farmstead mix also draining through buffer

RESULT = Compliant

1. 82 slaughter steers (assumptions based on 48 stall barn), avg. weight 1,200 lbs., avg. 15 hrs on lot per day
2. Feedlot area of 7,089 sq ft
3. 100% paved lot
4. Scrape lot every 14 days
5. 1% slope draining to the southwest
6. 60% snow removal from lot, 60% snow removal from Area 2
7. 4,361 sq ft of roof area draining into lot
8. 130' x 16' buffer draining to the southwest
9. 10,828 sq ft of farmstead mix also draining through buffer

RESULT = Noncompliant

Note that the model considers the lot to reach maximum pollution potential at 22 animals, meaning the lot is 100% covered with manure. Assuming all other variables remain constant, increases in the number of animals on the lot beyond 22 will not affect the compliance rating or index.

Updated MinnFarms were run on lot 2 using the following assumptions:

<ol style="list-style-type: none"> 1. 77 slaughter steers (100 sq ft per head), avg. weight 1,200 lbs., avg. 16 hrs on lot per day 2. Feedlot area of 4,396 sq ft 3. 100% paved lot 4. Scrape lot every 14 days 5. 1% slope draining to the south 6. 60% snow removal from lot, 60% snow removal from Area 2 7. 1,897 sq ft of roof area draining into lot 8. 160' x 20' buffer draining to the south 9. 9,744 sq ft of farmstead mix also draining through buffer 	<ol style="list-style-type: none"> 1. 54 slaughter steers (assumptions based on 48 stall barn), avg. weight 1,200 lbs., avg. 16 hrs on lot per day 2. Feedlot area of 4,396 sq ft 3. 100% paved lot 4. Scrape lot every 14 days 5. 1% slope draining to the south 6. 60% snow removal from lot, 60% snow removal from Area 2 7. 1,897 sq ft of roof area draining into lot 8. 160' x 20' buffer draining to the south 9. 9,744 sq ft of farmstead mix also draining through buffer
RESULT = Compliant	RESULT = Compliant

Note that the model considers the lot to reach maximum pollution potential at 13 animals, meaning the lot is 100% covered with manure. Assuming all other variables remain constant, increases in the number of animals on the lot beyond 13 will not affect the compliance rating or index.

- The County has become aware of several plats for the feedlot and surrounding area that indicate that the timeline presented at the previous meeting was incorrect. Two plats pre-date the Stuttgen Farm (the farm). The area was first platted in 1854 and was actually within the corporate limits from 1874-1876. The house on the farmstead was built in 1880, 26 years after the initial platting. A detailed timeline is provided in an included letter from the City of Houston Administrator.

Chairman Myhre asked if anyone wanted to speak.

Bob Scanlan of the Root River Soil and Water Conservation District (RRSWCD) spoke. He indicated that an assessment was done of the feedlot to see if there were any runoff concerns from the open lots if he adds animals. In the initial assessment there would be runoff coming to the east toward Highway 76. Cody plans to put up a concrete wall to prevent runoff from going in that direction. He will treat the runoff as it leaves the lot and goes toward the west and south into existing grassy areas. (The aerial mapping was reviewed on where the buffer location would be.) When he ran the model with the proposed animal units, the lot could handle that number. Another model was run at 300 head of cattle and it did not affect the outcome. Once you have a certain number of cattle on the lot the model is assuming there is always a manure covering 24 hours a day. The animal units on the lot have little effect compared to lot size or tributary area, etc.

Aaron Lacher said the pollution level does not change after 22 animal units for the south lot. For the north lot pollution levels do not change after 13 animal units.

Bob Scanlan spoke on the offset model. The offset model has very little to do with the animal numbers themselves but more to do with the square footage of the open lot that is exposed to the air as wind blows across it or the square footage of a confinement building as cattle move in and out. The model takes into account hydrogen sulfide levels that are coming off the areas that are generating manure. The model takes into account the odors in the air from April to October. It breaks it down into hours per month. At this lot, 95% of the time the site would be annoyance free of hydrogen sulfide levels (manure).

Larry Hafner asked to review the aerial color coded map to clarify the water flow direction and where it comes out. He also wanted clarification on 22 cows versus 200 cows with runoff. Aaron Lacher indicated the amount of runoff coming off will not change with the increase in numbers. It is based on a 25 year rain event over 24 hours. Bob Scanlan said it's about 4.95 inches of rain over 24 hours. Solid manure is staying on the lot as a coating, 100% of the time.

Chris Peterson, City of Houston Administrator, spoke. She indicated she contacted MPCA and did some research of her own on the MPCA runoff model. In the manual it states "a maximum of 50 lbs. of BOD (Biochemical Oxygen Demand) plus .25 lbs. per 1,000 lbs. of animal on the feedlot." The model indicates when you increase the number of animals the

allowance of pollution goes up. It is her understanding that the model is not intended to help or decide how many animals to allow on a site, it is used as an assessment tool to help with pollution solutions. Also, the buffer area is a concern as it cannot be used twice in the model, thus the buffer vegetation type will not remain lush grass. MPCA used the "pasture" setting as a model instead of grass so then it became non-compliant. The pollution potential is not being adequately looked at in her opinion.

Also, Chris said she contacted The Army Corps of Engineers and found out the city has an easement for flood control across the west half of Cody's property. The city is responsible for that entire area of flood control and she feels they need to have more say in what happens at this feedlot.

Greg Myhre asked where the water from the south side development goes; if it goes through Cody's feedlot. Chris said the water partially does, there was a flowage easement developed by the Corp of Engineers and then was turned over to the city to maintain. Aaron Lacher indicated the prior owner (Thorson) was paid \$80,000 for the water way easement so that water is supposed to run through Cody's land.

Chris Peterson also touched on the prevailing wind factor. She believes the National Weather Service information is not helpful because of the statement "Local topography can cause variations, often channelizing winds within valleys." It is not helpful information as specific data is not available for the City of Houston.

Chris discussed the historical platting of the City of Houston. The original platting was done in 1854 and this feedlot was actually included within the city limits. The point is that the city was there first and not the feedlot in comparison to that plat. As far as other feedlots being used as examples on how close they are to other cities; there are 3 other feedlots that are close to the City of Houston, but none are within the city levy.

Tony Schulze, City of Houston City Counsel spoke. He read a letter of concern from Tom Reay who was not able to attend the meeting. (Copy on file). Tony believes all cities and farms have their place and in this case the farm is not in sync with the big picture of city expansion. He has spoken with most everyone that lives in the subdivision and they are not in favor of this variance.

Sherrie Rohweder owns a home on Kilborn Street. She is renovating the home for her daughter and children. Her concerns are not with one variance setback but that there are actually four variances being applied for. Decrease in property values is another concern for her.

Eileen Loken spoke. She is a property owner and business owner in the City of Houston City and Houston Township. She stated she has experience with the process of public hearings and she has never heard of such a large variance being requested. There are rules that need to be followed and this is a large variance request that will affect a lot of people. The city has a lot invested and she does also. She could use help with taxation

burdens and believes the tax base needs to be spread out with other future property owners.

Jed Hammell, City of Houston Attorney, reviewed the findings of fact. In his determination the findings of fact cannot be supported by granting this variance.

Eric Johnson of Houston Township spoke. He said Cody Stuttgen is a taxpayer too and is just beginning to farm and has loans to repay. He believes feedlot management is a big key. He is aware of the good work ethic Cody has and if he keeps the lot clean it should not be a concern.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

This matter came before the Board of Adjustment on September 29, 2016 and continued on October 28, 2016. The Petitioner's application requested the following setback variances required to expand an existing feedlot:

1. A variance of 2280' from the City of Houston's corporate limits;
2. A variance of 2280' from a platted subdivision;
3. A variance of 1650' from a public park; and
4. A variance of 907' from an existing dwelling.

Based on the proceedings, the Board hereby finds as follow:

1. The Houston County Zoning Ordinance §0110.1204 grants the Board of Adjustment the power to grant variances.
2. The Houston County Zoning Ordinance §0110.1205 established criteria for granting variances.
3. Presently, the Applicant is registered (registration #055-91607) to operate a feedlot with 50.3 animal units.
4. The Houston County Feedlot Advisory Committee viewed the site on September 26, 2016, and provided a report to the Board of Adjustment.
5. The existing feedlot infrastructure (open lots and barns) proposed to be utilized as part of the expansion is approximately 360' east of the City of Houston corporate limits.
6. The existing feedlot infrastructure (open lots and barns) proposed to be utilized as part of the expansion is approximately 360' east of a platted subdivision.
7. The existing feedlot infrastructure (open lots and barns) proposed to be utilized as part of the expansion is approximately 990' east of a public park.

8. The existing feedlot infrastructure (open lots and barns) proposed to be utilized as part of the expansion is approximately 360' east of a platted subdivision.
9. The existing feedlot infrastructure (open lots and barns) proposed to be utilized as part of the expansion is approximately 413' east of an existing dwelling.
10. Based on the Odor From Feedlot Setback Estimation Tool (OFFSET), a neighbor 400' would experience an annoyance-free frequency of 95%.
11. Prevailing winds are from the West and South.
12. The lot can be managed so as to properly treat runoff based on multiple assessments using the MinnFarm runoff evaluation tool.

CONCLUSIONS

0110.1205 CRITERIA FOR GRANTING VARIANCES:

A variance to a provision of the Zoning Ordinance may be issued to provide relief to the land owner in those cases where the ordinance imposes undue hardship or practical difficulties to the property owner in the use of his/her land. To hear requests for variances from the requirements of the Zoning Ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the Ordinance and when the variances are consistent with the "Comprehensive Plan". Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance. "Practical difficulties," as used in connection with the granting of a variance means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the Ordinance. The Board of Appeals and Adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. No use variances may be issued.

Subdivision 1. Area Variance Standards – Practical Difficulties

1. Is there a substantial variation in relation to the requirement?

There are existing feedlots near other towns in Houston County and in other Counties that are closer than the Applicant's request, and that do not cause problems. The Board has granted variances of this magnitude previously.

2. Will the variance have a negative effect on governmental services?

The only potential impact is associated with the flowage easement West of the feedlot. The feedlot runoff will be adequately treated prior to entry in to the easement. Further, the easement overlays agricultural ground upon which manure is customarily applied—a practice likely to have a greater impact than open lot runoff.

3. Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties?

The area is predominantly agricultural. There are existing feedlots near other towns in Houston County and in other Counties that are closer than the Applicant's request, and that do not cause problems.

The applicant is known to properly manage a farm. The lot can be managed so as to properly treat runoff based on multiple assessments using the MinnFarm runoff evaluation tool.

OFFSET tool predicted a 95% annoyance free factor. This does not account for Prevailing winds, which blow from the city toward the feedlot.

4. Can the practical difficulty be alleviated by a feasible method other than a variance?

No, the entire property is located within the setback area.

5. How did the practical difficulty occur? Did the landowner create a need for the variance?

The proximity of the property to the city is beyond the applicant's control.

6. In light of all of the above factors, will allowing the variance serve the interests of justice?

Yes, the feedlot will be subject to the state feedlot regulations, which will ensure that it is properly managed.

0110.1207 FINDINGS REQUIRED

The Houston County Zoning Ordinance requires the following findings granting variances: Subdivision 1. Findings. The Board of Adjustment shall not grant an appeal unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property.

The entire property is located within the setback area.

2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant

and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

There are existing feedlots near other towns in Houston County and in other Counties that are closer than the Applicant's request, and that do not cause problems.

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Tim Orr made the motion to grant the variance as submitted for 134.6 AU.

Larry Hafner spoke on his reasoning for not going above 50.3 AU.

With the motion on the table a roll call vote was taken: Greg Myhre – Yes, Tim Orr – Yes, Larry Hafner – No. Motion carried with following conditions:

ORDER

For the reasons presented above, the Petitioners' appeal is hereby granted in part, to allow an increase 134.6 animal units, subject to the following conditions:

1. The Submittal of an Operations Plan and Manure Management Plan is required.
2. The establishment of screening as recommended by Soil and Water Conservation District and approved by the County is required.
3. The site must be managed and stocked in a manner resulting in a compliant MinnFarm score. Animal units shall be increased only to a level where a compliant MinnFarm score can be achieved.
4. The animal species is limited to slaughter steers.

Tim Orr made a motion to approve minutes of September 29, 2016. Larry Hafner seconded. Motion carried.

Tim Orr made a motion to adjourn. Greg Myhre seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on October 28, 2016.

Houston County Board of Adjustment
September 29, 2016

Approved on October 27, 2016 by Tim Orr and Larry Hafner

The Houston County Board of Adjustment met at 6:30 p.m. on Thursday, September 29, 2016. A summary of the meeting follows.

The meeting was called to order by Chairman, Greg Myhre. Members present were Greg Myhre, Tim Orr and Larry Hafner. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning. See sign in sheet for others present.

Notice of Continuation of Public Hearing No. 438 was read. **Craig Olson**, 7387 County 25, Caledonia, MN 55921, is seeking a variance of 12 feet from the west property line to meet the 50 foot setback requirement from a property line to build a shed in Union Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner seeks a variance of 12 feet from the west parcel line to meet the required 50 foot setback in an agricultural protection district to build a shed.
- **Update:** The Petitioner and neighboring adjacent land owner to the west have reached an agreement regarding location of property line, as well as agreeing to actions to minimize roof runoff that could affect an existing building. Deeds reflecting the agreed upon property line were recorded on September 28, 2016. Additionally, the Petitioner provided an aerial photo of the pond taken on September 10, 2016 after a period of heavy rain to document how it performs.
- In preparation for his application, petitioner had the location of the western parcel established by survey, and had an engineer assess the proposed location's suitability as a building site. The variance request of 12 feet is based on the 2016 survey. The engineer's report was necessary due to the proposed building location being atop an existing embankment. The report focuses on stability of the embankment, the pressures of upslope waters on the embankment, and how the embankment and incorporated spillways perform during rain events. The engineer concludes that the embankment is suitable for the proposed building.
- The proposed site is atop an existing embankment within a narrow draw approximately 150 feet wide. A pond created by the embankment holds water during rainy periods but is otherwise dry. The top of the embankment is 24 feet wide and flat. Additional information is provided in the engineer's report.
- The Union Township board and adjoining property owners were notified. There was one prior inquiry to the Zoning Office in regard to the application.

Chairman Myhre asked Craig Olson if he had anything additional to add. Craig Olson was not in attendance due to a family matter.

Greg Myhre asked where the survey line ended up being located. Aaron Lacher discussed where the line was on the aerial map provided.

Greg Myhre asked if the neighbors were in agreement with the survey line. Aaron Lacher said deeds were recorded to straighten out the discrepancy with the property lines.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Chairman Myhre asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

Area Variance Standards ~ Practical Difficulties

- 1.) Is there a substantial variation in relation to the requirement?
Answer: No.
- 2.) Will the variance have a negative effect on governmental services?
Answer: No.
- 3.) Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties?
Answer: No.
- 4.) Can the practical difficulty be alleviated by a feasible method other than a variance?
Answer: No.
- 5.) How did the practical difficulty occur? Did the landowner create a need for the variance? **Answer: No.**
- 6.) In light of all of the above factors, will allowing the variance serve the interests of justice? **Answer: Yes**

Zoning Administrator Lacher recommended that some conditions may be applied to the variance:

- 1) Prior to the issuance of a zoning permit, a survey marker or other indicator of surveyed property line must be installed so as to provide a line from which to measure setback.*
- 2) Any structure erected on the dike must incorporate gutters on the west side that prevents drainage from flowing into existing shed on adjacent property to the west.*

Chairman Myhre asked for a motion on the variance if there were no additional comments or questions.

Larry Hafner made the motion to grant the variance as submitted. Tim Orr seconded. Motion carried.

Notice of Public Hearing No. 439 was read. **Cody Stuttgen**, 5946 State 76, Houston, MN 55943, is seeking a variance of 2,280 feet to meet the required ½ mile setback from an existing expanding feedlot to a corporate limit, variance of 2,280 feet to meet the required ½ mile setback from an existing expanding feedlot to a platted subdivision, variance of 1,650 feet to meet the required ½ mile setback from an existing expanding feedlot to a public park. Existing feedlot is registered for 50.3 animal units with proposed expansion to 200 animal units in Houston Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner is seeking multiple variances to expand an existing feedlot operation. The petitioner is seeking to increase to 200 AU to allow for 140 slaughter steers (140 AU) initially, with the potential to incorporate 60 additional slaughter steers (60 AU) in the future on a second lot.
- Petitioner recently purchased the property located at the intersection of State 16 and State 76 east of the City of Houston. The property consists of 17.9 acres (split from a 26 acre property). The City of Houston borders the property to the west.
- Minn. R. 7020.0300, subpart 15 provides a definition of new animal feedlots that includes sites that existed previously and have been unused for five or more years. The proposed site was registered in January of 2013 for 50.3 animal units (AU). The 2013 registration indicated that no animals were kept on site, and that animals had most recently been on site in 2011. The registration was updated when the property was recently purchased by the Petitioner; the updated registration indicated that no animals were kept on site.
Update: The Petitioner submitted the updated registration at the request of staff. Staff was in error in making this request—the appropriate form that should have been requested was a Change in Ownership form. It is staff’s opinion that Petitioner did not intend to reduce AU capacity at the site by updating the registration, and intended only to change ownership of the site within the County’s records. This is supported by the fact that the Petitioner contacted the County prior to purchase to inquire about registration capacity of the site. For the purposes of this analysis, December 31, 2011 is considered the most recent time animals were kept on site, thus, the registration of 50.3 AU constitutes an existing feedlot until December 31, 2016, unless the site is re-stocked before that time.
- **Update:** Petitioner has submitted a Good Neighbor Plan addressing control of odor, manure application, and roadway weight restrictions. The Plan is attached. The Feedlot Advisory Committee viewed the site on September 26, 2016. The County has requested that the Petitioner apply for an Interim Permit to operate at this site due to the potential for pollution per §0110.3307. After an application is received, a permit could be issued in conjunction with a BOA decision, whereby the animal units and other conditions could be made consistent. The DNR has indicated that there are questions regarding interior drainage areas within Zone X on the preliminary FIRMs, and that they need to verify the classification of these features. The County is recommending that this matter be tabled to provide time to address the above matters.
- Applicable language from the Ordinance includes: 0110.3316 GENERAL FEEDLOT LOCATION AND SETBACK STANDARDS: **Subd. 3. Feedlot Setback from Urban Development.** New feedlots, and the expansion of existing feedlots located within one-half, (½), mile of a school, church, platted subdivision, public park, or incorporated city limit, shall be reviewed as a site specific variance. **Subd. 5. Feedlot Setback from Residential Dwelling.** New feedlots and the expansion of existing feedlots located with one-fourth ¼

mile of dwellings, other than the owner's, operators, or their family member's dwelling, may be reviewed as a site specific variance.

- Houston Township and the City of Houston were notified. The 10 nearest property owners were notified. Two inquiries were received by the zoning office. One individual contacted the zoning office to express opposition to the variance. Houston Township has expressed support for the application. The City of Houston has expressed opposition to the application.
- The site is adjacent to the City of Houston. An agricultural field approximately 366' in width lies between the open lot and adjacent outbuildings and a subdivision on the eastern edge of the City of Houston. Within the subdivision, a dwelling was constructional in the lot nearest the feedlot in 2015; many of the other lots remain vacant.
- The site is located in Zone X because it is an area protected by levees from the 1% annual flood chance. The Minnesota Animal Feedlot Rules do not consider Zone X to be part of the flood plain. **Update:** According to the current FIRM maps, the site is substantially located in Zone X. The DNR has provided clarity regarding the current maps indicating that westerns portion of the north lot and building extend into the floodplain. Animals would be prohibited within these areas should any expansion occur. Note that the floodplain maps are being updated and new maps are expected to be adopted this year. On the new maps, the entire parcel is shown to be Zone X on the new maps. The DNR has further indicated that there will be interior drainage areas within Zone X, and that further research is necessary to determine if these areas are to be considered floodplain.
- **Stocking Density:** The proposed lot #1 consists of a combination of dirt/grass and concrete and is approximately 24,743 sq. ft. in area. A 3,960 sq. ft. barn is connected to the lot and will be utilized. The MPCA provides a typical stocking density of 200 sq. ft. per head on dirt lots, and 100 sq. ft. per head on paved lots. The petitioner is proposing a stocking density of 205 sq. ft. per head. **Update:** Lot #1 will consist entirely of pavement and measures 5906 sq. ft. The 3960 sq. ft. barn remains connected. This affords 70 sq. ft. per head at 140 head. The second future lot is entirely paved and is proposed to be stocked at 128 sq. ft. per head. **Update:** A portion of Lot #2 is located in the floodplain, and thus could not be utilized as part of an expansion under the current FIRM. **Management:** The Petitioner has communicated a plan calling for scraping the lot on a weekly basis. He has stated that manure will be spread on land owned and leased by his uncle (currently approximately 2,500 acres). No manure storage is planned at the site. **Update:** Should land not be accessible due to weather conditions, Petitioner will mound manure within the feedlot until such time that it can be land applied. This is not considered manure storage.
- The Odor from Feedlot Setback Estimate Tool (OFFSET) estimates the annoyance-free frequency for the nearest neighbor at 95%.
- **Update:** SWCD conducted a site visit and provided a feedlot review and conducted a preliminary MinnFarm assessment of buffers necessary for runoff treatment. Many assumptions were made during this process, and thus the MinnFarm results are subject to change with any modification within the variables. SWCD evaluated the site assuming 50 animal units in each lot, for a total of 100 animal units, and provided the buffer sizes needed necessary for compliance.

Chairman Myhre asked Cody Stuttgen if he had anything additional to add. Cody indicated that Aaron explained everything well.

Greg Myhre asked Cody what his plans were on hauling manure. Cody indicated he would scrape every 7 days and haul as needed.

Greg Myhre asked what size cattle he planned to have. Cody said he would be starting with 300 pounders and raise them until they are 500 pounds. Scraping and hauling of manure was also discussed.

Chairman Myhre asked if anyone wanted to speak.

Jed Hammell, Attorney for the City of Houston, spoke in opposition of the proposed application. He summarized the following:

1) The proposed feedlot violates the Houston County Comprehensive Plan. The Houston County Comprehensive Plan Section 0100.052 Subd. 2 Policy 5 provides the county should “carefully control the location of feedlots and other animal confinement areas in the county to minimize pollution and nuisance problems.” The Comprehensive Plan at Section 0100.0504 Subd. 1, goal 1 provides that Houston County should “encourage and promote diversified economic development in order to provide for continuing employment opportunities.” Houston County has completed this action with allowing a hotel, an auto repair and auto retail business to occur very near to the existing feedlot on the property with a permit of 50 animal units. If the county allows a variance to 200 animal units this would encourage and promote diversified economic development in order to provide for continuing employment opportunities. A 200 unit animal feedlot located almost immediately adjacent to a lodging facility would most likely cause great concern to the businesses’ guests and other businesses. The Houston County Comprehensive Plan provides that Houston County should “encourage the location of residential subdivisions and major developments near existing cities where urban services can easily be provided.” Section 0100.0506 Subd. 2 Policy 1. The granting of a feedlot permit of 200 animal units within approximately 500 feet of an existing city completely undermines the above policy. The Comprehensive Plan also has the goal to “protect and enhance air, water and land resources in the county as a vital ingredient of the quality of life.” Section 0100.0507 Subd. 1, goal 1. The location of the feedlot would violate this goal. The current feedlot is immediately adjacent to the flood plain. In addition, the feedlot is located within the City of Houston’s dike protection area. There is great risk of water contamination if the feedlot is expanded. The Comprehensive Plan at Section 0100.0501 Policy 7 provided that Houston County should “control the location of feedlots and other animal confinement areas in the county to minimize pollution and nuisance problems.” The location of the proposed feedlot would be in complete contradiction to the minimization of pollution and nuisance problems. The Houston County Zoning Ordinance Section 0110.1205 expressly provides that variances shall only be permitted when they are in harmony with the general purpose and intent of the ordinance and when the variances are consistent with the Comprehensive Plan. As a result of this feedlot application not being in harmony with the policies contained with the Comprehensive Plan, the variance should be denied for this reason alone.

2) The applicant cannot meet the “practicable difficulties” test. The Houston County Zoning Ordinance at Section 0110.1205 Subd. 1 provides the standards for an area variance. None of these standards are met at indicated below: **1) Is there substantial variation in relation to the requirement?** The applicant is proposing a very substantial variation. The applicant is seeking variances ranging from 86% to 63% of the minimum standards. Variances are more properly granted if the variation is small, such at 5%. Since the variance is so large, the variances should be denied on this standard alone. **2) Will the variance have a negative effect on governmental services?** The variance would most definitely have a negative effect on governmental services. A large feedlot operation located within the City of Houston’s dike area presents many potential problems on governmental services. Any drinking water wells in the City of Houston could be negatively affected if there is a substantial flood causing rising waters with the levy area. All the residents of the City of Houston would be affected by potentially contaminated water. In addition, upon a significant flooding, the City of Houston’s maintenance department mechanically pumps any excessive water within the levy system to property outside the levy system. Upon this type of event, the city would also be pumping contaminated water through their pumps which would most definitely contain animal waste. **3) Will the variance effect a substantial change in the character of the neighborhood and will there be a substantial deterrent**

to neighboring properties? Having a 200 animal unit feedlot located immediately adjacent to the City Of Houston causes substantial deterrents to neighboring properties including lowering of property values, the impediment of additional construction within the City of Houston, a negative effect upon local businesses within the city as well as outside the city and nuisance problems, especially noise, flies and smell. One resident of the City of Houston built a brand new home in the city's development in 2015. This new home is located approximately 400 feet away from the proposed feedlot. The City of Houston went through great efforts to establish a city park to encourage community involvement, encourage physical activities as well as for their overall general sense of community. This park is located less than 1,000 feet away from the proposed feedlot. A 200 animal unit feedlot would diminish the recreational activities on this park as a result of noise and smell. The majority of the open city lots for future residential buildings are located on its eastern boundary. This is the boundary that is immediately adjacent to the proposed future residences. Additional problems for neighboring properties would include manure run off as well as flies. ***4) Can the practical difficulty be alleviated by a feasible method other than a variance?*** The answer to this factor is no, since all of the property is located within the setback area. However, merely denying the variance would alleviate this practical difficulty. ***5) How did the practical difficulty occur? Did the landowner create a need for the variance?*** The answer to this factor is yes, the landowner did create the need for the variance. The existing animal feedlot is only 50 animal units. ***6) In light of all the above factors, will allowing the variance serve the interest of justice?*** The plain and simple answer to this factor is most definitely no. The City of Houston expended exceptional funds to protect citizens from floods by construction of the city levy. The subject property is located with the city levy. By allowing a 200 unity animal feedlot within the city levy causes substantial problems for the city's residents as well as the governmental services provided by the City of Houston. Moreover, a new home was built in 2015 with the understanding that the subject property can only hold 50 animal units. A major injustice would occur if this property owner must be subject to various nuisances if this type of use is allowed. Moreover, the City of Houston has been constantly attempting to encourage more residents to construct new homes on the eastern side of the city. A 200 animal unit feedlot located immediately adjacent to this development would curtail any future development. The City of Houston's park would also be substantially affected creating an injustice for the participants of activities on the park. Moreover, commercial businesses located along Highway 16 located almost immediately adjacent to the proposed facility would also be negatively affected.

Chris Peterson, City Administrator of Houston, spoke about the positive aspects of the City of Houston. She talked about Chamber of Commerce staffing, the nature center continues to grow, the International Owl Center has a new location, the community garden, archery range. The city has removed some condemned homes, built new ball fields; the Prairie Meadows subdivision was started in 2005 and sat idle for a while but has recently seen some new homes built. She feels the feedlot expansion will harm the city and cause negative impacts on the City of Houston.

John Beckman, Houston Township Board, spoke. He believes we should be supporting farming in our community. It appears that maybe the City of Houston encroached on the feedlot. As long as the feedlot registration was kept up, that is what needs to be considered. He will be hauling away the manure. This feedlot needs to be supported.

Eric Johnson, Houston Township Board, spoke. He is in favor of this feedlot. He has known Cody and his uncle for many years and they are good stewards of the land and will take care of the property. There are other feedlots just as close to the City of Houston. There are approximately 4 more feedlots. He knows there have been animals located on

the feedlot with the previous owner. The smell shouldn't be an issue due to winds blowing to the east.

Eileen Loken, Owner of Loken Sawmill and Motel in Houston Township spoke. She indicated the motel is for sale and they also have lots for sale in City of Houston. She is looking to sell them and would like the property values remain. She is concerned that the feedlot could harm that.

John Loken, Owner of Loken Sawmill and Motel in Houston Township spoke. He is surprised his township officials did not come and talk to him about this feedlot expansion or his concerns. He is hopefully there is a way to compromise so that Cody can start up his feedlot.

Bill Hoskins owns the residence next to the lot line. He and another person spent money to develop the area. Cody did visit with him but he is not in favor of the feedlot with that many animals. He has concerns with manure, smell and noise.

There was discussion on tabling the hearing to wait for further DNR flood plain information and for Cody to submit an application for an interim feedlot permit that will include much more detailed information as far as manure handling and zero in on a maximum number of animal units that will be suitable for the site.

Greg Myhre asked what the feedlot officer recommendations were. Aaron Lacher indicated was his recommendation as the feedlot officer. The RRSWCD has also been at the site as they conduct approximately 80% of the feedlot inspections for the county. The RRSWCD provided a report should the feedlot expand to 100 animal units.

Greg Myhre suggested starting the site at 150 animal units. Aaron Lacher indicated there are many variables to consider such as manure, water and smell in conjunction with the number of animal units at the site.

Tim Orr asked if it's tabled would they still be within the 30 day time limit. Aaron Lacher said they have 60 days to make a decision.

Larry Hafner wonders about the effects if the larger animal unit number is turned down. Aaron Lacher indicated Cody is permitted to have 50.3 animal units at the site right now so it would revert back to that number.

Larry Hafner asked for clarification on the interim feedlot permit process. Aaron Lacher stated it is used over a 24 month period. It requires the applicant to correct any pollution hazards and do Best Management Practices plan.

Tim Orr asked if Cody needed to go through an interim feedlot permit for the 50.3 animal units. Aaron Lacher indicated Cody would not need to, he could add that number of animals units tomorrow. The interim feedlot permit would expire 2 years from the issue date.

Eric Johnson asked for clarification on the interim feedlot permit. Aaron Lacher explained the process and that it is due to the site having floodplain concerns. The interim feedlot permit process would also allow the city and the applicant to work together to determine a workable number of animal units for the site.

Larry Hafner appreciates the different views on both sides. He believes it is the responsibility of the BOA to look at all the variables and what the actual setbacks should be. The levy issue is a concern also.

Greg Myhre stated all the water coming down will unfortunately be contaminated before it gets to Cody's site.

Larry Hafner wonders if Cody would want to go through doing an interim feedlot permit process and then still only be approved for the original 50.3 animal units in the end. Aaron Lacher stated the interim process would provide the best outcome as the process would determine a suitable number of animal units for the site.

Chris Peterson stated that the city is all for farming practices to continue at the farm, the city is not questioning Cody having 50.3 animal units at the site, it is the expansion of more animal units they are unsure of.

Chairman Myhre asked if anyone wanted to speak. There were no other comments.

Tim Orr made a motion to table the hearing until all applicable information is available. Larry Hafner seconded. Motion carried.

Tim Orr made a motion to approve minutes of August 25, 2016. Larry Hafner seconded. Motion carried.

Larry Hafner made a motion to adjourn. Tim Orr seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on September 30, 2016.