

## **AGENDA**

Eau Claire County

- BOARD OF LAND USE APPEALS •

**Date:** Wednesday, June 19, 2024 **Time:** 5:30 p.m.

**Location:** Eau Claire County Courthouse, 721 Oxford Ave, Room 1277, Eau Claire, Wisconsin 54703

**Join WebEx Meeting:** <https://eau Claire County.webex.com>

Meeting ID: 2530 458 4083 Password: wtWrpMeH373

\*Meeting audio can be listened to using this Audio conference dial in information.

**Audio conference:** +1-415-655-0001 Access Code: 25304584083##

**For those wishing to make public comment, you must e-mail Holly Weigand at**

**[holly.weigand@eau Claire County.gov](mailto:holly.weigand@eau Claire County.gov) at least 60 minutes prior to the start of the meeting.**

*A majority of the county board may be in attendance at this meeting, however, only members of the committee may take action on an agenda item.*

1. Call to Order and confirmation of meeting notice
2. Roll Call
3. Election of Chair and Vice Chair / Discussion – Action
4. Appointment of Clerk / Discussion – Action
5. Rules and By-Laws Update / Discussion – Action **Pages 2-13**
6. Public Comment **(15 minute maximum)**
7. Public Hearings
  - a. A variance request to disturb a slope of 30% or greater. Land development activities on 30% slopes and greater is a prohibited activity under Eau Claire County Code Title 17.05.080. (Town of Washington) VAR-0002-24 / Discussion – Action **Pages 14-25**
8. Review/Approval of September 27, 2023 Meeting Minutes / Discussion – Action **Pages 26-27**
9. Adjourn

Prepared by: Holly Weigand

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of individuals with disabilities through sign language, interpreters, remote access, or other auxiliary aids. Contact the clerk of the committee or Administration for assistance (715-839-5106). For additional information on ADA requests, contact the County ADA Coordinator at 839-7335, (FAX) 839-1669 or 839-4735, TTY: use Relay (711) or by writing to the ADA Coordinator, Human Resources, Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, WI 54703.

**RULES AND BY-LAWS GOVERNING  
BOARD OF LAND USE APEALS**

**ARTICLE I. GENERAL PROVISIONS**

**SECTION 1. AUTHORITY**

This Board has been established pursuant to Wis. Stat. s.59.694, as amended, and Section 18.144 of the Eau Claire County code of General Ordinances, as amended, and assumes thereby, all responsibilities, duties, and powers as provided therein and by related statutes and county codes. Copies of the rules shall be available to the public at the Board's office.

**SECTION 2. TITLE**

The official title of this Board is, The Eau Claire County Board of Land Use Appeals.

**SECTION 3. MEMBERSHIP**

The Board shall consist of five members, and two alternate members.

**SECTION 4. CONFLICTS OF INTEREST**

Chapter 3.50 of the Eau Claire County code of General Ordinances shall govern the actions of the members of the Board where conflict of interest might exist. In addition to Chapter 3.50, a disqualifying conflict of interest shall be deemed to exist when: (1) a Board member is the applicant or spouse of the applicant, or is related to the applicant within the third degree of consanguinity, or is the husband or wife of someone so related; or (2) the applicant is the employer, employee or partner of the member or is a corporation in which the member is a major shareholder or has a major financial interest; or (3) the member owns property within 660 feet of the property which is the subject of the application.

**SECTION 5. LIMITATIONS**

Nothing herein shall be construed to give or grant to the Board the power or authority to alter or change the zoning ordinances or zoning or other official maps of the county, which authority is reserved to the County Board of Supervisors.

**SECTION 6. BOARD'S OFFICE**

The office of the Board shall be located at the Department of Planning and Development, Eau Claire County Courthouse, 721 Oxford Avenue, Room 3344, Eau

Claire, WI 54703. All records of the Board shall be available for public inspection between the hours of 8:00 a.m. and 4:30p.m., Monday through Friday, except for legal holidays.

## **ARTICLE II. OFFICERS AND DUTIES**

### **SECTION 1. OFFICERS**

The Board shall elect a chairperson as described in Section 18.144.020 of the County Code of General Ordinances and such election shall be at the annual organizational meeting in July. In the event there is no business to consider at the organizational meeting in July other than the election of officers, the election of officers may occur at another regularly scheduled meeting. The Board shall also elect a vice-chairperson. The chairperson shall appoint department staff as secretary. If the chairperson is unable to perform the duties of their office, the Board shall elect a replacement who shall serve until the next organizational meeting. In the absence of the chairperson, the Vice-Chair shall serve as chairperson for that meeting.

### **SECTION 2. DUTIES**

The chairperson shall preside over and direct the conduct of meetings and hearings of the Board and may administer oaths and compel the attendance of witnesses. The chairperson shall decide all points of procedure or order. The chairperson shall direct the official business of the Board, supervise the work of the Board and request help when needed.

The secretary, with staff assistance provided by the Department of Planning and Development, shall keep the records of the Board as directed by Section 18.144.020 A.3. and 18.144.020 A.4. of the County code of General Ordinances.

## **ARTICLE III. MEETINGS**

### **SECTION 1. TIME: HOW CALLED**

Meetings and hearings of the Board shall be held or may be cancelled at the call of the chair and at such other times as the Board may determine, provided that all Board members are notified at least one week prior to such meetings. All meetings shall be open to the public.

### **SECTION 2. QUORUM**

A quorum shall consist of a majority of all members of the Board and no action may be taken except by a majority vote of such quorum except as provided in Article VII., Section 1.

### **SECTION 3. ORDER OF BUSINESS**

The secretary shall prepare an agenda for each Board meeting, listing the matters of business at all meetings in the following order:

- A. Call to order and roll call
- B. Statement by the Chairperson concerning notice in accordance with the open meeting law.
- C. Hearings.
- D. Deliberations and decisions on applications before the Board including closed session.
- E. Reading and approval of minutes.
- F. Unfinished business.
- G. New business.
- H. Communications and miscellaneous.
- I. Other such business as authorized by law.
- J. Adjournment.

The order of business may be varied from the preceding by consent of the members present.

### **SECTION 4. RULES OF ORDER**

The attached Rules of Order shall govern the actions of the Board and conduct of its meetings. The chairperson shall have the final decision in interpreting these rules.

#### **ARTICLE IV. POWERS AND DUTIES**

The powers and duties are identified in s.59.694 (7) of the Wisconsin Statutes and referenced in Section 18.144.020 of the Zoning Code. The Board shall have the following general powers:

- A. To hear and decide appeals.
- B. Grant variances to the terms of Title 18, Land Use and Development Code, of the County Code of General Ordinances.

- C. Perform such duties for the Land Conservation Commission and the Department as prescribed in Title 17 of the County Code of General Ordinances.

## **ARTICLE V. APPLICATIONS AND APPEAL PROCEDURES**

### **SECTION 1. WHO MAY FILE**

Applications or appeals to the Board shall be filed with the Department of Planning and Development. Appeals may be filed by any person aggrieved or by the Office, department, board or committee of the county affected by the decision of the official. Variance applications may be filed by the owner, his/her agent or attorney.

### **SECTION 2. COPIES TO BE SENT**

The secretary shall promptly transmit copies of the application or appeal as follows: Original to the Board; a copy to the applicant or appellant, a copy to the Board's file in the office of the Board, and one copy to the Wisconsin Department of Natural Resources where applicable.

### **SECTION 3. TIME TO APPEAL**

Appeals from the decision of the Department must be filed within thirty (30) days after the decision in writing is made and filed in the Department of Planning and Development.

### **SECTION 4. REQUIRED INFORMATION**

Failure of the appellant to supply the required information within thirty days of filing of an appeal or application may be considered by the Board as a failure to comply with application and appeal procedure and the case may be dismissed for failure of timely filing. Applications or appeals shall be made on forms provided by the Department of Planning and Development or Land Use Manager. Any communication, except on prescribed forms, purporting to be an appeal shall be deemed a mere notice of intention to file and shall not be deemed a filing to comply with requirements of timely filing.

### **SECTION 5. REASONS TO BE STATED**

The reason for the application or appeal must be stated and the reasons why the request should be granted must also be stated by the applicant or appellant: (a) If a variance is requested, facts should be stated upon which findings may be made by the Board to justify the granting of the variance. (b) If an appeal is based upon an alleged error or abuse of discretion, facts should be stated as to the nature thereof.

## **SECTION 6. DISMISSAL OF CASE**

The Board may refuse to hear a case upon the failure of the applicant or appellant to supply the required information called for on the forms and as further reasonably required by the Land Use Manager.

## **SECTION 7. CONSENT/FILING**

The forms shall bear the signature of the owner of the property affected or shall be accompanied by a letter from the owner acknowledging the filing of the form. An applicant or appellant may file an appeal or application personally or by agent or attorney.

## **SECTION 8. TIME FOR HEARING**

Each appeal or application shall be considered by the Board at its next meeting, provided there is sufficient time between the date of the appeal and the date of the meeting for the required hearing notices to be published.

## **SECTION 9. NOTICE OF HEARING**

The secretary of the Board shall give, or cause to be given, notice of each hearing as required by law and these rules. This shall include at least the following: 1) publication of a Class 2 hearing notice in a newspaper or general circulation; 2) mailing a notice of the hearing to the applicant, where required and to the district office of the Department of Natural Resources at least ten (10) days before the hearing; 3) mailing a notice of the hearing to the town board of the town in which the property is located, and a notice to all property owners within 660 feet of the perimeter of the property affected.

## **SECTION 10. EFFECT OF APPEAL**

An appeal shall stay all legal proceedings of the action appealed unless the officer from whom the appeal is taken certifies to the Board that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such cases, proceedings shall not be stayed except by a restraining order from the Board or a court of law.

## **SECTION 11. FEE**

The applicant shall pay such fees as established by the County Board in Chapter 4.35, General User Fees of the County Code. The fee shall be deposited with each application filed and no refunds shall be made after the notice of hearing has been published.

## **ARTICLE VI. PROCEEDINGS OF HEARINGS**

### **SECTION 1. APPEARANCES, ADJOURNMENTS**

At the time of the hearing, the applicant or appellant may appear in his own behalf or be represented by his counsel or agent. A recess or adjournment of a hearing, made at a noticed hearing date, to the time and place certain is adequate notice to the members and the public of a new hearing date.

### **SECTION 2. WITNESSES**

The Chairperson, or Acting Chairperson, may compel the attendance of witnesses and may require those wishing to testify to state their names and their interests in the matter before the Board. Testimony may be taken under oath administered by the Chairperson or Acting Chairperson.

### **SECTION 3. ORDER OF HEARINGS**

Hearings on cases shall follow this order:

1. Reading of the appeal or application.
2. Determination of jurisdiction when requested.
3. Staff analysis or reading of reason for denial.
4. Applicant presents evidence.
5. Others in support.
6. Objectors present evidence.
7. Staff recommendation.
8. Rebuttals.

### **SECTION 4. PRELIMINARY MATTERS**

Following the reading of the appeal, the Board may hear arguments on the question or jurisdiction and request that briefs be filed. The Board may proceed with the hearing and the taking of testimony in any event and reserve its determination on a jurisdictional question until after the hearing is closed and render a decision on the merits as if it had jurisdiction. The Board may make an immediate determination and close the hearing upon a finding that it lacks jurisdiction. If the Board determines by

motion that it lacks jurisdiction, the secretary shall record the decision as a vote to deny the request.

#### **SECTION 5. PARTIES NOT TO INTERRUPT**

Orderly procedure requires that each side shall proceed without interruption by the other; that all arguments and pleading shall be addressed to the Board and that there be no questioning or arguments between individuals.

#### **SECTION 6. QUESTIONS AND DEBATE**

During the hearing, the Chairperson, Board members and members of the staff may ask questions and make appropriate comments pertinent to the case; however, no member should debate or argue an issue with the applicant. The Chairperson and Board members may direct any question to the applicant or to any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the case and may call for questions from members of the staff.

#### **SECTION 7. PRESENTATION OF EVIDENCE**

All supporting evidence for and against each case shall be presented to the assembled Board. The applicant or appellant shall be responsible for the presentation of all information supporting his/her case. The Board may take administrative notice of the ordinances of the County and laws of the State of Wisconsin and of other relevant facts not reasonably subject to dispute on its own motion or motion of a party.

#### **SECTION 8. ADDITIONAL EVIDENCE**

The Board may take a case under advisement for later consideration and determination or may defer action whenever it concludes that additional evidence is needed for further study is required.

#### **SECTION 9. RULES OF EVIDENCE**

The Board shall not be bound by court rules of evidence, but it may exclude irrelevant, immaterial, incompetent, unduly argumentative or repetitious testimony or evidence.

#### **SECTION 10. CHAIRPERSON TO RULE ON ADMISSIBILITY**

The Chairperson shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board present.



**SECTION 11. INTERESTED PERSONS MAY TESTIFY/ACCEPTANCE OF WRITTEN TESTIMONY.**

Persons having an interest in the case may attend the hearing and may request an opportunity to testify provided they identify themselves. All testimony shall be under oath and be limited to five minutes unless an extended time is allowed by the Chairperson. Written testimony shall be allowed if submitted prior to conclusion of the hearing. The address and signature of the person submitting written testimony shall accompany the submittal.

**SECTION 12. ADJOURNMENTS**

When all appeals or applications cannot be disposed of on the day set, the Board may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such adjournment shall be given to the absent members of the Board.

**SECTION 13. WITHDRAWAL**

An appellant or applicant may withdraw an appeal at any time prior to the decision, but a pending motion to grant or dismiss the appeal shall have precedence over withdrawal. Withdrawal of the appeal shall not entitle the appellant or applicant to remission of the filing fee.

**ARTICLE VII. DECISION OF THE BOARD**

**SECTION 1. MAJORITY VOTE REQUIRED**

The concurring vote of a majority of all members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, to decide in favor of the applicant on any matter upon which it is required to pass under any zoning ordinance or to effect any variance.

**SECTION 2. DECISIONS TO BE WRITTEN**

All decisions shall be in writing and contain the facts upon which the decision is based.

**SECTION 3. DECISIONS TO BE MAILED**

Within thirty (30) days of the close of the hearing to which the decision relates, written copies of such decision shall be mailed to the applicant and all interested parties and filed in the Planning and Development Department. The approval or granting of appeals by the Board is deemed to constitute an order to the Zoning official to issue a zoning permit. A denial of the application or appeal by the Board is deemed to be an

order to deny the permit. Copies of written decisions authorizing variances in floodplain or exclusive-agricultural districts shall also be mailed to the Wisconsin Department of Natural Resources and the Wisconsin Department of Agriculture, Trade and Consumer Protection, respectively.

#### **SECTION 4. FINDINGS**

In acting on any matters before it the Board shall make findings supporting its actions. In every case where a variance from the zoning regulations is granted by the Board, the minutes of the Board shall affirmatively show that an unnecessary hardship or practical difficulty exists, and the records of the Board shall clearly show in what particular and specific respects an unnecessary hardship or practical difficulty is created.

#### **SECTION 5. DISQUALIFICATION: MOTIONS**

A member may disqualify himself/herself from voting whenever the member has a personal or monetary interest in the property concerning the case, will be directly affected by the decision of the Board, has or believes he/she has any conflict of interest under State statutes. A member may also disqualify himself/herself from voting whenever the applicant or the applicant's agent has sought to influence the vote of the member on his/her case outside the public hearing. All decisions of the Board shall be made at a public meeting, by motion made, seconded and passed. A motion, which decides the issue, shall be in the form of findings of fact and shall state the reasons for the findings by the Board. If conditions are imposed in the granting of a variance, or conditional use, such conditions shall be included in the motion.

#### **SECTION 6. DECISION TO RELATE TO SPECIFIC PROPERTY**

The decision of the Board shall be deemed as applying to the property rather than to the individual and is valid only for the specific premises in the case and is not transferable to other properties.

#### **SECTION 7. INFORMAL ADVICE NOT BINDING**

No informal request for advice or on moot questions need be given by the Board. And advice, opinion or information given by any Board member, the Board secretary, or any other official or employee of the County shall not be binding on the Board.

#### **SECTION 8. CASES TO BE DETERMINED INDIVIDUALLY**

No action of the Board shall set a binding precedent. Each case shall be decided upon its merits and upon the attendant circumstances, provided the Board shall not act arbitrarily or capriciously.

## **SECTION 9. ORDER FOR PERMIT**

An order issued by the Board requiring the Department to issue a permit shall become void when the code is amended to change the section to which the appeal or variance was granted.

## **SECTION 10. ACTION IN CIRCUIT COURT**

Any person or persons jointly or severally aggrieved by any decision of the Board of Land Use Appeals, or any taxpayer, or any officer, department, board or bureau of the County may commence an action in the circuit court for writ of certiorari to review the legality of such decision in whole or in part, within thirty days after the filing of the decision in the office of the Board.

## **ARTICLE VIII. REFILING AND REHEARINGS**

### **SECTION 1. ONE-YEAR REFILING RULE**

No matter which has been acted upon by the Board shall be considered again within one year from the date of action, except as hereinafter provided.

### **SECTION 2. EXCEPTION TO ONE-YEAR RULE**

The Board may hear cases within said one year period concerning the same property only when: (a) the case does not involve a request for an identical permit or does not allege the same misinterpretations or error, point of no coverage or hardship as the previous case, or when (b) the case does not contain the original request for specific variance, or when (c) substantial change in the use of adjacent property has occurred since the previous case was heard, or if (d) the previous case was closed without a hearing because the application was not present at the time such case was scheduled for a hearing.

### **SECTION 3. REOPENINGS AND REHEARINGS LIMITED**

The Board may not reopen any case upon which a previous hearing has been held, except to correct a manifest error; but it may reconsider a case as provided by these rules. The Board may reconsider a case where new and/or substantial evidence can be presented to the Board, which was not evident at the original hearing.

### **SECTION 4. CLOSURE OF CASE**

A case will be considered as heard and closed at such time as the Board approves or rejects an application or appeal by motion or when it is considered closed by operation of these rules.

## **SECTION 5. RECONSIDERATION ON BOARD MOTION**

A decision of the Board may be reconsidered: (a) by motion to reconsider made at the same meeting which may be immediately disposed of without further notice, or (b) by motion to reconsider made not later than the following regular meeting, in which event, the matter shall be placed on the calendar for a subsequent hearing and a new notice given without additional fee.

## **SECTION 6. RECONSIDERATION BY REQUEST**

The Board may entertain a request for reconsideration by a party in interest provided the request is in writing and new written evidence submitted with the request. On receipt of a properly filed request to reconsider, the secretary shall place the matter on the next agenda under "Other Business" for consideration at the next regular meeting. A request for reconsideration must be filed with the secretary at least 15 days prior to the next regular meeting date.

## **SECTION 7. RECONSIDERATION TOLLS APPEAL PERIOD**

The filing of a request or adoption of a motion for reconsideration shall stop the running of the thirty-day period in which a petition to the circuit court must be made. The thirty-day period will run in such event from the date not to reconsider is made by the Board, or if the matter is reconsidered, from the date the decision on the reconsidered matter is filed in the Board's office.

## **SECTION 8. PROCEDURES FOR RECONSIDERATION**

A simple majority vote shall be sufficient to reconsider a previous decision. If reconsideration is refused to an interested party who has requested a reconsideration, the Board shall enter in the minutes the basis of the request, the reason why it was refused and the vote of the Board members thereon. If reconsideration is approved, the case will be placed on the agenda for the next regular meeting and notice given of the re-hearing as required for an original hearing upon payment of the re-hearing fee.

## **ARTICLE IX. AMENDMENT OF RULES**

These rules may be changed or amended from time to time by a majority vote of the Board of Land Use Appeals at any regular or special meeting.

## **ARTICLE X. ANNUAL REPORT**

Annually on a date specified by the County Board, the Board of Land Use Appeals shall submit a report of its activities during the preceding year, to the County Planning and Development Committee for transmittal to the County Board.

**ARTICLE XI. STAFF**

The Board of Land Use Appeals may utilize the advice and assistance of the County employees and may delegate administrative tasks to such employees as authorized by the County Board of Supervisors.

The foregoing rules and regulations are hereby adopted by the Board of Land Use Appeals for the County of Eau Claire on June 19, 2024.

**Board of Land Use Appeals**

	AYE	NAY	ABSTAIN
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Randall Stutzman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Karen Meier-Tomesh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Patrick Schaffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gary Eslinger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gary Gibson			

Dated this 19 day of June, 2024

**EAU CLAIRE COUNTY BOARD OF LAND USE APPEALS  
STAFF ANALYSIS AND RECOMMENDATION - VAR-0002-24**

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DATE PREPARED: June 4, 2024

PUBLIC HEARING DATE: June 19, 2024

PROPERTY OWNER: Martin McSharry & Stephanie McSharry, 5856 Markgraff Road, Fall Creek, WI 54742

PROPERTY DESCRIPTION: SE ¼ NE ¼ Section 9, T26N - R8W

PARCEL SIZE: 34.60 acres

ZONING DISTRICT: A-2 Agriculture – Residential District

#### EXHIBITS

1. Staff Report
2. Variance Application
3. PowerPoint (with site pictures and video)

#### REQUEST AND BACKGROUND

The applicant is requesting an after-the-fact variance from the Board of Land Use Appeals (Board) to disturb slopes in excess of 30%. Approximately 22,500 square feet of disturbance has already occurred. Within the 22,500 square feet of disturbance, were slopes greater than 30% which resulted in a 225 linear foot driveway.

County Code Chapter 17.05.080 A. prohibits land development or land disturbing activities on 30% slopes and greater. The landowner is requesting a variance from the Board to avoid the need to reclaim the site and to maintain the newly graded area for division of the parcel and sale of two new proposed lots.

The Land Conservation Division (LCD) of the Department on Planning & Development was informed of the violation by the Land Use Controls Division after the applicants submitted a Preliminary Certified Survey Map (CSM) into Planning & Development for review. The intent of the CSM was to divide the parcel into two lots and sell the proposed lots for residences. The Land Use Controls Division Staff brought the slope disturbance issue to the LCDs attention and the violation process was initiated; the CSM application is pending at this time.

The surface water flow path starts approximately 175' uphill of the driveway location and flows off the disturbed area into the constructed ditch on the northside of the driveway toward Markgraff Road. Water that doesn't get entrained in the driveway ditch flows off the area of disturbance staying in the valley created by the Markgraff Road until it enters the road ditch. The area of violation is approximately 1,300 feet from a water way that enters Otter creek about 2.1 miles downstream. There is one DNR mapped wetland 4,870 feet downstream of the disturbance that is currently cropped.

#### ADJACENT LAND USE AND ZONING

The adjacent parcels are predominantly agricultural land with unfarmable areas dominated by woody vegetation. Surrounding properties are zoned A-P Agricultural Preservation and A-2 Agricultural – Residential District.

## AUTHORITY

### Chapter 17.05.010

This ordinance is adopted by the county board under the authority granted by Wis. Stat. §§ 59.693, 92.07(6), 92.07(15) and Wis. Stat. Ch. 236.

## ORDINANCE REQUIREMENTS AND VARIANCE ANALYSIS

### Section 17.05.030 Purpose

- A. The general purpose of this ordinance is to establish regulatory requirements for land disturbing activities aimed to minimize the threats to public health, safety, welfare, and the natural resources of Eau Claire County from construction site erosion. Specific purposes are to:
1. Further the maintenance of safe and healthful conditions.
  2. Prevent and control the adverse effects of soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; establish erosion control standards for building sites, placement of structures and land uses; and preserve ground cover and scenic beauty.
  3. Reduce sedimentation in existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger property.
    - a. Through this erosion control permit process, this ordinance is intended to meet the current construction site erosion control regulatory requirements of Wis. Admin. Code ch. NR 151 on the effective date of this ordinance. Nothing in this ordinance prevents the Wisconsin Department of Natural Resources (WDNR) from adopting or enforcing more stringent soil erosion or storm water management requirements in future revisions of Wis. Admin. Code.
    - b. Provisions have also been incorporated to coordinate the erosion control permit requirements of this ordinance with other county and town zoning and land division regulations. (Ord. 158-26, 2015; Ord. 150-36, 2006)

### Section 17.05.070. Applicability and Exemptions

- B. Uniform Statewide Standards. Unless otherwise exempted under 17.05.070 D., an erosion control permit shall be required, and all erosion control provisions of this ordinance shall apply to all proposed land disturbing activity that meet the requirements of 17.05.070 A and any of the following:
1. Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more; or
  2. Involves excavation or filling, or a combination of excavation and filling, which affects 400 cubic yards or more of soil, sand or other excavation or fill material; or
  3. Involves street, highway, road, access lane or bridge construction, enlargement, relocation or reconstruction.
  4. Involves the laying, repairing, replacing, or enlarging of an underground pipe, line or facility for a distance of 300 feet or more; or
  5. Requires a subdivision plat approval or a certified survey.
  6. Is a land disturbing activity, regardless of size, that is likely to cause an adverse impact to an environmentally sensitive area or other property.

### Section 17.05.080 Prohibited Activities.

- A. Land disturbance activities on 30% slopes and greater, unless:
1. exempted in 17.05.070. D.; or
  2. for activities that require public improvements; or
  3. to correct a preexisting erosion problem.

B. No activity permitted under this ordinance shall cause contamination resulting in a public health hazard or other violation under Title 8. (Ord. 158-26, 2015; Ord. 156-002, Sec. 16 & 17, 2012; Ord. 153-27, Sec.'s 7 & 8, 2010; Ord. 151-36, Sec. 1, 2007; Ord. 150-36, 2006)

### **Section 17.05.060. Definitions**

“Environmentally Sensitive Area” means any area that, due to the natural resources present or the lack of filtering capacity, is more susceptible to the adverse impacts of sediment and other pollutants associated with erosion and urban runoff. Examples include environmental corridors, slopes of 20% and greater, direct hydrologic connections to lakes, streams, wetlands, groundwater or other water resources, or very coarse or shallow soils above groundwater or bedrock.

“Steep Slope” means 20% or greater. For the purpose of application of these regulations, slope shall be measured over a horizontal distance of 50 feet parallel to the direction of the existing slope and within the proposed “land disturbing activity”. Slopes shall be measured as the change in elevation over the horizontal distance between consecutive contour lines and expressed as a percent. Modeling software, where used, shall be adjusted to account for large areas with steep slopes.

## **VARIANCE STANDARDS**

### **17.05.150.C.3 Variances**

Upon appeal, the Board may authorize variances from the provisions of this ordinance which are not contrary to the public interest or the purposes of this ordinance, and where owing to special conditions beyond the control of the applicant, a literal enforcement of this ordinance will result in unnecessary hardship.

## **STAFF RECOMMENDATION**

In evaluating the variance application, the Board must consider the County Code’s Erosion Control variance standards for granting a variance. An approval or denial requires that the board state its reasoning why an application did or did not meet the statutory criteria.

For the board to authorize an approval of the variance, the Board will need to give their reasoning as to why a literal enforcement of the ordinance creates conditions that are beyond the control of the applicant. The Board may consider written statements from the applicant and any testimony presented at the meeting.

The following are reasons the LCD recommends the board deny the variance request:

1. The CSM has not been approved, therefore, there is no reason that a driveway should exist at this location. If the applicant had created the lots prior to constructing infrastructure, an alternative driveway location or lot configuration would have been vetted that avoids 30% slopes. Lot 1 is planned to utilize a historic roadbed that would provide access and avoid 30% slopes.
2. According to Title 17, disturbing slopes of 30% or greater is a prohibited activity. The board’s decision to approve the variance may set precedent for future development on the property. 32% of the property is comprised of slopes greater than 30%. 51% of the property is comprised of slopes greater than 20%.
3. The applicant hasn’t exhausted all options as to why a hardship is present. The applicant has not addressed why the proposed CSM cannot be modified to provide alternative access to proposed lots that avoid slopes of 30% or greater. A CSM with a buildable area that does not have road access would not be approved.
4. The applicant has not demonstrated how long-term maintenance of the driveways will be carried out to ensure they can be stabilized. Since the planned outcome for this property is development, we can assume that impervious areas will be constructed increasing runoff. Long, steep slopes with



concentrated flow need to be carefully designed to ensure the designed flows can safely be routed down the slope.

The LCD recommends the following should the board consider approval of the variance request:

1. Staff recommends the erosion control plan be designed and stamped by a Professional Engineer (PE). The PE has the professional background to ensure that the slope is stable and knowledge of prescribing appropriate erosion control and stormwater practices.

## FINDINGS

If the Board approves the variance request, the Board may incorporate their own or any of the following findings in its decision:

- An unnecessary hardship is present. The board will need to state the hardship that is present.

If the Board denies the variance request, the Board may incorporate their own or any of the following findings in its decision:

- The applicant did not prove that an unnecessary hardship is present.
- The project is in violation of Chapter 17.05 Erosion Control due to disturbance of 30% slopes.
- The erosion control permit will be amended to show how the disturbed areas will be restored to preexisting conditions.



Department of Planning and Development  
 Land Conservation Division  
 Eau Claire County Courthouse  
 721 Oxford Avenue, Room 3344  
 Eau Claire, Wisconsin 54703  
 (715) 839-6226

Date Application Accepted:	05.07.2024
Accepted By:	Zach Mohr
Receipt Number:	077369
Town Hearing Date:	N/A
Scheduled Hearing Date:	06.19.2024

### TITLE 17 VARIANCE AND APPEAL APPLICATION

Property Owner Name: <u>Marty McSharry</u>	Phone# <u>218-209-7062</u>
Mailing Address: <u>5856 Markgraff RD Fall Creek WI 54742</u>	
Email Address: <u>Marty.McSharry@gmail.com</u>	

Agent Name:	Phone#
Mailing Address:	
Email Address:	

#### SITE INFORMATION

Site Address: <u>5856 Markgraff RD Fall Creek WI 54742</u>
Property Description: <u>1/4</u> <u>1/4</u> Sec. <u>9</u> , T. <u>20</u> N, R. <u>8</u> W, Town of <u>Washington</u>
Zoning District: <u>A2</u> Code Section(s):
Ordinance from which a variance is being requested: <input type="checkbox"/> Title 17.04 Agricultural Performance Standards and Manure Storage <input checked="" type="checkbox"/> Title 17.05 Erosion Control <input type="checkbox"/> Title 17.06 Stormwater Management Check Applicable
Computer#(s): <u>1802422608091400002</u> or PIN #(s):

#### GENERAL APPLICATION REQUIREMENTS

Applications will not be accepted until the applicant has met with department staff to review the application and determine if all necessary information has been provided. All information from the checklist must be included.

A detailed written statement that specifically identifies what is being requested.

Written argument that justifies the need for the variance and addresses the variance criteria. It is the applicant's responsibility to prove that the variance criteria exists at the site and that a variance can be granted. (See page 2 for additional information.)

The applicant must flag/stake the property/project corners and label them accordingly (e.g., NE Lot corner, NE building corner, project area).

A scaled site plan of the site and surrounding area for a distance of 100 feet, including buildings and other structures. Also, include the proposed addition/structure/location of septic system, well, driveway, property lines, navigable water ways, wetlands, floodplains, slopes in excess of 20%, and any other unique limiting condition of the property. An erosion control plan and stormwater management plan, if applicable, shall be included. All maps and engineering data to be no larger than 11" x 17". The following website could be used to assist in the site plan creation: <https://beacon.schneidercorp.com>, or contact the LCD to assist with the site plan. Additional fees may apply.

Provide a \$550.00 application fee (non-refundable). Send application to [LCD@eauclairecounty.gov](mailto:LCD@eauclairecounty.gov) or to the address above.

I certify by my signature that all information presented herein is true and correct to the best of my knowledge. I give permission for the staff of the Eau Claire County Department of Planning and Development to enter my property for the purpose of collecting information to be used as part of the public hearing process. I further agree to withdraw this application if substantive false or incorrect information has been included.

Property Owner Signature [Signature] Date 5/11/24

At the public hearing, the applicant may appear in person or through an agent or an attorney of his/her choice. The applicant/agent/attorney may present testimony, evidence, and arguments in support of the application. All site plans, pictures, etc. become the property of the Department, and will remain in the file.

## STANDARDS FOR VARIANCES

The Board of Land Use Appeals is authorized by Wisconsin statutes § 59.693, § 59.694 and Sections 17.04.150, 17.05.150 C, and 17.06.170 C of the Eau Claire County Code to grant appeals and variances to the strict terms of the Eau Claire County Agricultural Performance Standards and Manure Storage, Erosion Control, and Stormwater Management Ordinances only when certain criteria exist. Those criteria are listed below. It is the applicant's responsibility to prove that those criteria exist at the site and that a variance can be granted.

### Variance Criteria.

1. The variance cannot be contrary to the public interest or purposes of Title 17.
2. A variance could be granted where, owing to special conditions beyond the control of the applicant, a literal enforcement of this ordinance will result in unnecessary hardship. An unnecessary hardship must conform with the following:
  - I. The hardship cannot be self-created.
  - II. The property owner bears the burden of proving unnecessary hardship.
  - III. The hardship must be based on conditions unique to the property rather than considerations personal to the property owner.
  - IV. The Board is to evaluate the hardship in light of the purpose of the code restriction at issue.
  - V. Strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with zoning ordinance unnecessarily burdensome.

If it is found that there is a hardship and that the other criteria are present, the Board can grant a variance. In that case, the variance should only provide for the minimum relief needed to overcome the hardship, the spirit of the ordinance shall be observed, and substantial justice done.

A variance grants relief from a **numerical standard**, such as a setback, that allows development that is inconsistent with the dimensional standards contained in the ordinance. Variances cannot be issued to approve uses that are inconsistent with the ordinance. The Board of Land Use Appeals is authorized by statute to grant variances to the strict terms of the Eau Claire County Erosion Control and Stormwater Management Ordinances only when certain criteria exist. Those criteria are listed above. It is the applicant's responsibility to prove that those criteria exist at the site and that a variance can be granted.

Additional Criteria relating to Title 17.04. Include in your application how your variance request will comply with the purposes of the Agricultural Performance Standards and Manure Storage ordinance listed below:

1. Prevent water pollution and thereby protect the health of Eau Claire County residents and visitors.
2. Prevent the spread of disease.
3. Promote the prosperity and general welfare of the citizens of Eau Claire County.

Additional Criteria relating to Titles 17.05 and 17.06. Include in your application how your variance request will comply with the purposes of the Erosion Control and Storm Water Management ordinances listed below:

1. Minimize the threats to public health, safety, welfare, and the natural resources of Eau Claire County from construction site erosion and post-construction stormwater runoff.
2. Further the maintenance of safe and healthful conditions.
3. Prevent and control the adverse effects of soil erosion and storm water; prevent and control water pollution; protect spawning grounds, fish and aquatic life; establish erosion control standards for building sites, placement of structures and land uses; and preserve ground cover and scenic beauty.
4. Reduce sedimentation in existing drainage facilities and receiving water bodies; Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger property.

If you believe your request meets the criteria necessary to grant a variance, please summarize your request, along with the facts that show those standards have been satisfied, and arguments that support this conclusion. If the application involves engineering or architectural plans, it is recommended the engineer or architect accompany the applicant at the Board of Land Use Appeals meeting.

May 5, 2024

To the Board of Land Use Appeals:

My name is Martin McSharry, and I am a resident of Fall Creek. In late winter, I reached out to the Eau Claire Highway Department about adding a driveway to the north side of my 35 acre property. The Highway Department made two site visits to determine the best access point, as there is a guardrail running north/south on the property line. Highway department deemed the site safe, and agreed that it was the best place for the driveway. I also consulted with Loren Gorel with Northland Excavating. He conducted two site visits, where we walked the property and determined where we would install the driveway; which is the least disturbing to natural landscaping. The driveway runs in the most natural space. Directly to the south is the guardrail, and directly to the north is a hill that the Highway Department stated would be unsafe for drivers accessing the road. After meeting with the Highway Department and Loren, Loren installed the driveways, as I thought I had completed all necessary paperwork and due diligence. I received the permit on February 28, 2024. I was unaware that erosion permits and variance were necessary before beginning the work. I submitted a CSM with surveyor Jason Heiss and it was brought to my attention that I had completed this project out of order. I was not informed during any meeting or conversation with the Eau Claire County Highway Department that extra permits were required, as I had received the permit to install the driveway.

Upon completing of the excavation, I immediately seeded down both sides of the north driveway with DOT mix #10. Once it began to grow, I repeated the application of the mix. I stapled down erosion mats on both the north and south side of the driveway, totalling 40 (48 x 112ft) mats. Erosion log was installed in the ditch and staked down in 15 foot intervals. I applied base course to the driveway, gravel and a 16" culvert. Without this driveway, I would not be able to access the property.

Thank you for your consideration,

  
Martin McSharry

 Erosion Logs

 Erosion Mats

 Culvert

 Water flow Direction

 Driveway & Gravel



# Eau Claire County Highway Department



5061 US Highway 53  
Eau Claire, Wisconsin 54701

**Jon Johnson**  
Highway Commissioner

Highway Committee  
Chair-S Chilson, Vice Chair-L Hoekstra,  
D Zook, M Beckfield, K Dahl

## CONTACT

Office 715-839-2952  
Fax 715-578-4893  
Email: [ecchwy@eauclairecounty.gov](mailto:ecchwy@eauclairecounty.gov)  
Website: [www.eauclairecounty.gov](http://www.eauclairecounty.gov)

May 7<sup>th</sup>, 2024

Marty McSharry  
5856 Markgraff Road  
Fall Creek, WI 54742

To Whom it may concern,

The Eau Claire County Highway Department issued two Land Access Driveway Permits for Martin Mcsharry on February 28<sup>th</sup>, 2024. The property is approximately 35 acres and abuts County Road IJ (Markgraff Rd) located in part of the SE1/4-NE1/4, Section 9, Township 26 North, Range 8 West, Town of Washington, Eau Claire County, Wisconsin.

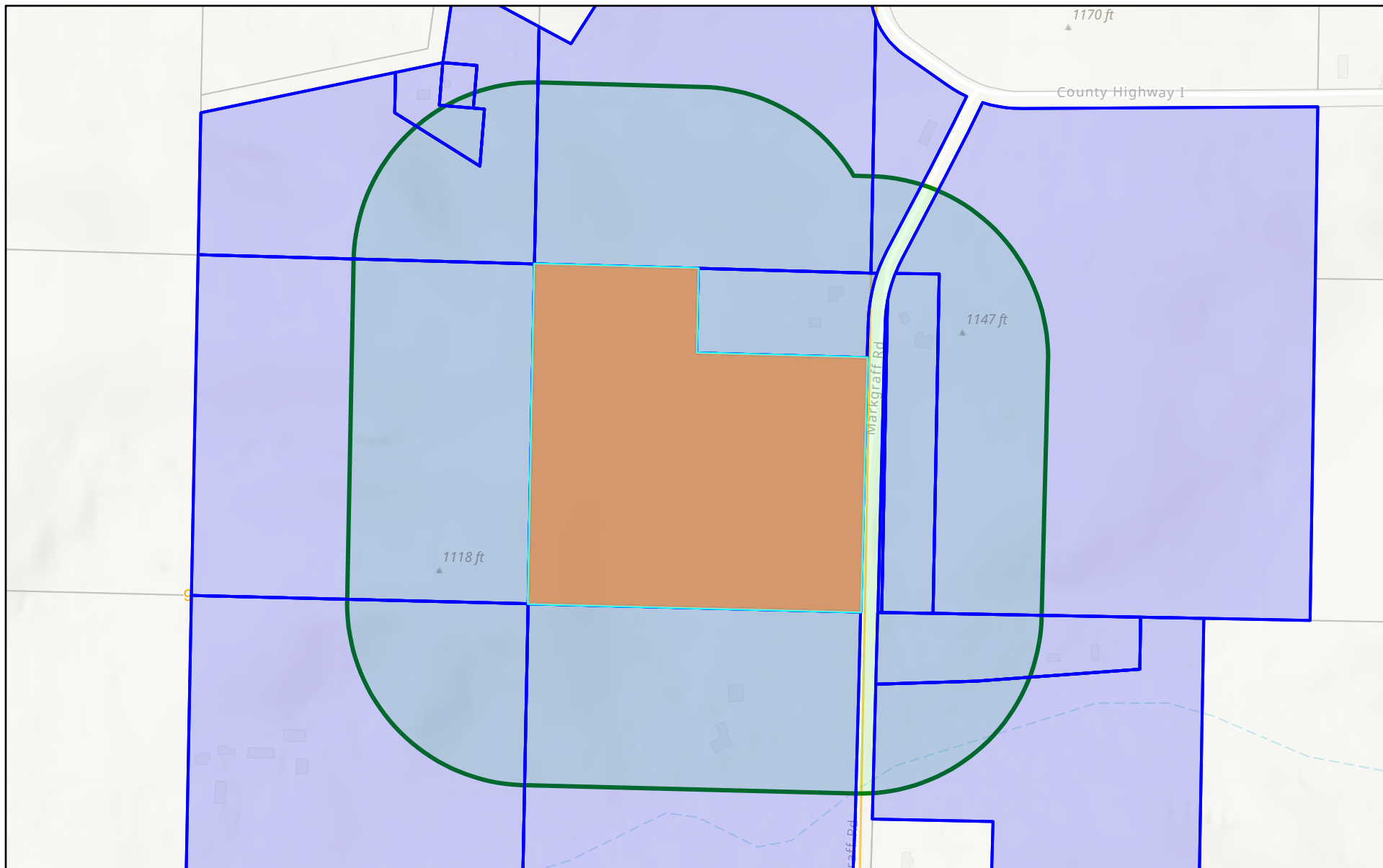
The two driveway access locations met the Eau Claire County Highway Department Policies and Procedures Manual guidelines for driveway access. The said property has restricted access to County Road IJ due to an existing guard rail approximately 600 feet in length. The two approved access locations are north and south of existing guard rail which met the required driveway sight and stopping distances. The northerly driveway access location could not be any further north because of inadequate sight and stopping distances.

Sincerely,




Ben Klitzke

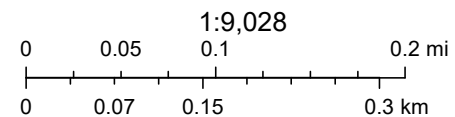
Highway Department Surveyor

# Public Notification



5/28/2024, 7:28:48 AM

-  County Boundary
-  Tax Parcel
-  Section



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FirstName LastName	Address	City State Zip
ORVILLE G & TERRY L KLEINHANS TRUST	9087 OTTER CREEK RD	FALL CREEK WI 54742-6336
CHRISTOPHER CALDWELL	5548 MARKGRAFF RD	FALL CREEK WI 54742-9757
WESSTON BORRESON	5468 MARKGRAFF RD	FALL CREEK WI 54742-9757
DAROLD J & LAURIE G ZICH	5847 MARKGRAFF RD	FALL CREEK WI 54742-9757
JERROL & CONNIE RINDAL	6080 MARKGRAFF RD	FALL CREEK WI 54742-9755
EDWARD F & VIRGINIA K BARTCH TRUST	5851 MARKGRAFF RD	FALL CREEK WI 54742-9757
TIMOTHY H & ANGELA HITE	4103 LIBERTY CT	EAU CLAIRE WI 54703-1330
NOEL LARSON	5545 MARKGRAFF RD	FALL CREEK WI 54742-9757

## MINUTES

Eau Claire County

• BOARD OF LAND USE APPEALS •

**Date:** Wednesday, September 27, 2023

**Time:** 5:30 p.m.

**Location:** *Eau Claire County Courthouse, 721 Oxford Ave, Room 1277, Eau Claire, Wisconsin 54703*

**Members Present:** Randy Stutzman, Karen Meier-Tomesh, Gary Gibson, Gary Eslinger, Patrick Schaffer

**Members Absent:**

**Staff Present:** Holly Weigand, Rod Eslinger, Chad Berge, Christina Rauh

1. Call to Order and confirmation of meeting notice

Chair Stutzman called the meeting to order at 5:30 p.m. and confirmed the meeting was properly noticed.

2. Public Comment **(15 minute maximum)**

None

3. Public Hearings

- a. A variance request to install an 8" diameter stormwater outlet pipe through a slope of 30% or greater. Land development activities on 30% slopes and greater is a prohibited activity under Eau Claire County Code Title 17.06.080. (Town of Bridge Creek) VAR-0004-23 Discussion – Action

Chair Stutzman swore in Christina Rauh, Environmental Engineer, Eau Claire County Land Conservation Division to provide background for the variance request. Christina Rauh went over the staff presentation that shows the outlet pipe, along with the slopes that are 30% or greater. Per Eau Claire County ordinance, land development activities on 30% slopes and greater are prohibited. The presentation shows that the slope is approximately 32%.

Reasons for approval: hardship is that the entire pond frontage is considered a steep slope, proposed stormwater basin cannot overflow properly. Approved Chapter 30 permit from WIDNR. The outlet pipe is permitted through State Shoreland Zoning – applicant has provided erosion control plan that shows detailed plan how slope will remain stabilized during and after construction. Denial: Not enough design details on how the pipe outlet installation and demonstrate pipe outlet be non-erosive to slope below the pipe. Disturbing slopes is a prohibited activity, and approval may set precedent for future development.

Chair Stutzman swore in Matt Appel, Advanced Engineering Concepts. Matt Appel stated that ideally, they would like to have an outlet pipe for major storm events for a controlled discharge. They want to install it as low as possible so it can easily freefall into the lake.

Chair Stutzman swore in Tom Robinson. Mr. Robinson asked questions about how much water will be going into the pond, along with the condition/quality of the water once it reaches the pond.

Christina Rauh gave a staff summary – with recommendation of staff support if the pipe is designed and installed per county code and WINDR code and specifications of NRCS requirements. Recommended LCD staff be on site during construction and installation to confirm it is installed per plan.

The board deliberated the request.

**ACTION:** Motion by Gary Eslinger to approve the Variance request based on finding in the staff report and under the request LCD staff be on site during the install of the pipe, seconded by Karen Meier-Tomesh. Motion carried 5-0-0.

4. Review/Approval of April 4, 2023 Meeting Minutes / Discussion – Action

The board reviewed the April 4, 2023 Meeting Minutes. Karen Meier-Tomesh recommended two changes in the minutes.

**ACTION:** Motion by Patrick Schaffer to approve the April 2, 2023 meeting minutes with the two changes mentioned, seconded by Karen Meier-Tomesh. Motion carried 5-0-0.

5. Adjourn

**ACTION:** Motion by Karen Meier-Tomesh to adjourn the meeting at 6:17 p.m.

Respectfully submitted,



Holly Weigand  
Clerk, Board of Land Use Appeals

DRAFT