

Buffalo County Minutes

<u>Committee/Board:</u>	Zoning Committee
<u>Date of Meeting:</u>	November 14, 2019
<u>Electronic and Hardcopy Filing Date:</u>	February 19, 2020

The meeting of the Zoning Committee was called to order by Mr. Taylor, chairperson, at 9:00 a.m. Roll call showed that Michael Taylor, Max Weiss, Dwight Ruff, David Danzinger was present by phone. Dennis Bork was absent. Others present for all or part of the meeting include Mike Owecke, Zoning Administrator, Julie Lindstrom, Zoning Administrative Assistant, Sonya Hansen, County Administrative Coordinator, David Hon, WI DNR, Edward Witte. Others may have been present that did not sign in.

Motion by Mr. Weiss, seconded by Mr. Ruff to approve the minutes of the July 11, 2019 Zoning Committee meeting as printed. All in favor. Carried.

Review/Discuss – After-the-Fact Shoreland Rezone Application. Mr. Owecke explained the three different situations that we are looking at. First is a violation of the Buffalo County Floodplain Ordinance. Fill has been placed in a mapped floodplain with no permit. Mr. Owecke explained this is a Zone A floodplain, which means there is no engineering on that section of the Trempealeau River, so we don't know what is floodway, floodfringe and we don't know what the base flood elevation is at that location. Mr. Owecke continued to say the only opportunity for release from this unknown is to complete a Hydraulic and Hydrologic (H&H) Analysis of that section of the river. Engineering is completed to determine the floodway, flood fringe and base flood elevation. This piece of information is due to the county tomorrow (11/15). One of the critical pieces of information that we will learn from that analysis is base flood elevation. The floodplain ordinance says that a road that accesses a dwelling, has to be at or above base flood elevation. If the road is not at or above base flood elevation (if other approvals are forthcoming from this committee and the full County Board) they would need to bring in more fill. Mr. Owecke explained that base flood elevation is the elevation of a 100-year flood event. Mr. Hon explained to establish the 100-year based flood elevation, an engineer needs to create a model using historical data to show what the 2-year, 25-year, 50-year and 100-year rainfall event is and likewise what flood event. They use up stream water coming in and they use land uses to create a model. The 100-year flood event, Mr. Hon calls it the 1% flood event, every time there is a flood, you are rolling a 100 sided dice and that 100 number could potentially come up each time. The second part of it is the county Shoreland Zoning Ordinance. Shoreland encompasses all lands within 300 feet of any navigable water. This land is protected by the state and the county. So within shoreland, it eliminates any development (any structure) within 75 ft of the navigable stream and within 35 ft of the stream is considered sacred ground, a vegetative buffer to protect that stream and you can only do limited clearing in a vegetative buffer. The third piece is wetland. Buffalo County has a wetland component within our Shoreland Ordinance called a shoreland wetland. That was the only avenue of relief for the applicant, Mr. Herold to apply for an after-the-fact re-zone of this shoreland wetland footprint of the road. What the applicant is asking for is to take this section of shoreland and say it is not shoreland. This will allow the applicant to leave the fill and leave the road as they constructed it. Mr. Owecke continued by saying that a wetland delineation was completed and it confirmed there is approximately a 20-acre wetland basin there. The terminology of the designation there is hardwood bottom land, floodplain forest, which in my understanding is one of the more rapidly disappearing wetland habitats. So the applicant in their petition are asking for that stretch of land about 1/3 of an acre be taken out of shoreland, so it is not shoreland and it is not wetland. It will be re-zoned to the ANR-40 Farmland Zoning District.

Mr. Owecke suggested that all the Committee members take time to drive down to the site and walk the road and get an idea what it looks like. Mr. Owecke introduced Ned Witte. Mr. Witte is the attorney for applicant and gave approval for the Zoning Committee members to go walk the site of the road construction.

Photos of the site were reviewed by Mr. Owecke at this time.

Mr. Hon introduced himself as an employee with the DNR. He worked 5 years as a waterway and wetland specialist out of Eau Claire and covered Buffalo County. He was responsible for administering waterway and wetlands activity for the state of WI. Mr. Hon went on to say that the DNR regulates wetlands when there is a disturbance or fill material placed in wetland and for navigable water we regulate structures and dredging and other activities actually in the navigable water. The County and the DNR have similar regulations that compliment each other, but they are not quite the same, specifically shoreland wetland ordinance and DNR laws. Mr. Hon went on to explain that county ordinance prohibits you from doing certain activities in the shoreland wetland until you get it re-zoned. There are a few exceptions to that such as boardwalks and stairways. The DNR on the other hand regulates discharges of fill material in wetlands and that is found in statute 281.36. In this case the DNR determined on their site inspection that fill material was placed in wetlands for the driveway, floodplain and shoreland wetlands and permanent bridges, culverts, constructed over a navigable stream. Those activities require permits from the DNR. At this time the County has a shoreland wetland rezone application on their desk and the DNR actually has a wetland fill permit application on it's desk. They are both after-the-fact applications. The DNR is looking at the county shoreland wetland district re-zoning criteria and language from the Shoreland Wetland ordinance that states that a wetland or portion of a wetland in the shoreland wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following and it lists the wetland function and values that are in the DNR Administrative Code NR103. Mr. Hon continued by saying the DNR criteria for reviewing and issuing a permit is a little bit different. The first two steps in the DNR wetland permitting process you have to show that you do not have a practicable alternative to avoiding or minimizing impacts to the wetlands. Practicable is defined in statute. The DNR is still reviewing the permit application and the alternatives analysis. Mr. Hon stated there are two types of permits, General Permits and Individual Permits. Mr. Hon explained that General permits are for more simple projects or projects impacting less than 10,000 square feet of wetlands. Individual permits are more complex and have case by case reviews and require the purchase of mitigation credits where you need to restore wetlands off the impacts of your project. If you apply for an individual permit, there are also some limitations that come into play on the scope of the DNR alternative review. In this case because it is for the construction of a single family home – attending features, which would be the driveway, the DNR review of practical alternatives is limited to the property where the discharge occurred. One parcel, in this case where the driveway was constructed and that is where the DNR is looking for potential alternatives. Mr. Hon continued by saying the DNR is still reviewing alternatives. At the same time, the DNR permit process also includes that the proposed project will not result in significant adverse impact to wetland functional value, water quality or other significant adverse environmental consequences. That is very similar to the county, but not quite the same. The DNR completed a site visit just 2 days ago to evaluate the functional value of the wetland that are listed in the County ordinance like storm and flood water storage, water quality and wild life habitat. That assessment is still in a draft, but it is done and some changes might be made to it. Mr. Hon pointed out that the county has to do their own review of whether this rezone application meets the criteria in the county ordinance, but the DNR can provide information and communicate with the county. The DNR will share the rapid assessment once it is finalized, but the county has to make their own decision based on the county criteria because it is a little bit different and that is important to keep in mind. The DNR and County each have their own processes. This ended Mr. Hon's explanation of the two different processes. Mr. Hon continued with the next step in the process for DNR permitting. Once the DNR feels the application is complete, they make a tentative determination of approval or denial and go through a 30 day public notice period. The public notice will be

published by the applicant and appear in the local newspaper once. It will also be on the DNR website. The DNR can set up an informational hearing for the project if they choose, but at this time they had not decided if they were going to or not. Mr. Hon also stated that any member of the public can also request an informational meeting about the project during the first 20 days of the public comment period. Zoning Committee questioned if the DNR had their determination done and Mr. Hon responded, the DNR does not. Mr. Hon continued by saying the permit is still in the initial review period; they are still gathering information. The DNR has not finalized their wetland assessment yet, but should be coming in the near future. Zoning Committee questioned whether the landowner was working on one as well. The applicant, Mr. Herold completed a wetland delineation, which is like a wetland survey showing where the wetlands are. That was necessary for the permit application, but the county Floodplain Ordinance is where the Flood study with the engineer is needed, which again is due tomorrow. Zoning Committee questioned the amount of impact that there is a potential alternative route for the proposed building site. Mr. Hon explained that he is not sure how that is looked at in the county Shoreland Wetland Ordinance. He did not see anything about that in the county ordinance, but for the DNR that is a criteria for issuing a permit whether the applicant has a practical alternative to complete the project which would be constructing a single family home. DNR is reviewing that right now. Mr. Owecke stated that as far as the county ordinance there is no language in there that states that a rezone petition should be analyzed under the alternative potential. It also doesn't say that you can't. It doesn't say that you have to. Zoning Committee questioned the involvement of the Army Corp of Engineers in this process. Mr. Hon explained they are involved in this process. They also have a permit application in house. When a DNR wetland permit is required, generally an Army Corp wetland permit is also required. They are working on their application and have not made any determination yet. Zoning Committee questioned fish habitat in the stream. Mr. Hon stated he does not know about fish and continued by saying there is no fish survey that has been done. The streams are fairly small and they are probably more important for supplying the Trempealeau River with a source of cold water. The streams are basically big springs. Zoning Committee questioned the impact of the whole project if the DNR and Army Corp or the county deny their application, where does it go from there. Mr. Hon went on to state that no decisions have been made, however there is a 30-day appeal period and an appeal process. Mr. Hon went into detail about the appeal process and stated this process could take months because it takes awhile to get on the calendar for the Administrative Law Judge. Mr. Hon stated that he was involved in one that took months, but less than a year. Mr. Hon stated that he is not quite sure what happens after the decision of the Administrative Law Judge. He knows there is a second appeal process, but provided no details about the second appeal process. Zoning Committee questioned whether the road will provide access to an agricultural field that would be used for heavy equipment and learned the road does not access to any agricultural field(s). Mr. Hon went on to explain the DNR permit review process, which included timelines in the decision process. Zoning Committee questioned the make up of the people who are involved in the review process and Mr. Hon stated there is a wetland team that will review the wetland application, starting with a DNR main permit reviewer, Mr. Hon will be available because he has been working on the project longer than the main reviewer has. They will ask for feedback from DNR staff, such as the wildlife biologists, fisheries biologist on what sort of impacts the project has on the environment. Mr. Owecke questioned whether the DNR permit would be reviewed by a hydrologist and Mr. Hon stated that he does not believe so. DNR are the waterway and wetland program people and they go straight to the biologists that are available. Zoning Committee questioned and Mr. Hon explained that the DNR uses the wetland functional value listed in NR 103 Administrative Code and they are really the same values listed in the county ordinance for rezoning something out of the shoreland wetland and the DNR uses a very specific methodology to evaluate those functional values, which is called the Wisconsin Rapid Assessment Methodology (RAM). The DNR uses their staff professional experience, input from their biologists, run some calculations and Mr. Hon stated it is pretty consistent from project to project. Mr. Owecke brought up a point from the rezone application submitted by the applicant in addressing the county criteria, it talks about the construction of the culverted driveway will not have an actual possible major harmful effect on the wetland, including ground water discharge or recharge, etc. Mr. Hon explained that he thinks that is in the rezone

application because it can only be rezoned if there are no significant adverse impacts to any of these functional values and the applicant is trying to explain their position there is no significant adverse impact. Mr. Owecke asked if that will be addressed in the RAM and Mr. Hon stated that is what the RAM is for, not to address what the applicant said, but to address impacts to the wetlands functional value and describe the wetland functional value. Mr. Hon stated there are no numbers in the RAM criteria, but the purpose of the RAM is to make it as quantitative as possible, as opposed to something that is open to interpretation.

Mr. Hon left the meeting at this time.

Mr. Owecke stated that this all started because the Zoning Department responded to a complaint from a neighboring landowner that saw the trucks of fill being hauled down towards the Trempealeau River. The initial site visit by the Zoning staff indicated it was obvious wetlands and so he contacted the DNR. Mr. Owecke provided in detail a meeting with the applicant and the contractors involved in the work and the contractors the applicant hired advised the applicant to check to see if he needed a permit to do this work and Mr. Herold continued the work without checking with the County office to see if he needed a permit. Mr. Owecke continued to explain the process should the applicant have come into the Zoning Office prior to starting the work, the applicant may have decided to avoid the costs and permit application process to complete the construction of the road and maybe look at a second option. Mr. Owecke would have been able to explain to the applicant about the navigable streams, the wetland, the floodplain and the permit. Mr. Owecke stated they started building two years ago. There was nothing there before. Mr. Ruff asked, after reading through the materials, would like to go on record to say that he is kind of disappointed that Mr. Herold hasn't responded necessarily to the letters. Mr. Owecke stated that was surprising to him as well, the lack of communication even after the letters he had sent to the applicant. Mr. Owecke later learned in a letter that was sent from the applicant's legal council to the County DA and it was the applicants understanding that as long as they were pursuing this with the DNR that Buffalo County was not going to enforce their ordinances. After that, Mr. Owecke stated he responded with a letter to the applicant that Buffalo County was in fact going to be enforcing the county ordinance.

Mr. Owecke explained that this was on the agenda, just to bring the Zoning Committee some background information. The committee will not take any action today. Mr. Owecke continued by saying the H&H Analysis is due tomorrow. He would like to forward that on to the regional floodplain engineer for an official review. Before the Zoning Committee takes any action, he would like to have the DNR's decision. Mr. Owecke explained that statute has no real clean procedure for these rezones. The committee needs to receive the application. A public hearing needs to be scheduled before the Zoning Committee. Mr. Owecke proposes the next meeting would be the public hearing, probably in January. That will give time for everything to happen and give the committee members time to review the forthcoming information from the DNR and the H&H Analysis. Mr. Owecke stated that he received the Town Acknowledgement Form. There is a conflict of interest with relatives of the applicant on the Town Board, so the Town Board opted to provide No Comment. Mr. Owecke encouraged the committee members to review the applicants Rezone application, specifically the responses to the County ordinances. This is their justification for removing the road from the shoreland zoning.

This ended the discussion on Agenda Item #3.

Filling the Zoning Specialist position. Mr. Owecke questioned the discussion during the county Human Resource Committee meeting regarding filling the Zoning Specialist position, stating this position needs to be filled. Mr. Owecke explained this position was not filled immediately when Ms. Tepovich left the position because it was towards the end of the construction season. This person would come in with no licensure, no credentials to do anything that we needed to have done. It takes months to get the training and do the testing and

get qualified and the training is all held in the winter during the months of February through April. Mr. Owecke continued by saying the county is required by the state to enforce the sanitary ordinance and the Zoning Specialist spends the largest part of their time doing sanitary ordinance work as well as the addressing ordinance and eventually become fluent with the other ordinances administered in the Zoning Department. Ms. Hansen commented that she talked with Mr. Owecke and after their conversation she felt that the county would not be doing the necessary service to the landowners if the position was not filled with a full time staff. Motion by Mr. Ruff, seconded by Mr. Weiss to approve to fill the Zoning Specialist full-time position. All in favor. Carried.

Zoning Administrator Report. Mr. Owecke reported as follows: The addressing project is scheduled to be completed tomorrow (11/15). Mr. Owecke explained that the Towns were asked to review their list of addresses, whether to keep an existing address or have it removed. Address signs were ordered based on that information. Address signs will continue to be installed as long as weather permits. Decision was made that Mr. Owecke's Performance Review will be completed with Ms. Hansen and Mr. Taylor as chairperson of the Zoning Committee should be included.

There were no additional Chairperson comments.

No date was scheduled at this time for the next Zoning Committee meeting.

No public Comments.

Motion by Mr. Ruff, Seconded by Mr. Weiss to adjourn. All in favor. Carried. Mr. Zoning Committee meeting was adjourned at 10:37.

Respectfully Submitted
Julie Lindstrom
Zoning Administrative Assistant