

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, SEPTEMBER 21, 2023.

9:00 AM – 11:56 AM

Board of Adjustment members in attendance: Tom Coombe
Steve Filipovich
Dan Manick
Pat McKenzie
Dave Pollock
Ray Svatos
Diana Werschay, Chair

Board of Adjustment members absent: None

Also present: *Nick Campanario*, St. Louis County Attorney's Office

Decision/Minutes for the following public hearing matters are attached:

NEW BUSINESS:

- A. Charles Mack, S3, T64N, R20W (Leiding)
- B. Scott Bandel, S27, T69N, R21W (Kabetogama)
- C. Dave Enstad, S2, T52N, R15W (Fredenberg)
- D. Aaron Dean (representing Friends of Fredenberg), S24, T52N, R15W (Fredenberg)

OTHER BUSINESS:

Donald Rigney, Acting Secretary, announced this will be Ray Svatos' last day on the Board of Adjustment and thanked him for nearly 17 years of service between the Planning Commission and Board of Adjustment.

NEW BUSINESS:

Charles Mack

The first hearing item is for Charles Mack, property located in S3, T64N, R20W (Leiding). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2 (F), to allow a subsurface sewage treatment system installation at a reduced shoreline setback from a Recreational Development Lake and a reduced structure setback from the absorption area. *Tyler Lampella*, St. Louis County Environmental Specialist Senior, reviewed the staff report as follows:

- A. The applicant is proposing to install a new septic system at a reduced shoreline setback of 20 feet from a Recreational Development lake where a minimum of 75 feet is required and at a reduced structure setback of 10 feet where a 20 foot setback is required for the soil treatment area.
- B. The property is a small island on Pelican Lake.

- C. The new system will be replacing the existing noncompliant septic system.
- D. The parcel currently contains a dwelling, one storage building, and several other small storage structures.
- E. There are two existing septic systems on the property.

Tyler Lampella reviewed staff facts and findings as follows:

A. Official Controls:

- 1. SSTS Ordinance 61 states that all SSTS components must be set back in accordance with 7080.2150, Subpart 2 (F) of the SSTS Technical Standards.
 - a. Pelican Lake is classified as Recreational Development and the required setback is 75 feet. The applicant is proposing to install the septic system at a setback of 20 feet.
 - b. The structures on the property have required setbacks to the soil treatment area of 20 feet. The applicant is proposing to install the septic system at a setback of 10 feet.
- 2. All other setbacks will be met.

B. Practical Difficulty:

- 1. With the structure setback of 20 feet and a shoreline setback of 75 feet, there is no area on the island that conforms to both setback requirements.
 - a. The island is approximately 100 feet at its widest point, limiting the conforming area for replacement.
 - b. The existing structure layouts limit the conforming area for replacement.
- 2. The existing septic system was found to be noncompliant when a compliance inspection was done and is required to be replaced.

C. Essential Character of the Locality:

- 1. The area is zoned Shoreland Multiple Use (SMU)–7 and consists of conforming and nonconforming residences.
- 2. There have been no similar variance requests in the area.

D. Other Factors:

- 1. There is no conforming septic replacement area due to shoreline and structure setbacks.
- 2. The existing system is noncompliant.

Tyler Lampella noted one item of correspondence provided by the applicant. This correspondence was provided to the Board of Adjustment prior to the hearing.

RECOMMENDED CONDITIONS

Conditions that may mitigate the variance for relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2 (F), to allow a subsurface sewage treatment system installation at a reduced shoreline and structure setback as proposed include, but are not limited to:

- 1. All other Onsite Wastewater SSTS standards shall be met.

2. Following the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing a Certificate of Compliance.
3. All other local, county, state, and federal regulations shall be met.

Charles Mack, 207 North Main Street, Wanatah, IN, the applicant, stated he sent in his written comments. They have put money into escrow for this new system. They are learning the process. This property was developed from 1915 to 1920. The landowner in the 1960s added an addition to the back of the cabin. They want this cabin as a family, generational cabin. They will start with the septic and make this better. He understands the importance of not polluting. It is important for him to protect the lake. He worked with Rick Viita who was concerned about how this system would change the topography of the island and the shoreline.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Werschay* asked if the existing system is noncompliant. *Tyler Lampella* stated that the existing system is noncompliant and failing. There are two types of failing systems: one is an imminent threat to public health where there is surface discharge, and one is where the system is not treating anything. In this case, the system is not treating anything.
- B. Board member *Coombe* stated a new system is better than a failing system. The applicants are likely trying to protect their investment. The treatment aspect will be good.
- C. Board member *Manick* asked how flow and water usage will be monitored when the property is run by generators. *Tyler Lampella* stated that is a concern with not having electricity. Normally, usage is monitored with a timer or water meters, but without power that is not as easy. The goal is to get the system on an operating permit.
- D. Board member *Svatos* asked if staff has worked with Viita's before on projects like this. *Tyler Lampella* stated that Viitas installs, inspects, designs, pumps, and service preps. They can cover every aspect of On-Site Wastewater. Viitas has experience putting these systems in. There is also a barge service available.
- E. Board member *Coombe* asked about condition two and who would the qualified inspector be if Viitas is the one installing the system. *Tyler Lampella* stated that he would be the qualified inspector.

DECISION

Motion by Manick/McKenzie to approve a variance for relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2 (F), to allow a subsurface sewage treatment system installation at a reduced shoreline and structure setback, based on the following facts and findings:

- A. Official Controls:
 1. SSTS Ordinance 61 states that all SSTS components must be set back in accordance with 7080.2150, Subpart 2 (F) of the SSTS Technical Standards.
 - a. Pelican Lake is classified as Recreational Development and the required setback is 75 feet. The applicant is proposing to install the septic system at a setback of 20 feet.

- b. The structures on the property have required setbacks to the soil treatment area of 20 feet. The applicant is proposing to install the septic system at a setback of 10 feet.
2. This will be such an improvement to the area and the applicant knew right away they needed to get this septic up to standard.
3. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The size of the island limits where a septic system can be placed.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area is zoned Shoreland Multiple Use (SMU)-7 and consists of conforming and nonconforming residences.
2. There have been no similar variance requests in the area.
3. The variance request will not alter the essential character of the locality.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing a Certificate of Compliance.
3. All other local, county, state, and federal regulations shall be met.

In Favor: Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

Opposed: None - 0

Motion carried 7-0

Scott Bandel

The second hearing item is for Scott Bandel, property located in S27, T69N, R21W (Kabetogama). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2 (F) to allow a subsurface sewage treatment system installation at a reduced shoreline setback from a General Development Lake. *Tyler Lampella*, St. Louis County Environmental Specialist Senior, reviewed the staff report as follows:

- A. The applicant is proposing to install a new holding tank at a reduced shoreline setback of 35 feet from a General Development lake where a minimum of 50 feet is required.
- B. The new system will be satisfying St. Louis County requirements.
- C. The parcel currently contains a dwelling, a boat house, and a shared driveway towards the east.
- D. There is adequate vegetative screening from the shoreline and neighboring properties.
- E. There is an overall elevation change of 54 feet, with steep slope throughout the parcel.
- F. At some point, Kabetogama will be served by a municipal system.

Tyler Lampella reviewed staff facts and findings as follows:

- A. Official Controls:

1. SSTS Ordinance 61 states that all SSTS components must be set back in accordance with 7080.2150, Subpart 2 (F), of the SSTS Technical Standards.
 - a. Lake Kabetogama is classified as General Development and the required setback is 50 feet. The applicant is proposing to install the holding tank at 35 feet.
2. All other setbacks will be met.

B. Practical Difficulty:

1. With the shoreline setback of 50 feet and the topography of the site, there is no area on the property that conforms to the setback requirement without needing to blast/remove ledge rock.
 - a. The property is mostly ledge rock with steep slopes, limiting locations suitable for an SSTS.
 - b. The accessibility for maintenance/pumping of the holding tank is limited.

C. Essential Character of the Locality:

1. The plat is zoned Shoreland Multiple Use (SMU)-11 consisting of conforming and nonconforming residences.
2. There have been no similar variance requests within the plat.

D. Other Factor:

1. There is no conforming septic replacement area due to the shoreline setback and site topography.

Tyler Lampella noted no items of correspondence.

RECOMMENDED CONDITIONS

Conditions that may mitigate the variance for relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2 (F), to allow a subsurface sewage treatment system installation at a reduced shoreline setback as proposed include, but are not limited to:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing a Certificate of Compliance.
3. All other local, county, state, and federal regulations shall be met.

Scott Bandel, the applicant, was not present.

Jean Bestrom, 10325 86th Avenue SE, Chatfield, the applicant's sister, stated this cabin is a family cabin owned by her two brothers and herself. They are not kosher with wastewater and using an outhouse. They have heard rumors of a municipal system coming to Kabetogama. She knows they are doing the right thing coming forward now.

No audience members spoke.

Board member *Coombe* noted the 1,500 gallon and two chamber tanks and asked if this will be good when Kabetogama takes over. *Tyler Lampella* stated they have not heard from the engineers.

They do not have a time frame or anything. The system will still need to be set up to pump somewhere.

DECISION

Motion by McKenzie/Svatos to approve a variance for relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2 (F), to allow a subsurface sewage treatment system installation at a reduced shoreline setback of 35 feet where 50 feet is required, based on the following facts and findings:

A. Official Controls:

1. SSTS Ordinance 61 states that all SSTS components must be set back in accordance with 7080.2150, Subpart 2 (F), of the SSTS Technical Standards.
 - a. Lake Kabetogama is classified as a General Development lake and the required setback is 50 feet. The applicant is proposing to install the holding tank at 35 feet.
2. All other setbacks will be met.
3. Official controls exist to address physical barriers to meeting Ordinance or statutory requirements such as in this case.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. There is no area on the property that conforms to the setback requirements.
2. There is ledge rock and steep slope on the property.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The installation of an underground holding tank will not alter the essential character of the locality.

D. Other Factors:

1. The existing drainfield will be disabled and the existing outhouse will be removed.
2. The property will have greater value.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing a Certificate of Compliance.
3. All other local, county, state, and federal regulations shall be met.

In Favor: Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

Opposed: None - 0

Motion carried 7-0

David Enstad

The third hearing item is for Dave Enstad, property located in S2, T52N, R15W (Fredenberg). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical

Standards 7080.2150, Subpart 2 (F), to allow a subsurface sewage treatment system installation at a reduced shoreline setback from a Recreational Development Lake and a reduced structure setback. *John Otterbein*, St. Louis County Environmental Specialist Technician, reviewed the staff report as follows:

- A. The applicant is proposing to install a new septic tank at a reduced shoreline setback of 45 feet where 75 feet is required on a Recreational Development lake.
- B. The system will be at a reduced structure setback of five feet where 10 feet is required.
- C. The property has good vegetative screening from the shoreline, roadway, and neighboring properties.
- D. There is a steep slope at the location of the dwelling with bluff area to the north and south.
- E. There is a floodplain located on the property, but the build site will not affect.
- F. There is a small area of wetland that will not be impacted.
- G. The existing tank is noncompliant, and this proposed tank will allow the applicant to purchase the property from Minnesota Power.

John Otterbein reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards. The required setback for Island Lake Reservoir is 75 feet. The applicant is proposing to install the tank at a reduced setback of 45 feet.
 - 2. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards. The required setback for an existing structure is 10 feet. The applicant is proposing to install the tank at a reduced setback of five feet.
- B. Practical Difficulty:
 - 1. The existing structure and bluff area limit available area for the holding tank.
 - 2. There is a well on the property which requires a 50 foot setback, limiting replacement area.
- C. Essential Character of the Locality:
 - 1. The surrounding area is zoned Shoreland Multiple Use (SMU)-7 consisting of conforming and nonconforming dwellings.
 - 2. There have been no similar variances within the surrounding area.
- D. Other Factor:
 - 1. The parcel is a Minnesota Power lease property.

John Otterbein noted no items of correspondence.

RECOMMENDED CONDITIONS

Conditions that may mitigate the variance for relief from St. Louis County SSTS Ordinance 61 7080.2150, Subpart 2, Item F (Table VII), to allow a subsurface sewage treatment system installation at a reduced shoreline setback and a reduced structure setback as proposed include, but are not limited to:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing a Certificate of Compliance.
3. All other local, county, state, and federal regulations shall be met.

Dave Enstad, 9223 Pine Owl Place, Madison, WI, the applicant, stated they are working to bring the property into compliance. They have owned the property since 1958 and want to keep it in the family. They look forward to having the property for years to come.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked why there is a need for distance from the well if this is just a holding tank. *John Otterbein* stated those setbacks are determined by the Minnesota Department of Health. This is regardless of the type of system. There will still be a 50 foot setback.
- B. Board member *Coombe* asked if pumping records, and a signed contract are required. Would the applicant be able to pump this tank once per year? *John Otterbein* stated yes. The agreement that is signed is the tank is pumped per usage, not per year. If the applicant uses the tank every weekend and it fills up, it will need to be pumped. If the applicant uses the tank twice a year, the tank may not fill up and would not need to be pumped frequently. Part of the holding tank requirement includes the operating permit. At the time of that operating permit renewal, staff would review water usage records and pumping records. If after five years, which is the time period of an operating permit renewal, there is only one record of the tank being pumped, staff will have a lot of questions about that.
- C. Board member *Coombe* noted that there was a pumping contract included with this application and it looked to be on a small piece of paper. *John Otterbein* stated that is something their division is trying to improve on with getting pumping contracts before issuing holding tank permits. In past practice, this was not always happening.
- D. Board member *Pollock* asked if the five-year review triggers an automatic site visit. *John Otterbein* stated it does not. The renewal period could be anywhere from one year to five years. Generally, the five-year period occurs when the homeowner or landowner has demonstrated compliance. At time of this renewal, the maintainer or pumper needs to evaluate the tank, including a visual inspection. This gets submitted as part of the renewal. If staff agree with their findings and everything is working properly, this will lead to another five-year renewal. If there is an issue, such as a cracked lid, this could lead to a temporary status of noncompliance. The homeowner could replace the lid and demonstrate that this was taken care of, and the system is back in compliance. The renewal could be set for one year in which the homeowner could work on getting that part replaced. Board member *Pollock* asked if the homeowner fills out this paperwork. *John Otterbein* stated no; the person who fills out the paperwork is the maintainer.
- E. Board member *Pollock* asked if the pumper or the homeowner submits the records. *John Otterbein* stated the homeowner. The maintainer fills out the 5-1 form. The homeowner would need to submit the records including the operating permit renewal form. Board member *Pollock* asked if there is regular compliance with these five-year renewals. *John Otterbein* stated there is a lot of compliance, but there are homeowners that do not follow

their operating permits and do not submit the appropriate records. Staff keep communication records for those that do not get their renewals. A maintainer's evaluation is less of a site review and just a visual inspection. A compliance inspection would require a more thorough inspection. There is an opportunity to do site visits as written in the Ordinance.

DECISION

Motion by McKenzie/Pollock to approve a variance from St. Louis County SSTS Ordinance 61 7080.2150, Subpart 2, Item F (Table VII), to allow a subsurface sewage treatment system installation at a reduced shoreline setback of 45 feet where 75 feet is required, and at a reduced structure setback of five feet where 10 feet is required, based on the following facts and findings:

A. Official Controls:

1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards. The required setback for Island Lake Reservoir is 75 feet. The applicant is proposing to install the tank at a reduced setback of 45 feet.
2. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards. The required setback for an existing structure is 10 feet. The applicant is proposing to install the tank at a reduced setback of five feet.
3. Official controls exist to address physical barriers to meeting ordinance or statutory requirements due to nonconformities such as in this case.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The available area, the topography, the placement of the structure, and the necessary setback to the well limit the area for a holding tank.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The installation of an underground holding tank will not alter the essential character of the locality.

D. Other Factor:

1. An existing SSTS is being replaced.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing a Certificate of Compliance.
3. All other local, county, state, and federal regulations shall be met.

In Favor: Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

Opposed: None - 0

Motion carried 7-0

Aaron Dean (representing Friends of Fredenberg)

The fourth hearing item is for Aaron Dean (representative for the Friends of Fredenberg), subject property located in S24, T52N, R15W (Frendenberg). The appellant is appealing of the Board of Adjustment per St. Louis County Zoning Ordinance 62, Article VIII, Sections 8.1.E and 8.6, and Article X, Section 10.6.B, and Minn. Stat. § 394.27, Subds. 5–6 (2022), concerning the Director's administrative determinations issued on October 31, 2022, for the Conditional Use Permit BG-000012 at 6464 Fredenberg Lake Road, Duluth MN, 55803.

Nick Campanario, St. Louis County Attorney's Office, stated the Board of Adjustment is here to hear an appeal from the Friends of Fredenberg LLC. This is a limited liability company that was duly formed under MN law. The appeal relates to the borrow pit at 6464 Fredenberg Lake Road. This is the second appeal with respect to this property. The first appeal was Melissa Bell's appeal in May 2023. This appeal involves eight items. Four items were considered and decided by the Board of Adjustment in May 2023, including item 3 (entrance gate), item 4 (setback from wetlands), item 5 (vegetative screen), and item 8 (reclamation). These four issues overlap with the May 2023 appeal. The other four issues were not included in the first appeal. The same decision does not have to be made now that was made in May 2023. The information presented today may be different than the information presented in May 2023. The Board of Adjustment is free to consider the information presented today to decide on those issues in the context of this appeal.

Mark Lindhorst, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The appellant is appealing the administrative determinations dated October 31, 2022, by Matthew Johnson, St. Louis County Planning and Community Development Director, regarding the operation of a permitted borrow pit at 6464 Fredenberg Lake Road.
- B. The administrative determinations were sent to the applicant in response to a formal complaint against LTI at 6464 Fredenberg Lake Road. The borrow pit received conditional use permit (conditional use permit) approval at the May 14, 2020, Planning Commission meeting, and a conditional use permit on June 12, 2020. The St. Louis County Planning and Community Development Director reviewed the complaint and determined that the borrow pit located at 6464 Fredenberg Lake Road is in compliance per the administrative appeal.
- C. The background timeline is as follows:
 - May 14, 2020: The borrow pit received conditional use permit approval.
 - June 12, 2020: conditional use permit was issued.
 - September 16, 2022: Request for administrative determination.
 - October 31, 2022: Administrative determination sent to Elise R. Radaj regarding the formal complaint.
 - December 16, 2022: Appeal of the Administrative Determination.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. The first request relates to the septic system on the subject property.
 1. Determination: The conditional use permit provides, "The applicant shall adhere to all county ... regulations." This includes St. Louis County's Subsurface Sewage Treatment System Ordinance. In July 2021, we issued a notice of noncompliance with respect to this ordinance. An application to construct a new system was submitted and

- approved. In June 2022, once installation of the new system was completed, we inspected the new system, concluded that it was in compliance, and issued to the permit holder a notice of compliance to that effect. The permit holder has been in compliance at all times since then. For the avoidance of doubt, at no point in this process did St. Louis County determine that corrective steps were not possible, or that the permit holder was unwilling to take such steps.
2. Ordinance: St. Louis County Ordinance 62, Article III, Section 3.6, states a sanitary review shall be completed on all land use permits issued within the shoreland area and parcels less than 2.5 acres shall have a sanitary review to determine if the proposed land use permit would adversely impact the existing sewage system or expansion area.
 3. Facts: The permit holder is in compliance as it relates to SSTS ordinance.
 - The home was not within the shoreland area or on a parcel less than 2.5 acres.
 - The conditional use permit was for a borrow pit with no request to generate additional wastewater.
 - Septic Permit 21-S-01629 has been issued.
- B. The second request relates to the width of an access point as of October 2021.
1. Determination: Article VI, Section 6.22.G.12, of the zoning ordinance states, "All accesses to public roads shall be approved by the appropriate road authority," but does not expressly address the issue of road width. In this case, in April 2020, the St. Louis County Department of Public Works, the appropriate road authority, approved a permit for a haul road with a forty-foot width. Based on review of aerial imagery of the property, the permit holder is in compliance with this forty-foot requirement. The permit holder is in compliance.
 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.12, states "All accesses to public roads shall be approved by the appropriate Road Authority."
 3. Facts: St. Louis County Public Works Department approved a 40 foot access in Permit # DWY 2020-0936.
- C. The third request relates to gates.
1. Determination: Article VI, Section 6.22.G.14, of the zoning ordinance states, "An extractive use shall have a gate for controlling access. The use of cable, chain, or similar barrier is prohibited." This provision applies only to access points used for extractive-use activities; it does not apply to other access points. Although the subject property has multiple access points, only one of them – the haul road that enters the property from the south – is used for extractive-use activities. Based on an evaluation of the subject property during an inspection conducted in August 2022, the permit holder is in compliance.
 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.14, states, "An extractive use shall have a gate for controlling access. The use of cable, chain, or similar barrier is prohibited."
 3. Facts: Based on an evaluation of the subject property during an inspection conducted in August 2022, the permit holder is in compliance with this condition in the conditional use permit.

- A gate is located on the main borrow pit entrance that was granted through an easement and was approved by the Planning Commission and Public Works Department.
- Other access points that are not being used per conditional use permit approval are not required to be gated.

D. The fourth request relates to a setback from wetlands.

1. Determination: Article VI, Section 6.22.G.9.d, of the zoning ordinance states, “a no disturbance setback, including the haul road, shall be 50 feet from the boundary of a wetland.” Based on an evaluation of the subject property during an inspection in August 2022 and review of aerial imagery of the property, the permit holder is in compliance.
2. Ordinance: St. Louis County Ordinance 62, Article, VI, Section 6.22.G.9, requires a no disturbance setback of 50 feet from the boundary of a wetland.
3. Facts: Based on an evaluation of the subject property during an inspection in August 2022 and review of other aerial imagery of the property at the time of our review, the permit holder is in compliance with the conditional use permit.
 - Vegetative removal from a wetland averages 50 to 100 feet.
 - Permit holder has not engaged in any observable activity within 50 feet of wetlands.
 - The haul road is approximately 230 feet from the wetland boundary.

E. The fifth request relates to vegetative screening.

1. Determination: Article VI, Section 6.22.G.11, of the zoning ordinance states, “Adequate vegetative screening shall be required to screen the operation from ordinary public view. If vegetative screening is not sufficient, the Director may require the placement of a fence or berm.” Based on an evaluation of the subject property during an inspection in August 2022 and review of the images in the relevant portion of this letter, the permit holder is in compliance.
2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.11, states, “Adequate vegetative screening shall be required to screen the operation from ordinary public view. If vegetative screening is not sufficient, the Director may require the placement of a fence or berm.”
3. Facts: Based on review of the images in the relevant portion of the letter from Friends of Fredenberg, and review of other aerial imagery of the property, the permit holder is in compliance with this condition in the conditional use permit.
 - No excavation or vegetative removal has taken place within the required property line of adjacent parcels, public right-of-way, or public utilities.
 - Staff determination on excavation and vegetative removal:
 - Right-of-way 175 feet.
 - Excavation from wetland 165 feet.
 - Vegetative removal from a wetland averages 50 to 100 feet.
 - Permit holder has not engaged in any observable activity within 50 feet of a wetland.
 - The haul road is approximately 230 feet from the wetland boundary.

- F. In its sixth request, the applicant merely noted that operations have begun at the subject property. Without more, we do not see how this implicates any condition in the conditional use permit or any provision of the zoning ordinance.
- G. The seventh request relates to whether the permit holder has a permit from the Minnesota Pollution Control Agency (MPCA).
1. Determination: Article VI, Section 6.22.B.3, of the zoning ordinance states, "It shall be the property owner's responsibility to secure necessary concurrent permits, including, but not limited to, Minnesota Pollution Control Agency permits; state waste disposal permits; US Army Corps of Engineers permits; Department of Natural Resources (DNR) Public Waters permits; and DNR Public Waters appropriation permits. Approval by the county does not imply approval by other agencies." Based on information provided by the permit holder, the MPCA issued a permit with respect to the subject property with an effective date in June 2021. Thus, the permit holder is in compliance.
 2. Ordinance: St. Louis County Ordinance 62, Article VI, Section 6.22 B.3, states, "It shall be the property owner's responsibility to secure necessary concurrent permits, including, but not limited to MPCA, state waste disposal, U.S. Army Corp of Engineers, DNR Public Waters. Approval of the county does not imply approval by other agencies."
 3. Fact: MPCA issued a permit with respect to the subject property with an effective date in June 2021. Thus, the permit holder is in compliance.
- H. The final request relates to reclamation.
1. Determination: Article VI, Section 6.22.H, of the zoning ordinance establishes minimum reclamation standards. During an inspection conducted in August 2022, our review of the reclamation plan submitted by the permit holder in connection with the conditional use permit, and our understanding of the degree to which the permit holder has engaged in extractive-use activities at the subject property to date, the permit holder is in compliance.
 2. Ordinance: St. Louis County Ordinance 62, Article VI, Section 6.22 H., states that all extractive uses shall implement minimum reclamation standards.
 3. Facts: Based on staff review of the reclamation plan submitted by the permit holder in connection with the conditional use permit, and staff's understanding of the degree to which the permit holder has engaged in extractive-use activities at the subject property to date, the permit holder is in compliance.
 - o Non-working banks do not exist.
 - o Topsoil, native seed and sloping to a 2:1 is not required unless there are non-working banks, or the pit is at completion for final reclamation.

Mark Lindhorst noted no items of correspondence.

BOARD OF ADJUSTMENT DETERMINATION

This is an appeal concerning the Director's administrative determinations as set forth in his letter dated October 31, 2022.

As to each administrative determination, the Board of Adjustment may reverse or affirm wholly or partly, or may modify the administrative determination, as provided in Article VIII, Section 8.6.B.4.c.i, and Article X, Section 10.6.B.2, of the zoning ordinance and Minn. Stat. § 394.27, subd. 6.

To the extent the Board of Adjustment affirms the administrative determinations, the administrative determinations that the permit holder is in compliance will remain in full force and effect.

To the extent the Board of Adjustment reverses the administrative determinations, the matter will be returned to the Director for further action under Article VIII, Section 8.11.C, of the zoning ordinance, which establishes the procedures to be followed in the event of noncompliance.

The Board of Adjustment's decisions concerning this appeal are subject to judicial review in state district court, as provided in Article VIII, Sections 8.1.E.4 and 8.6.C, and Article X, Section 10.6.C.5, of the zoning ordinance and Minn. Stat. § 394.27, subd. 9.

The Friends of Fredenberg LLC provided two documents to the Board of Adjustment that were not included in the packet for additional information.

Aaron Dean, 5900 Mount Normandale Drive, Bloomington, MN, the appellant, stated he represents the members of the Friends of Fredenberg LLC. He presented a PowerPoint presentation. He wants to have a conversation with the Board of Adjustment. He noted there is never a wrong time to do the right thing. Two former Planning Department employees have made wrong decisions every step of the way.

The 6464 Fredenberg Lake Road borrow pit is a strange place to have a borrow pit. It is next to a lake and it is in a neighborhood. This is not an ideal location for this pit. The applicant of the 6464 Fredenberg Lake Road borrow pit did not own the property until July 2020.

Friends of Fredenberg LLC filed this appeal after St. Louis County Attorney *Nick Campanario* told them the venue instead of District Court is Section 8.1 E. of the zoning ordinance. Friends of Fredenberg LLC believe that the conditional use permit issued for 6464 Fredenberg Lake Road was granted in error. The Friends of Fredenberg LLC is asking to have state and county laws and rules followed. The information obtained by Minnesota Data Practice Act requests by members of the Friends of Fredenberg LLC proves that the permit at 6464 Fredenberg Lake Road was granted in error and therefore must be made null and void in accordance with MN statutes and St. Louis County Ordinance 62.

The eight so-called "facts" set forth in the staff report are not relevant to the issues before this tribunal. The staff report picks and chooses which "facts" the author believes are important, but which he will show are not relevant to the main issues in dispute before this Board of Adjustment today.

The Friends of Fredenberg LLC are asking the Board of Adjustment to admit a mistake was made. This mistake was made by former county employees and not this tribunal. MN state law says that

a Board of Adjustment is to have between three and seven members. One member from the Board of Adjustment should also be on the Planning Commission. The St. Louis County Board of Adjustment is made up of five members of the Planning Commission from 2020 when the permit at 6464 Fredenberg Lake Road was granted. They are asking every member of the Board of Adjustment to review this matter with a fresh set of eyes and a clear conscience.

Friends of Fredenberg LLC took the St. Louis County Planning Commission to District Court regarding the conditional use permit granted for 6464 Fredenberg Lake Road. Both Judge Pearson and St. Louis County Attorney Nick Campanario wrote responses after the case was finished. On June 20, 2022, Judge Pearson wrote his decision pursuant to the Defendants' Motion to Dismiss, stating "As to alleged violations of the Zoning Ordinance Number 62, Plaintiffs have adequate legal remedy under Section 8.1.E of the Ordinance." On March 14, 2022, attorney Nick Campanario wrote to Judge Pearson regarding the Lawsuit of Friends of Fredenberg vs. St. Louis County Planning Commission, writing "Our final defense concerning Plaintiff's revocation claim is that they have an alternative non-mandamus remedy – including a path to district-court review – under section 8.1.E of the zoning ordinance..."

The Zoning ordinance states that the Board of Adjustment may reverse or affirm wholly or partly, or 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.

Both the St. Louis County conditional use permit application and the Zoning Ordinance are extremely clear regarding what steps need to be taken when a permit is issued in error:

1. Conditional use permit – Extractive Use Class II application stated St. Louis County, Minnesota – under Agreement - Intentional or unintentional falsification of this application or any attachments thereto will make the application, any approval of the application and any resulting permit invalid.
2. Article VIII: Administration, Enforcement, and Application Review, Section 8.1.C. Voiding of Permits Issued in Error: Any permit issued on the basis of an application which is in error, whether the error is intentional or not, shall be null and void. Any permit issued on the basis of a mistake in fact or law, whether the mistake is intentional or not, shall be null and void. No such permit may be construed as permission to build or begin a land use. It shall be the responsibility of the Director to notify the property owner upon discovery of an erroneous application.

LTI Holdings stated they are the owner or authorized agent of 6464 Fredenberg Lake Road. LTI Holdings did not own this property until July 14, 2020.

Melissa Bell contacted Darren Jablonsky, Interim Director of the Planning and Community Development Department. As the Interim Director, he has the ability to re-evaluate the formal complaint regarding the conditional use permit issued at 6464 Fredenberg Lake Road. Melissa Bell informed him of MN Statute 15.992, Subd. 4 Compliance: When a license is deemed granted under subdivision 1, this section does not limit the right of an agency to suspend, limit, revoke, or change a license for failure of the customer to comply with applicable laws or rules.

Zoning law clearly states, “Any permit issued on the basis of a mistake in fact or law, whether the mistake is intentional or not, shall be null and void.” The reasons why the conditional use permit at 6464 Fredenberg Lake Road is null and void include:

- Multiple violations by Lakehead Trucking/LTI Holdings/Todd Kaneski
- LTI Holdings were not the owners of the property at the time the conditional use permit was granted
- Septic tank issues
- Omission of residential dwelling

Part of an inspection program is to ensure that all conditions are met. Ordinance 62, Section 6.22.B.4 also needs to be complied with: “No permits shall be issued to an operator/owner who has not reclaimed a previously approved extractive use or is in violation of the conditions of their permit.”

Article VIII Administration, Enforcement and Application Review, Section 8.1 General A. Planning Director’s Responsibilities: This ordinance shall be administered by the St. Louis County Planning and Community Development Director. The Director, or designee, shall provide assistance to any applicant in preparing an application; advise the applicant as to the provisions of this ordinance; and shall conduct an inspection program. The Director or designee shall review and make decisions on wetland replacement plans, banking plans, exemptions, no-loss and wetland boundary and type determinations and is responsible for administering the Minnesota Wetland Conservation Act.

Matthew Johnson, the Director of Planning and Community Development, did not conduct a proper inspection of LTI Holdings’ application for 6464 Fredenberg Lake Road. Many things were not presented at the time of the public hearings: March 12, 2020 and May 14, 2020. Matthew Johnson granted the conditional use permit at 6464 Fredenberg Lake Road even though he was aware of issues that, in accordance with Ordinance 62, should have never allowed the permit to be granted. Other county employees were aware of multiple issues regarding LTI Holdings and the property at 6464 Fredenberg Lake Road. The multiple violations include:

1. Reclamation issues – compliance concern
 - The 6464 Fredenberg Lake Road conditional use permit should not have been granted due to the August 8, 2008 Extractive Use inspection.
 - The inspection was completed by Mark Johnson, former Director of Planning and Zoning.
 - The 2008 inspection identified Lakehead Trucking’s McKeever Pit to have major compliance concerns. This was not fixed between 2008 and when the 6464 Fredenberg Lake Road pit was applied for.
 - The 2008 inspection report shows that Lakehead has ignored the warning given regarding their ability to reclaim the property.
 - In 2008, Mark Johnson warned that the north wall was 164 feet from the property line.
 - Mark Johnson wrote in the inspection regarding ability to reclaim “could be a problem if working face continues northward.”
 - An image from the County Land Explorer taken between 2021 to present shows that Lakehead dug approximately another 108 feet toward the north wall.

- Condition 2 of the February 9, 2006 Planning Commission decision stated: “There shall be a 50 foot no disturb buffer area along the north property line. No excavation shall take place within 50 feet of the line except for final reclamation.”
 - The Lakehead McKeever pit is exhausted. The ability to reclaim is much more severe than in 2008.
 - How did Matthew Johnson not determine that there was reclamation issues? Did something change in the ordinance that would cause the validity of the 2008 inspection to change?
2. No Reclamation Plan
- There was no reclamation plan located for the McKeever pit.
 - The MN Data Practices Act Request included a draft Administrative Determination in response to Melissa Bell’s formal complaint against Lakehead’s McKeever Pit that says, “The subject property has a reclamation plan on file with St. Louis County. The permit holder is in compliance with this ordinance provision.” Highlighted in red it says “JB to follow up with Lakehead RE its reclamation plan and reclamation activities.”
 - Since Lakehead Trucking has no reclamation on file, Matthew Johnson changed the narrative of the March 31, 2023 Administrative Review in response to Melissa Bell’s formal complaint regarding the McKeever Pit.
 - Matthew Johnson instead wrote, “This provision of the zoning ordinance enumerates minimum standards with respect to reclamation. Based on information provided by the permit holder and review of aerial imagery of the property, an area in the south portion of the property has been reclaimed, an adjacent area to the northwest of the reclaimed area and another area in the north portion of the property area are partially reclaimed and are being sloped, and extractive use activities are in progress in the remaining areas. The permit holder is in compliance with this provision.
 - Also obtained in the MN Data Practices Act Request was an email from Mark Lindhorst to Todd Kaneski, owner of Lakehead Trucking. The email stated that Mark Lindhorst asked Todd Kaneski for a reclamation plan at the April 13, 2023 Planning Commission meeting. This email was a follow-up asking Todd Kaneski to get him a reclamation plan by April 28, 2023. Fourteen days is the standard amount of time when the county asks individuals to respond to a request.
3. Stockpiling concrete and bituminous without permit
4. No affidavits were signed by homeowners who live on Extractive Use Area.
- At all three Lakehead Trucking Extractive Use Properties, there are residential dwellings on the properties with no affidavits on file.
 - According to Ordinance 62, Section 6.22.D.2, Residential uses are allowed with a land use permit in such areas provided they meet the following standards: An affidavit shall be signed by the homeowner acknowledging the existence of extractive use activity and the potential impact such use may have on the home. The affidavit shall be filed with the Department.

Lakehead Trucking was ineligible to apply for this conditional use permit until they purchased the property on July 14, 2020. County records confirm that LTI Holdings did not own the property. The conditional use permit used by the county states that only a landowner or authorized agent can apply for the permit. LTI submitted two applications dated January 4, 2020 and March 17, 2020,

six months and four months, respectively, before they owned the property. The conditional use permit application does not occur before ownership. The applicant was not eligible to apply for a conditional use permit as they did not own the property. The permit should never have been issued.

The issue about the septic tank should have been presented at both Planning Commission hearings on March 12, 2020 and May 14, 2020. In 2016, Mark Toms was denied a land use permit. The language states, "It is the opinion of this department (ISTS) that the size and type of the sewage treatment system is not adequate for your land use permit proposal, therefore, a land use permit cannot be issued until the applicant obtains a sewage treatment permit and installs an approved septic system." Had there been a proper inspection of this property, this ISTS site inspection would have been identified, and the permit application would have been denied.

Nothing happened to the septic system between 2016 and 2020. The property was still in noncompliance. It was not until 2022 when the county said they were in compliance. Process matters and the permit should not have been issued.

Because LTI Holdings answered "Yes" to the question "Is this project within 300 feet of a stream/river or 1,000 feet of the lake" it is required that a copy of the septic permit to construct or a certificate of compliance approval be submitted when applying for a land use permit. LTI Holdings did not submit a permit to construct or certificate of compliance approval with their application or prior to 6464 Fredenberg Lake Road conditional use permit approval. Therefore, the conditional use permit should never have been granted.

Nine audience members spoke.

Clayton Cich, 4955 Vista Bay Drive, stated he is on the Fredenberg Town Board. The Board of Adjustment does have power here. This is the wrong place for this borrow pit and things have been done wrong. This has cost the township a lot of time, effort, and family money. They are not looking forward to the other operations LTI Holdings has had for 70 years. There may be more pits in the area, but that is not the reason why people live on this lake.

Oly Olson, 4931 Fish Lake Road, stated he worked for LTI Holdings in the past. He lives within a golf ball's drive from the pit. His wife, his six grandchildren, and his children do not want this here. They come out to this property for peace, serenity, and no noise. There has been a septic compliance issue on this property. His dog took off into that property and came back black and smelling like raw sewage. For every property that is sold, the property has to have a compliant septic system. There needs to be something on this property.

Mike Anderson, 6456 Olson Drive, stated his property is on the other side of the 6464 Fredenberg Lake Road property. For as long as he could remember, the McKeever Pit has always been a borrow pit. This pit is in such need of reclamation and repair. He does not know if guidelines and requirements are being followed. To see this one in such violation raises concern about it. It is time to make things right.

Bruce Anderson, 4929 Fish Lake Road, stated in the staff findings, there was nothing said about being in compliance with the current conditional use permit. He was here at the first meeting on

March 12, 2020. What stands out was Todd Kaneski stating they wanted to mine sand. Commissioner Keith Nelson stated, "Sand. We need sand." It was such a clear rubber stamp. He was also attending the Webex meeting on May 14, 2020 when the conditional use permit for 6464 Fredenberg Lake Road was approved. It was so different when people were on a screen. That was the day that Roger Skraba said he was frustrated and wanted facts, not emotion. He sat on Melissa Bell's appeals. He felt Nick Campanario hijacked this appeal that she paid a lot for. He sat in the room when they awarded LTI Holdings a conditional use permit for asphalt reclamation knowing they were in violation already since the Planning Commission did not think they would do any harm. LTI Holdings was awarded that. There were public safety issues, too, with the snowmobile trail. This is not within the scope of this appeal. This is a tortured history. He has been to many commissioner's meetings where he asked them to backtrack and to untangle the web. Untangling this web is difficult. Is it right to move forward in the wrong direction knowing there are all of these facts and findings and knowing that this was issued in error? He asked the Board of Adjustment to please rescind the conditional use permit. The Board of Adjustment has 35 days to consider this.

Matt Hanka, Fryberger Law Firm, 302 West Superior Street, Suite 700, stated all discussion about the issuance of the conditional use permit is irrelevant. The Board of Adjustment is tasked to review the eight complaints. The original decision on the conditional use permit stands. This was litigated in the courts and was dismissed. No violations were found. He asked the Board to consider these points and affirm the Director's findings of no violations.

Ann Cich, 4955 Vista Bay Drive, stated she has come to these meetings for a long time. They are older and want to enjoy the rest of their life. They do not want to deal with the dust in the air and having to close their windows. They do not want to hear the 'beep' of trucks. This is a beautiful community, and this pit does not belong there to impact the lives of people there.

Debra Johnson, 4438 Carey Road, stated she used to live at 6350 Beaver River Road. They had a pit that was put in. Through massive intimidation the pit was put across the road from them. Her daughter still lives at this address. The dirt was bad enough to not open their windows. The pit would start their diesel trucks at 4:00 to 4:30 in the morning, and it would go on for hours. She truly thought the county cared about its citizens. She called the county and explained what was going on. The county fixed the Beaver River Road and the trees across the road were taken down because the county wanted the gravel. There was no longer any buffer. She is not a NIMBY (not in my backyard), but this is just not good.

Jamie Milenius, 6350 Beaver River Road, stated she purchased her parent's property and was born and raised there. There is a pit across the road. She works as a safety manager for a construction company and is a member of the Iron Mining association. She has been to the mines around here. She mainly works safety for oil and gas. She travels across the country. She lives next to a pit and does not mind it. She is all for the rules and as long as the gravel pit follows the rules, she is okay with it. She has problems when people do not follow the rules.

Janet Olson, 4931 Fish Lake Road, stated it makes simple sense to do the right thing. The landowners can apply for a new conditional use permit. Nothing about this borrow pit was right and it should never have been approved. She asked the Board of Adjustment to do the right thing.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Werschay* stated that Matthew Johnson's resignation was not public record. *Aaron Dean* stated he would not retract the statement that Matthew Johnson had been terminated based on the opportunity to resign to not be fired.
- B. Board member *Pollock* stated they have had people come before either board that are in the process of buying a piece of property, but do not currently own the property. If there was no activity on that permit until ownership changed, how would that affect this? *Aaron Dean* stated there are certain clear lines that cannot be crossed. One is not applying for a conditional use permit until you own the property.
- C. *Nick Campanario* stated the administration determination process is the correct process when dealing with permit holders not in compliance with their conditional use permit or the zoning ordinance. The eight items presented are what is before the Board of Adjustment today. It is different to claim the conditional use permit should not have been issued in the first place. That is what the appellant presented. The conditional use permit is null and void and should be wiped out. That is not in the scope of this appeal. In the request of administrative determinations that the county received in September 2022, it set out Friends of Fredenberg's position that the conditional use permit should not have been issued in the first place. This is not a basis for administrative determination as set in Section 8.1. Matthew Johnson issued his administrative determinations. He added that he would not respond to any administrative determinations whether the conditional use permit should not have been issued in the first place. An appeal was received in December 2022. The appeal states that the conditional use permit should not have been granted in the first place, but this is not the basis of the administrative determination requested as pursuant to the ordinance or for this appeal. The Board of Adjustment has the authority to affirm, revoke, or modify the eight administrative determinations as presented. Which of the eight items is implicated when saying that the conditional use permit applicant was not the landowner at the time?
- D. Board member *Pollock* asked if all they can deal with are the eight administrative determinations and not revoking the permit. *Nick Campanario* stated the Board of Adjustment's authority has been activated by an appeal from administrative determinations, which are these eight points. There is full power to act when it comes to these eight items. Board member *Werschay* stated they can only act on what is before them. *Aaron Dean* asked if the words in the application have any meaning. The Board of Adjustment has the authority to revoke this conditional use permit. There are two issues, including the ownership lie and the septic lie, which could revoke the conditional use permit. LTI Holdings can still come forward with another conditional use application and the Friends of Fredenberg will be there to greet them.
- E. *Nick Campanario* stated in the District Court case with respect to this property at 6464 Fredenberg Lake Road, there were two claims made in that case. The first was that the conditional use permit should not have been granted in the first place. The second was that the permit holder is not complying with the conditional use permit. The Judge ruled that this first type of claim was made too late. The second type of claim needs to go before the Board of Adjustment as an administrative appeal. He never said that the claim the permit

should not have been granted in the first place should come before the Board of Adjustment in this manner.

- F. Board member *McKenzie* asked when Mr. Olson became aware of this septic issue. *Oly Olson* stated this was in 2019. Board member *McKenzie* asked if Mr. Olson is aware that a new septic permit was granted and there is a new septic system on this property. *Oly Olson* stated he does not believe that there is one because the property looks the same way it did back in 2019.
- G. Board member *Werschay* stated what the Board has to go by are the eight administrative determination points. *Nick Campanario* stated yes.
- H. Board member *Coombe* asked if there is overlap between the 60 days and 35 days. Both this and the first appeal on this pit from May 2023 are close to the same. *Nick Campanario* stated the 60 day rule does not apply here. The 35 day rule means that the Board of Adjustment has 35 days from the closing of the public hearing to make their decision. *Donald Rigney*, Acting Secretary, noted that the next hearing date was October 12, which is 21 days from today.
- I. Board member *Pollock* asked what the court dismissal was. *Nick Campanario* stated that *Matt Hanka* was referring to the case dismissal. The appeal has to be brought forward at a certain place and in a certain amount of time and that was not done. Board member *Pollock* asked if the ownership issue is moot because it was not done in a timely manner? *Nick Campanario* stated that is correct. This is not relevant to the appeal before the Board of Adjustment now.

DECISION

Motion by McKenzie/Pollock to exercise the option under Zoning Ordinance 62, Article VIII to postpone the Board of Adjustment decision until the October 12, 2023 hearing.

In Favor: Filipovich, Manick, McKenzie, Pollock, Svatos - 5

Opposed: Coombe, Werschay - 2

Motion carried 5-2

Motion to adjourn by Svatos. The meeting was adjourned at 11:56 AM.