

**MINUTES
CLAY COUNTY PLANNING COMMISSION
7:00 P.M., TUESDAY, JANUARY 24, 2017
MEETING ROOM B - THIRD FLOOR COURTHOUSE**

Members Present: Mark Klevgaard, Tom Jensen, Amos Baer, Dan Langseth, Randy Schellack, Bill Davis, Andrea Koczur and Kevin Campbell.

Members Absent: Curt Stubstad, Jenny Mongeau, Tim Brendemuhl.

Others Present: Tim Magnusson, Lynne Spaeth, Jenny Samarzja, Rodger Hemphill.

APPROVAL OF AGENDA

On motion by Randy Schellack, seconded by Andrea Koczur, and unanimously carried, the Commission approved the Agenda as amended.

APPROVAL OF MINUTES

On motion by Bill Davis, seconded by Tom Jensen, and unanimously carried, the Commission approved the December 20, 2016 Minutes as corrected.

CITIZENS TO BE HEARD

There were no citizens to be heard on matters not on the Agenda.

AMENDMENT TO COUNTY LAND DEVELOPMENT ORDINANCE

Clay County is proposing an amendment to the County Land Development Ordinance to Regulate the placement of docks and lifts on public water basins. The proposed Amendment would apply County-wide.

No motion was needed to open the public hearing, as it was tabled at the December 20, 2016 meeting and remains open.

Tim Magnusson recapped how this proposed amendment evolved. He summarized that Commissioner Mongeau had been approached by an individual with a complaint that his next door neighbor placed a dock that was encroaching on his property line. The DNR inspected the site. No enforcement action was taken as no navigational or safety hazard existed. Magnusson introduced Rodger Hemphill, the area hydrologist serving Clay County.

Enforcement can take place relevant to the dock's width and location on the land. However, once the dock reaches the water, it becomes the DNR's jurisdiction.

Magnussen reiterated that Becker County's ordinance reads that docks and piers shall be exempt from the setbacks on the shoreland. The projection in the water has to maintain a minimum sideyard setback equal to that required by that zoning district, which, from the shoreline is generally 10-feet.

Cass County's ordinance requires a dock be 10-feet from the sideyard. Docks cannot be placed to

block access or create a safety issue.

Magnusson stated he and Jenny Samarzja drafted language pertaining to this amendment. The language is similar to Becker County's, phrasing that what goes in the water has to maintain the same setback to a parallel extension of the lot line projection. It is, however, questionable whether that lot line projection is something the County could determine. Additionally, the projection near the water cannot be one-half of the distance than the lot frontage, to minimize how far the dock projects. As far as the DNR is concerned, a dock can extend as long as necessary to attain navigable water. On the contrary, Magnusson added that lifts are completely submerged in water. Thus, the County has no jurisdiction and enforcement rests with the DNR.

Discussion continued regarding the issue of enforcement. Property lines would need to be established and the County does not have any capability to do that on their level. It may become an ordinance that is unenforceable.

Magnusson stressed that there had only been one complaint in the past 31 years. The present complainant is Dean Guttormson, who resides in Texas. Magnusson emphasized the fact that no one had appeared at December's meeting in favor or against this amendment, nor did the complainant appear. Likewise, Magnusson stated there are roughly five lakes wherein the amendment might apply.

Campbell posed the question to Samarzja with respect to an individual's remedies. Samarzja orated that an individual can bring a civil suit against a party they believe has encroached on their property. She restated that when your property hits the water, your property line stops. Samarzja's legal opinion is that the complainant lacks a property right to the basis of his complaint. No legal course of action exists because the complainant holds no property right. Nonetheless, if one did retain a property right, then one would have a private legal remedy. Samarzja deems the ordinance is not necessary seeing that only one complaint has emerged in the past 31 years. Accordingly, an ordinance is passed when it proves the best interest of the County, not for a sole individual. The amendment, as written, would not resolve the problem due to the County's lack of authority.

Samarzja clarified that the ordinance could either expire at the Planning Commission, or be recommended to the County Board.

On motion by Kevin Campbell, seconded by Bill Davis, and unanimously carried, the Planning Commission closed the hearing.

On motion by Tom Jensen, seconded by Bill Davis, and unanimously carried, the Planning Commission elected to take no action on the amendment to regulate the placement of docks and lifts on public water basins.

Adjourn:

On motion by Randy Schellack, and seconded by Bill Davis, the meeting adjourned at 7:40 p.m.

Thomas Jensen, Planning Commission Secretary