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**MINUTES – Pierce County Board of Adjustment Meeting
March 29, 2007**

Members Present: Lee Wright, Ed Hanson Corliss Hendrickson, Arby Linder and Kenneth Peterson. & Mike Graham.

Others Present: Jim Kleinhans, Carol Denninger, Myrna Olson, Doreen Smith, Dean Berry, John & Ellen Howarth

Vice Chairperson, Lee Wright called the Board of Adjustment meeting to order at 7:00 p.m. in the Pierce County Boardroom, Ellsworth, Wisconsin.

Approve Minutes: Ed Hanson made the motion to approve the minutes of October 19, 2006 as written and Ken Peterson second the motion. All approved. Motion carried.

Next meeting dates: April 19th, May 17th and June 28, 2007.

(LW) Lee Wright We are here this evening for a public hearing and I will read the notice. Notice is hereby given to all person in Pierce County, Wisconsin, that a public hearing will be held before the Board of Adjustment on the 29th day of March, 2007 at 7:00 p.m. in the County Board Room, Pierce County Courthouse, Ellsworth, Wisconsin, under Chapter 240-68 (B), and 240-78 of the Pierce County Code to request a setback variance for a dwelling on a non conforming lot owned by Preston & Myrna Olson, agent Doreen Smith, described as Lot 10, Block 2 original plat, Village of Martell, located in the SE ¼ of the NE ¼ . T27N, R17W, Town of Martell, Pierce County, WI.. All persons interested are invited to said hearing and be heard.

(LW) Has everyone in attendance this evening signed the attendance sheet?

(LW) Before we get into the public hearing I would like to share with everybody some of the rules of the Board of Adjustment. The Pierce County BOA is an appellate board required by state law and any municipality that has adopted a county ordinance. The board does not have the authority to amend or repeal provisions of the zoning ordinance. Its authority is limited to appeals regarding the interpretations of the ordinance provisions, consideration of variances and considerations of conditional use permits. The board functions like the court. Its purpose is to give a full and fair hearing to any person whose property interests are affected by these matters. Its job is to apply the ordinance and appropriate legal standards to the facts of each case. The board meeting and Public hearings are open to the public. A taped recording is being made of the proceedings. Any permission to develop granted by a decision of the board must be authorized

by obtaining the necessary building and zoning permits. A decision of the board may be appealed by commencing an action in the Circuit Court of this county within 30 days after the date of filing of the decision in the office of the board. An applicant that commences construction prior to expiration to an appeal period assumes the risk of having the board decision overturned. Anyone who wishes to speak this evening will be sworn in. We would like that anyone speaking would not be interrupted. We will give everybody ample opportunity to ask questions and try to get their point across.

(LW) Jim, has a notice of this evening been published in the local newspaper?

Jim Kleinhans (JK) Yes, it was published on March 14th and the 21st

(LW) Would you please read the notice.

(JK) Jim read the Public Hearing notice that was published in the local newspaper.

(LW) Anyone wishing to speak this evening will be sworn in and I would also like to have them state their name and address so that it will be part of our public record on the recording. Is Mrs. Smith here this evening and are you going to be representing yourself this evening?

Doreen Smith (DS) Yes.

(LW) Would you come forward and could you state your name and address please.

(DS) My name is Doreen K. Smith and my address is 120 Burr St, Roberts, WI.

(LW) Would you raise your right hand? Do you swear to tell the truth, the whole truth and nothing but the truth under penalty of perjury?

(DS) Yes I do. In proving hardship with this lot, I guess that is where I start. In January of this year, I began inquiring into lot 10, Block 2 as to whether or not Preston, I only called Preston because I did not know where Myrna lived and I did not know her address and Preston's was listed so I started with Preston to inquire or not whether he would be interested in selling lot 10 and he did say that he would be willing to sell that lot and from there I have a single wide mobile home that in the beginning I thought that I would put on this lot and it would fit nice and be no problem. In talking to Jim Kleinhans in zoning I found out that the township of Martell is not zoned for trailer. I could not put my mobile home on there. My next step was, he also told me that a manufactured home would be acceptable in the township of Martell. The next thing that I did was to purchase lot 9. I did call John Howarth and ask him if he would be willing to sell lot 9 so that I would have more property to work with. He was not interested in selling that lot, so at

that point I only have lot 10 to work with. There is no other property available that is connected to this lot. I spoke with Mr. Kleinhans, and we met out at the lot and we did some measuring, we took a look at the old shed that is on the property. I did consider reconstructing it or saving it, there is a tree down on the roof, the windows are broken and it is caving in on the west side. It really is not worth saving. It would have to be taken down, you can't live in it. It is 30' X 20'. It is 600 square feet. I suppose a person could live in 600 square feet, but I would call that a hardship. From there I did find a manufacture home that is 26' X 40'. It is probably the smallest manufactured home they make. I did purchase it and I only had 2 week to move it, so it is being stored behind the neighbor's house with a permit. It is able to stay there until the 1st of June, 2007 until this is all settled. Then Jim and I got together and we came up with a footprint and I was under the impression, not knowing a lot about variances, that I would have to stay on that footprint of that old shed and that is why when we requested the variance meeting you were given the first footprint with the house down below the slope. I had a couple of excavators out there that were looking at the slope telling me what they thought what could be done with water would obviously be a problem with erosion. They started to say why I couldn't put it up on the hill. I said I was under the impression that I had to put it on these footprints, but then I did call Jim and he did explain to me that yes, with a variance that's what the variance is all about. I can plot it out how I feel it would work best and that is how I should draw it out so that is why you were also presented with what we consider our plan (A), now with the home upon the hill. The garage would be on the hill, the driveway coming in up at the top of the hill. That road that we had labeled as 537th to the west of this lot is officially abandoned, it is not a road, it has never been developed and it will never be developed. Down of the east end of this lot they had that down as 537th Street and the county had it zoned as an alley. I did talk to the town board and they have decided to keep that an alley and will not be developed. The hardship comes in where I didn't have and couldn't get any other property, I only have this lot to work with. The property limitations would be the 75 foot setback from the center of the road, which is 794th Street. The lot is only 66 feet wide. You measure in 75 feet, you have 14 feet to build on and it leaves the lot pretty much virtually without a variance, you can't do anything on it. So, with the manufactured home purchased, and looking into all of the different situations, that I had before me with this lot and speaking with Jim, I stayed in very close touch with him and I did with the town board also. I made the decision to go ahead and apply for the variance, which is why I am here this evening. The unique property limitations are the old shed is falling down and quite a shamble and a wreck. I couldn't really build on it and setback of 75 feet renders it. It is useless without the variance. As far as my neighbors, I have had quite a few favorable comments and a few of them have seen me at the lot and have come up and talked to me and asked me what I was planning to do. I explained it to them and a lot of the most that I have spoke to were favorable for it and it would be a improvement for them. The shed would be gone and there would be nice lawn there and a nice looking home to look at as opposed to a run down shed with well residence of various sorts that we don't want to live with. I feel that the public is safe, and I will not be blocking anyone's views. I will not be blocking anyone's driveways. I am not doing anything damaging

to anyone's properties on either side of me, so I feel that the public will be protected from this plan. I don't see any adverse problems with it what so ever.

(LW) From the last proposal on the drawing that I received is highlight in red here. Am I correct with my math that you would be basically looking at 30 feet of relief on this proposal? Which would mean the 75 foot setback would be reduced to 45 feet?

(DS) I am not sure I understand what you are looking at. Okay, when I put the dwelling up on the hill?

(LW) Right, if the dwelling is 40 feet long in the area which is presently allowable to build in is 10 feet wide, that means that you would be coming 30 feet towards the center line of 794th Street.

(DS) Either that or the way I measured it out the manufactured home would be 13 feet from both lot lines.

(LW) I think the issue here is the setback from the centerline of 794th Street. I guess we need to have a feel for your request in terms so that we are not misunderstanding this, would it be 45 feet from that centerline?

(DS) Yes, I believe that is correct.

(LW) You know what, That isn't necessarily correct.

(JK) I think she is asking for 26 feet of relief.

(LW) She is asking for 26 feet and not 30 feet?

Ed Hanson (EH) This dwelling is 40 feet across. This is the way she has it set up right here. So you got about 40 feet and you have about $\frac{3}{4}$ of the 40 here. That is not in the 75 foot setback.

(LW) This line has to be 75 feet?

(EH) Yes.

(LW) Okay, so if we take thirty feet off, is it actually 40 feet long?

(DS) Yes it is.

(EH) It is 14 feet from here to here.

(DS) It would be 26 feet.

(LW) It's not 10 feet wide, it is 14 feet wide. Is everybody clear on that part? On the red it is 14 feet across and so if this line here is the 75 foot mark back from the centerline, and we take 14 off from this 40, we end up with 26 feet of relief that we are asking for from the centerline.

(LW) Anybody from the Board of Adjustment have any questions of Mrs. Smith?

(EH) Above here where you got the garage or where this abandon street there appears to be an open area there that doesn't have any trees on, is that where the old abandon street was?

(DS) Yes.

(EH) So, you won't be going into that at all. You'll be from there down. So your lot has quite a bit of trees growing on it.

(DS) There are a lot of trees. I guess I plan on using that space or abandon road for a driveway with a garage right there.

(EH) So this abandon street you do own part of that?

(DS) I don't know what happens to it. It is abandon.

(LW) She probably would own to the center of it, wouldn't she?

(JK) I think if it is abandon that would be a question for the village or the town on what happens to it when they abandon a street or an alley. Sometimes it is conveyed back to the landowner. I didn't see that activity done on the deed or anything like that. I don't know Arby if you checked into that.

Arby Linder (AL) I had not checked into that. I don't know who got that land back. I know that we have the papers that say it is abandon. We have an ordinance that says we will never bring it back again. So I guess that in other cases that split down the middle between 2 land owners, the landowners on both sides. I would say it would be split half with her and half with Mr. Stockwell.

(JK) According to the deeds, they just own the lots in block 2. That would just be the 66 ft. X 165 ft.

(EH) Now, when you tried to buy Lot 9, would that have been here.

(DS) Yes, He wasn't interested in selling it. I didn't try to go for part of it, but I know that he didn't want to split it off from lot 8 which makes sense to me.

Ken Peterson (KP) You said you were going to bring your driveway in off from the abandon street?

(DS) The abandon road in the beginning in the plot was called Cherry Street and it was never developed. You can drive in here, but it has never been used for anything. So I really don't know what they do with it. If it is not feasible to put the driveway there, it can be moved.

(EH) It is my understanding that you are planning to remove the shed.

(DS) Yes

(EH) And this is where your holding tank is going is down in this area.

(DS) Yes, it would be down in that area.

(EH) Would you put a septic system in there?

(EH) Jim did an analysis of the soil down in there and it is all bedrock. It is not really feasible to put a sewer in there. So I am going to ask for all the permits and the land uses for a holding tank. I am not the kind of person that would drill holes in it either.

(EH) There is no thought that you would turn the dwelling another way here, if it is 26 X 40.

(DS) You mean the long way on here.

(EH) Yes.

(DS) That would take a lot of bringing in fill or you would have a house that was falling lopsided off the slope.

(EH) It looks to me that there is considerable slope there anyway and you would have to have fill.

(DS) I am planning on a retaining wall.

(EH) Okay, I would think definitely have to.

(DS) Yes, I have plans for a retaining walls at the base of that slope to hold back the erosion.

(EH) You mention a porch.

(DS) A porch on the back. It probably is not on the drawing. Just some kind of a porch so I can get in and out of the back door.

(EH) Would it be on the back or on the side?

(DS) The porch would be on the back.

(KP) Would you draw that on this plan?

(DS) Sure, it would just be a small porch right off the back door that I could get in and out of without jumping out of it.

(EH) So that would be within the 26 feet

(LW) It is on the opposite side of the house of the deck.

(DS) It would be on the west side, yes.

(LW) Does anyone else have any questions?

Corliss Hendrickson (CH) There is a street taken part away, will that be straighten?

(LW) I don't think there is any intension of the township changing the street.

(MG) At what point does that road become a private drive, west of this lot we are talking about?

(AL) Right at the top of the hill it becomes a private drive.

(LW) That would be a limiting characteristic of that property in the fact that the street does kind of go into the lot.

(MG) Does anyone know how long this has been a lot of record?

(DS) It would be back in the 1800's.

(JK) I says on the deed that Harris Sam sold it to Preston Olson in 1963. That was well before we had a subdivision code.

(LW) Is there anymore information that the board members would care to request?

(EH) I have a couple questions for Jim. On the first page of the staff report it states that Pierce County Zoning Code does permit manufactured homes in the RR-20 district per 240-40 (B), which is typical residential building configuration that could fit in this lot. Then on page 3 it states the zoning code standards for residential development in the RR-20 district did not allow mobile homes. Am I reading this wrong?

(JK) You are right, You caught me. That should say does not permit manufactured mobile homes in the RR-20 district.

(EH) Okay, so that should say does not permit.

(JK) Yes, that is correct.

(KP) Am I correct you said doublewides are not considered manufactured homes?

(JK) That is correct, by definition in the zoning code a manufactured home could be a doublewide in the RR-20 district.

(LW) Any other comments or questions? If not, is there anybody in the room that has any comments or questions. Yes sir, would you stand up, state your name and address.

John Howarth (JH) My name is John Howarth and my address is N7951 537th Street. I own lots 8 & 9. Lot 9 borders this property that is being discussed.

(LW) John, could you raise your right hand and promise to tell the truth, the whole truth and nothing but the truth under penalty of perjury.

(JH) Yes, I do. I have one question about the abandon street. There are no stakes that survey that states where these property lines are. I was under the assumption that what you are calling an alley here is actually a road, which would state that there is actually 75 feet setback from the center of that road. It is marked as 537th St. The sign is wooden and looks like it has been there a long time. So where you have a 10 foot setback here, her plan doesn't show that she wants to build there, but I would want to make sure that it is part of that 75 foot setback if that is the case and if this is an alley, I just question why there is a street sign there saying that it is actually 537th Street.

(LW) I think initially there was some confusion and if I am not mistaken I think the township has corrected their physician and that it is an alley. Am I correct to that Jim?

(JK) That is what I understand.

(LW) That is what the township is telling us that it is an alley.

(JH)

A motion was made by Arby Linder and seconded by Ed Hanson to adjourn the meeting at 8:05 p. m. All approved. Motion carried.

**MINUTES – Pierce County Board of Adjustment Meeting
August 9, 2007**

Members Present: Jack Leo, Lee Wright, Ed Hanson Corliss Hendrickson, Arby Linder, Kenneth Peterson., & Mike Graham.

Others Present: Jim Kleinhans, Carol Denninger, Tim Stauffer, Mark Whims,& Brian Utoft,
Chairperson, Jack Leo called the Board of Adjustment meeting to order at 7:00 p.m. in the Pierce County Boardroom, Ellsworth, Wisconsin. Jack started the meeting with the Pledge of Allegiance.

Jack introduced himself and the other members of the committee

Approve Minutes: Ed Hanson made the motion to approve the minutes of March 29, 2007 as written and Corliss Hendrickson second the motion. All approved. Motion carried.

(EH) Ed Hanson – Do you go out and check after we have worked on a certain project to make sure that the project was all done according to the proceedings we had mentioned here?

(JK) – Jim Kleinhans – Yes, we follow up on those, sometimes successfully and sometimes not so successful.

(EH) I wondered about the setbacks on the one we had last time on the retaining wall if she was as far back as she was suppose to be.

(JK) Which one was this?

(EH) The one in Martell Township.

(JK) Oh yes, that mobile home. I haven't been there yet. I will check that out.

Next meeting dates: September 20th and October 11th ,2007

(JL) Jack Leo - explained the BOA authority and meeting procedures. All of us are not elected to the board. We are appointed by the County Board of Supervisors. We are citizens like you people are. It is a board required by state law and any municipality that has adopted county ordinances. We do have county ordinances here in Pierce County, and that is why we are meeting because there seems to be a problem with the issue tonight of not being able to abide by

the county ordinance. We have no authority to amend or repeal the zoning ordinances and our authority is limited to appeals regarding the interpretations of the ordinance, provisions, considerations of variances, and considerations of conditional use permits. The board functions like the court. We vote on all the issues and the majority is the way the issue is settled. It is our job to apply the zoning ordinance appropriately with standard to the facts of each case. Board meetings and public hearings are open to the public. A tape recording is being made of these proceedings. A decision by the board may be appealed by commencing an action in Circuit Court for this county within 30 days after the date of the filing of the decision in the office of the board. We will take testimony from anyone that wants to give testimony and we appreciate only one person speaking at a time. You will be sworn in prior to your speaking. We will need your name and address. There was two items on the agenda and we dropped the one so we will only be hearing the one on the sand and gravel request. There will only be one discussion tonight. Jim, will you read the public hearing?

(JK) Jim stated this public hearing was published in the paper July 25th and August 1st, 2007. Jim then read the public hearing.

(JL) Jack opened the meeting to anyone that wished to speak. Tim Stauffer was sworn in by Chairman, Jack Leo, and stated his name and address.

(TS) Tim Stauffer – Tim stated he was with WI. Industrial Sand Co. down in Maiden Rock, division of Fairmount minerals. I have with me tonight Brian Utoft and Mark Whims from WW Constructors Inc. who are our consulting engineers helping with the design of this establishment. WI. Industrial Sand is looking at purchasing WI. Specialty Sand. The proceedings are almost complete. The signing is August 30th so as of that date, it will be ours to have and hold. In the process of all the negotiations with WI. Specialty Sand, and the negotiations of the acquisition we have been utilizing this time to check out the property for many, many reasons. One for simply how well it can be utilized, its production rate, and very important, safety. We retain them for that task and many many things were found out to be concerns of ours before it even gets running. We have a lot of things we want to have revised and improved to make a safer foundation. We realize that the sand structure or the screening tower will not produce sand in its current condition. The heights are just way too short and there is not near enough screening for the production levels that WI. Specialty Sand said it would be and a lot of the shoots don't have the angle of repose to have the sand go through them without backing up. There are a number of tasks that we need to overcome and that is why we are here to request a taller screen tower to raise up the screens and add screens underneath, stretch it out a little bit so people can safely go around these screeners without being pinched on the walls and many things that go along with that. That is why we are here tonight to ask to raise it up and allow for more screening and proper angle of repose to reach the elevator legs to fill the screen tanks themselves.

(JL) Are there any questions from the board?

(EH) I was down to look at it the other day and they looked like pretty new buildings that have never been used. Would you run through which building here on this drawing you are planning on changing. I understand that you are planning to enlarge it and to increase the height on it.

(TS) As you come in 770th and then come down into the plant, here is the office building.. The building that we are looking at is right here. This is the screen tower itself and then behind it you can see those real tall elevator legs with shoots going down into these tanks. Another thing that you can easily see from coming in here are these load out tanks over top of this rail spur. They are way high up in the air here. The height that we are looking at changing is the footprint right here of the screen tower.

(EH) It looked like you were going to change the size of that building.

(TS) The size of the building will be changed just slightly.

(EH) Okay. It is height you want not the size of the building.

(TS) The width is almost identical. The length here goes from 32 ft. to 41 ft. It is not going to be hardly any larger. Driving in you will never notice a bigger footprint. One of the concerns that we have is the slab that is poured underneath the screen tower, and the screens up in it are made by Rotex. They are called mineral separators. They are rather large units and they shake around and one concern is the forces that these screens shake at is they need a very large steel structure and a very heavy foundation. When they conducted their surveys on this they found a very inadequate cement base. Not enough rebar and not thick enough to support the units and the forces that they generate. We need to make a better slab down there. The way we found best to do it, is basically pour overtop and a very large footer around the end and in order to do that it has to be a little bit larger footprint in order to get those footers around the end to support those forces.

(EH) Would you reconstruct this entire building then?

(TS) Yes we would. There are a lot of things in the steel that do not meet code. Nuts, bolts, length of bolts, joints & etc. We could just go on and on about the things that would not meet code in the building.

(EH) This has never been used has it?

(TS) No.

(EH) Do you dump the sand in here someplace and do you dry it here to.

(TS) Yes, there is a dryer sitting in here.

(EH) I see all the LP tanks in here.

(TS) LP tanks are for stand by. They are hooked up to natural gas which comes over and out of the ground right here in order to supply the burner itself.

(EH) You would reconstruct this building and increase the height somewhat?

(TS) Yes. The height is just a necessity to get the flows of sand coming out of the screeners and into the elevator legs to get back up to the tanks.

(EH) These are all storage bins?

(TS) Yes.

(EH) Basically everything goes out by rail?

(TS) Yes. We will have some trucks, unfortunately we don't have a mine adjacent to this so there is going to be some waste. We will have to bring some trucks in to load up that waste and take it back to the mine to minimize any type of storage piles here. We can't keep storing waste material here forever.

(CH) Where is your mine?

(TS) It is over in Bay City up route Hwy 35. It is already an open and permitted mine.

(KP) Is this the site of the old Bay City sand mine?

(TS) Yes.

(EH) How much of this land do you own in here basically?

(JK) I have a survey map here and it is 12.2 acres.

(JL) Mark Whims was sworn in by Chair, Jack Leo, and stated his name and address.

(MW) One of the requests with this variance is the height issue. In the existing structure is roughly about 48 ft. tall. You can see it on the second page of the layout, the elevation view that gives you a better perspective. The building will be 92 feet to its peak from the grade out there. There is a piece of equipment that feeds that building that is called a bucket elevator. It is the same kind of equipment that you use on farms to elevate corn or beans to the top of a grain tank. That is our tallest structure on site and that will be to the top of the leg is about 105 ft. We just use a plan elevation of 100ft. which equates to 699 which is elevation above sea level. The property is pretty flat.

(JL) Your highest structure is 105 ft and the present county code says 35 ft. So you are exceeding it by 70 feet.

(MW) That is right.

(LW) Right now the highest structure down there is these two tanks that are over the railroad grade.

(MW) Correct. You can see that from the road. Those are roughly around 60 feet. From the rail to the top of these was roughly 48 feet. But the rail is elevated over this whole property about 10 or 12 feet.

(LW) Lee Wright – Since height is the primary issue in this request, if we are 55 feet here and they are on top of the railroad grade, and this is 105 feet, how much higher will the new structure be than the existing structures that are down there?

(MW) It is roughly 45 feet higher. And this structure will go away in the new plan, because it is unsafe. The two tanks are going to be moved over to this other site plan. Rail clearance we need 23 feet for railroad codes for loading rail cars. We will probably be 35 feet in the air for that structure.

(LW) If we go down there right now and visualize it we are talking about 45 more feet more than we already have there.

(MW) Yes.

(EH) Just out of curiosity the other place looked like you were moving sand on a belt. Now you are using a bucket elevator. What are you doing with the other?

(MW) Still using belts. A bucket elevator is nothing more than a vertical belt conveyor and what it is used for is instead of running belts all over the world, like conveying sand and conveying

corn, you can only run at a certain degree angle. So you have to run out there 500 feet, turn around and come back 500 feet. Or you can go up 100 feet real quick in a real small space. It is real economical. You can keep a smaller footprint by raising it straight up as opposed to an angle.

(LW) In the communities surrounding this site do we have fire equipment that will reach that 105 foot level with their ladder trucks?

(EH) Red wing certainly must have.

(AL) With the grain elevator, the old malt house and ADM being right there.

(LW) Yes, Those are sizable structures. I would think it would be important that any new structure in the community that exceeds its certain level would have accessibility from the fire department. Does anybody know what the ladder trucks go up in height?

(JK) What about sprinkler systems? Is that building equipped with a sprinkler?

(MW) No. Anything flammable in it would be the belts and they are all outside. There is nothing inside the building structure itself.

(LW) Are the electric motors at the bottom or the top?

(MW) They are at the top.

(JK) Are there portable extinguishers located in the plant?

(TS) Yes. That is all based on mine safety and health requirements and all the belts, head pulleys, and tails we have to have portable fire suppression. So there would be extinguishers up there. It wouldn't be a water sprinkler system, but it would be the ABC kind.

(MW) It is a little different than a grain elevator which you are dealing with dust, which is very flammable. Where here, you are dealing with dirt.

(KP) What was the plan for this facility originally? Obviously the building was not set up for what you are doing. What was it suppose to do? Was it suppose to lower volume production?

(TS) No. He was trying to set it up for a 150 ton an hour screening plant. We are trying to put enough screens in to do that.

(JL) This was approved in 2006. Is that correct and it is not producing.

(TS) It basically was never started. He tried to start and ran a couple ton through it and figured it would not work.

(JK) The guy who developed this changed plans throughout the process. Their building was originally 36 feet high and it turned out to be 48 feet high. He was making some modifications as he went to try to make it work. He opened up a mine in the town of Isabelle and ran some sand through it and realized there were some issues.

(JL) He was allowed to exceed the 35 ft. with his modifications?

(JK) Yes. The Land Management Committee did a site plan review for this facility. That committee can approve buildings up to 60 feet. They have some exemptions for certain buildings and the code as I mentioned in the staff report. Their site plan review looks at the surface water drainage, location of buildings, state plan approvals, sewer system design, water system, traffic layout, and parking..

(JL) When they approved it to 60 could it have been 75 or 80 ft.

(JK) No. They couldn't go that high. They are only limited to taking buildings up to the height of 60 ft. by the ordinance.

(JL) So then if we were to grant the variance we would be in violation of the ordinance.

(JK) You would be relaxing the standard in the ordinance. I know we have never dealt with the height issue before, but there are things that are exempt from the ordinance like barn silos and pent houses and certain structures that we can exceed to 35 feet, then we can go beyond that and the commercial sites and the industrial sites the zoning committee can approve up to 60 ft. There are other things that we allow like communication towers to go up 200 feet. So it all depends on the type of use.

(MW) Isn't there also 1 of the exceptions is one foot of setback per 1 foot of height?

(JK) Yes, above the maximum height.

(MW) We do fall in the criteria from the closest property line. The closest property line is the railroad tracks. We are further away than 105 feet. So if you take that setback of 105 feet, we are actually 120 ft to our highest structure from the closest property line.

(JK) He is not referring to the spur that was installed, he is talking the actual railroad tracks. I

think you meet the setback to the main line. There is also a part in the zoning code that talks about setbacks for industrial buildings adjacent to railroad spurs. There is a couple of things in our zoning code that identify that some building are going to be taller, but because this request is above 60 feet, I didn't take it back to the zoning committee, I brought it here, because the zoning committee would not be authorized to do this. The zoning committee can only go to 60 feet with the building. They have addressed some taller building in industrial area, like Weisers. I would not go above 60 feet with that group.

(AL) We could go against the ordinance to do this?

(JK) I don't know if you are going against the ordinance. You have the ability to relax some of the standards.

(AL) We can relax the standards because 1 foot from the property line to the structure you can go up another additional foot. Is that correct? Is it an additional foot or total feet?

(MW) It is an additional foot for every foot of height. It is total height, not just over 35 feet.

(JL) So you are saying if you have 120 feet you could technically go to 120?

(EH) If I recall right we had a communication tower that we had to do this same thing with. We had to know how far from the property line because it had to be far enough away so that if the tower collapsed it would still be on the property.

(JK) That was for Dairy Land Power out in Rock Elm.

(MW) Are there any grain elevators in the county? They probably have been grandfathered in.

(JK) Yes. There are some exemptions for certain things listed in the code.

(MW) Typically grain elevators are anywhere from 100 to 200 ft.

(AL) I guess we have to look at the things we usually look at and that is hardship and if we don't do it, they can't use it for what they got, if I understand that right. So that is probably part of a hardship. If you can't use it for anything and the public doesn't seem like they have a problem with it or they would be here. What is the other standard?

() You need property limitations. I don't think there are any property limitations.

(CH) Now when you are running this, the sifting is all inside so there is no outside dust?

(TS) That is correct. These are all enclosed units and all of them have ports and will have pipes coming off from them directly attached to dust collection. We will not only connect to these screeners it will also connect to the tanks, elevator legs, and several places around the plant.

(TS) We have state air permits which regulate us and we have to monitor and test our missions to be under a certain limit to be approved by the state. We will have dust collections on all these emitters.

(KP) Have you heard anything from the airport at all?

(JK) We haven't heard from the airport at all. I tried to call Denny Tebby, the airport manager and I couldn't get him. I brought along this map that shows the airport limitation zoning with heights. We are well below the limitation in height for this location.

(LW) Myer Industries was near by with substantially taller towers. I am assuming any taller structure will be in its proximity to the airport is going to have some kind of a beacon on it. Would that be in the plan?

(TS) Yes. The airport will dictate that.

(MW) Typically we do it anyway just for safety. On a foggy night if somebody is trying to land we don't want them flying into the side of your tower. You want to give them as much notice as possible.

(AL) I guess when I look at the 3 criteria's and the bottom two are not a problem. It is the hardship one again that we usually run into.

(MW) Are the height of both structures considered the minimum necessary to make this thing function?

(TS) Yes. Steel now days is not cheap and we wouldn't build this thing any bigger than we have to. We are building the minimum size that we need to house these screeners to produce 150 ton an hour.

(JL) Are there any questions from the board? No.

(JK) This facility was built by Eldon Duncan who used to own the mine where Tim works right now in Maiden Rock. He sold that to Fairmount Materials and then he opened up this facility last year. He opened up a mine and built this facility right here. The facility went through some

modifications in the construction process, but he kept the committee involved with it. Jim read the staff report. I talked to one of the plan reviewers just recently and we did discuss sprinkler systems in tall buildings. Based on what he told me he doesn't require sprinkler systems unless there are 30 people occupancy in the building. It is good to consider that fire protection in a structure like that and Tim is certainly aware of safety for his workers and the inspections they have.

(JL) I am looking what the ordinance says 35 foot maximum and here we are going to 105 feet, not realizing that this board has the authority to relax that and the ordinance also allows us to relax it with certain conditions and in this case it was setback from the property line. If we were to deny it tonight the decision could be overturned in court. The judge has the authority to do it. The only other people who have the authority to do it, is the zoning committee. We do not have the authority to change that ordinance. So if it were to be denied tonight it could go to court and have us over ruled. That is the only two places that that can be done, in court or by the county board of supervisors. So that is why I asked the question why are we even considering this if we have no authority to change the ordinance, but we do have the authority to relax the ordinance.

(JK) I would just like to add that all of our staff reports go to our Corporation Council as well. He reviews them and if there would have been a red flag, he would have notified me before tonight.

(JL) Any more discussion from the board?

(EH) It just seem like 35 feet is rather old fashion because how many silos are there that are taller than that. At this day and age there are quite a few grain elevators that are taller than that. I think 35 feet is rather modest.

(LW) This is also zoned heavy industrial and this is a permitted use in that district and we have the ability to relax standards for a modified legitimate purpose. I think this falls along with appropriate conditions.

(AL) Arby Linder to approve the variance with the conditions set forth. Tree buffer, Land Use permit prior to construction, and a submittal to safety and buildings of the building for review. Ed Hanson seconded the motion.

(LW) Could I add a condition or discuss a condition to see if you want to make it part of your motion? Contact the local authorities of the fire department to make sure they have no issues pertaining to this. Is that an issue or not?

(JL) I don't know if that is an issue or not but I think for our information that it be passed back to

us. Yes or no that they do have the equipment for 105 feet

(AL) I think that is a good idea for the future.

(LW) I think the people that are called out at midnight to put out a fire should have the authority to have some say in it and they probably are going to say their ladders go up 120 feet. This is the time to do it, not after it is up and built. If it is not a big deal it is a condition that you just pass right through.

(JL) In relaxing of the ordinance is one foot horizontal allows an additional foot in elevation. That ordinance does not say providing there is fire protection.

(LW) Does it make sense in our time to allow anything to go through that can not be handled by our community? Next time if the tower is 200 feet, where do you draw the line? We have the ability to relax it, but what stops at 105 feet, because the next one may be 125 feet. I don't think it is a real big challenge for the fire department to give us their two cents worth. If they say this is a real problem, or this is not a problem, I think this should be one of the conditions that the local fire department feels that it is not a problem. Anyway, it is your motion.

(EH) I am not sure that we can, the fire department has to make a good faith effort, but beyond that I don't know if it is up to the individual that builds that. If the fire dept. can't get there I guess that is where it starts and stops.

(AL) In our township we have a maximum grade of the driveway and also a turn around at the end of that driveway, now if they don't have that we don't approve the building permit. The local fire department would respond and if they did respond, could they do it.

(LW) I think they would make a good faith effort to do it, but are you going to be putting firemen in harms way saying, hey they have a fire up there 105 feet, go up there and put it out, and those guys end up getting hurt. I don't know, maybe this is not necessary.

(AL) Yes, I made the motion and it was seconded. We will have to deny that motion with a new one if I understand. You would have to turn down the other one and you would have to bring it back again.

(JK) You would have to amend the motion to the variance.

(TS) Using an example of us there in Maiden Rock we have a very active relation with the fire department. They have been into our site and we do drills with them. We will bring them in and have meetings with them and they can address any issues and they can tell us themselves what

they require from us in order to make them comfortable with fighting the fire whether they are willing to take that on themselves or not. I am sure that one phone call can settle the fact that 100 feet is not very large. This would be Ellsworth responding right next door at the airport and they have some pretty sizable trucks. Maiden Rocks trucks are a lot smaller than that and they have no problem saying we have 80 plus feet elevator legs up there and that they can reach it with their little trucks. I don't think that the height is a problem, but we would still have them in there and if we have any issues to address we would certainly do what modifications they needed. Maiden Rock even asked if we could have a spout for them to come in and fill up there trucks so they could do it in a couple of minutes rather than take a half an hour to do elsewhere. We are willing to work with the local fire departments.

(MW) We design to the IBC which is the International Building Code. It is the latest and greatest building code that is out there. Most states and most cities and the major metropolitan areas have adopted it. Pierce County does not adopt that code. I don't know what code you use here but if it is still UBC. You have an occupancy permit for that class of building and you get into the fire protection requirements that are there and you have to follow those. Normally this building would not be sprinkled. More so than fire it is life safety with the fire department. That is probably the biggest criteria that you would need the fire department, because chances of fire are slim, but chances of somebody getting in a tank or falling and you need to get them out of somewhere those guys are trained at it.

(EH) Is somebody in that building all the time? So, there isn't an occupant in that building?

(TS) The only time people go up there is if we have an out of spec sand condition where they will shut the tower off and go up and open up and maybe change the screen. Typically it will run by itself with nobody inhabiting in the building itself.

(MW) It is all done by computers.

(TS) We have a very sophisticated automation system and everything will turn on and off by the click of a mouse. We have special electrical panels that monitor the amps. The loads have kick outs that are a state of the art to do as much safety as we possibly can on that end. Typically everything will be shut off at the click of a mouse before anyone were to enter that structure.

(CH) In other words there is nobody around to watch anything?

(TS) They will be watching all the time. There will be people around the plant possibly doing clean up. The operators themselves will be watching a computer screen which is telling you your load limits and everything else to make sure everything is running efficiently and properly. Typically when an elevator leg were to catch on fire it would be due

to the fact that it got caught up and the belt stopped running. In the case of modern day technology we show the amp loads on the motor trying to pull that belt. If it spikes up way high, our computers will catch that and be able to tell us before anything happens or we can set it to kick out. We don't want to replace the belt if we don't have to.

(JL) Who would respond to those fires?

(TW) That would be Ellsworth right there at the airport. They are ¼ mile away.

(AL) Ellsworth has two stations. One here in Ellsworth and one at the airport.

(JL) My thoughts on what Lee is saying is that they be advised of this proposed building modification. Fire departments and ambulance response teams are continually updating there equipment. I don't know where they stand as far as new equipment. Then they say now we have a building that is 105 feet. This is the piece of equipment we were thinking of buying, but now we may need to buy something else. That would be by suggestion that you advise the Ellsworth Fire Dept. of your proposed building modifications so they know that it is not a 35 foot tower down there, that it is a 105 foot tower. So do you want to amend that with a fourth condition to advise the local fire department of the proposed building changes?

(AL) Yes I would. That would be fine. Second by Ed again. All approved. Motion carried.

A motion was made by Arby Linder and seconded by Lee Wright to adjourn the meeting at 8:00 p.m. All approved. Motion carried.

APPROVED BY:

Lee Wright, Vice Chairperson

Date

MINUTES – Pierce County Board of Adjustment Meeting October 25, 2007

Members Present: Lee Wright, Ed Hanson, Arby Linder, Kenneth Peterson., & Mike Graham.

Others Present: Jim Kleinhans, Bill Thiel, John Higley & Carol Denninger

Vice Chairperson, Lee Wright, called the Board of Adjustment meeting to order at 7:04 p.m. in the Pierce County Boardroom, Ellsworth, Wisconsin.

Approve Minutes: Arby Linder made the motion to approve the minutes of August 9, 2007 as written and Ed Hanson second the motion. All approved. Motion carried.

Next meeting dates are Scheduled for November 29th and December 13th, 2007.

(LW) Jim, is there anything on the docket at this time?

(JK) – I sent out an application for a lift out on the St. Croix Riverway and I have not heard from the individual yet.

(LW) Lee Wright read this evenings public hearing request by Mike Michaud to appeal the issuance of a land use permit for residential development on a parcel owned by James and Jennifer Smith on property located in the NE ¼ of the SE ¼, Section 24, T24N, R16W, Town of Maiden Rock, WI. with a physical address of W2596 20th Ave, Pierce County, WI. Before getting into the public hearing, Lee shared with everybody the rules of the Board of Adjustment and instructions for witnesses. Has a notice of this evenings public hearing been published in the local newspaper?

(JK) Jim Kleinhans stated this public hearing was published in the paper on October 10th and 17th. Jim then read the public hearing notice.

(JW) Lee Wright - explained the BOA authority and meeting procedures. All of us are not elected to the board. We are appointed by the County Board of Supervisors. We are citizens like you people are. It is a board required by state law and any municipality that has adopted county ordinances. We do have county ordinances here in Pierce County, and that is why we are meeting because there seems to be a problem with the issue tonight of not being able to abide by the county ordinance. We have no authority to amend or repeal the zoning ordinances and our authority is limited to appeals regarding the interpretations of the ordinance, provisions, considerations of variances, and considerations of conditional use permits. The board functions like the court. We vote on all the issues and the majority is the way the issue is settled. It is our job to apply the zoning ordinance appropriately with standard to the facts of each case. Board meetings and public hearings are open to the public. A tape recording is being made of these proceedings. A decision by the board may be appealed by commencing an action in Circuit Court for this county within 30

days after the date of the filing of the decision in the office of the board. We will take testimony from anyone that wants to give testimony and we appreciate only one person speaking at a time. You will be sworn in prior to your speaking. We will need your name and address.

(LW) For the benefit of the Board of Adjustment members, we are represented this evening by our legal representative, John Higley. If you have any questions in regard to interpretation of the ordinance, Mr. Higley will certainly help.

(MM) Mike Michaud came forward, stated his name and address and was sworn in by Vice-Chair, Lee Wright.

(MM) Thank you for the opportunity to speak to you tonight on this matter. It is a matter that concerns a number of us landowners down in the Pine Creek Area. Although this appeal is referred to as an appeal by Mike Michaud, I just want to call your attention to the fact that there are 17 landowners that are part of this petition, page 6 of our appeal lists the names and addresses in the Pine Creek area and I am spokesman for the group. We have been involved with Pine Creek for a number of years and some of us have lived in the area over 30 years and we have seen a lot of flooding that goes on down there. We have also seen how scenic the area is, how unique the area is and great deer population live down in that area. We are very concerned about the area generally and some of us were even getting involved in getting the road designated as Rustic Road down in the township. We are suddenly made aware of this land use permit and are very concerned about the flooding situation down there. I do want to emphasize that flooding in that area is incredibly severe. We didn't realize how severe it was until we saw the County Department of Transportation maps that were recently developed for that bridge project on County AA. Cedar Corporation did a hydraulic study as part of that bridge construction and determined that the 100 year flood elevation at that location is 8 feet over the top of road way on County AA. That is just a mile down stream from the proposed housing location. We knew the flooding was severe and we have seen photographs of flooding. Just a couple of years ago showed water wall, to wall, in that valley. They are part of the Town of Maiden Rock's records. What disturbed us was when we saw the difficulty interpreting the floodplain maps, depending upon which one you look at, you get a different result. The only map that is available is part of that insurance rate map. There are no elevations that are in those maps for the location and the scale of those maps are so incredibly large it is hard to discriminate a couple hundred feet in a map that you got 2000 feet to the inches. The zoning administrator was aware of the new information and hydraulic study that was done as part of that bridge before he issued that zoning permit. We think that is a significant factor in the existing field conditions out there that would lead one to question the accuracy of the map. You can not really determine if this is a floodplain zone or not without additional hydraulic study. Provisions of Chapter 238 are the ones that should be brought to bare on this land use application. Instead it was determined that Chapter 240, which, is out in the floodplain would be the ones that would be applying here. We are suggesting that if Jim would have taken a little more time to look through, he probably would have come up with the same conclusions we did about enough concern here of what is and what isn't floodplain. There is also the issue of the fact that you can't get in or out of that valley during a flooding event. You can't get out of the valley to the west all winter long because of the ice and the water over the creek and so it is essentially a dead end road for most of the winter. If you go down that road you have to drive through the creek water in order to get exit to the west. Since the flooding would cross over the road going west and this was just discussed it would cross over the road to the east going towards County AA. Any structures in that area are going to be essentially on a floodplain island and the residents are going to be trapped in. There is going to be

no way to get fire, police, or ambulance services in there during flood events. We also are here for the fact that it is Rustic Road down there. There are specific requirements in those Rustic Road rules for the preservation of the scenic and natural beauty of the road. I want to make sure you are clear that we understand that Rustic Road rules do not apply directly to the adjoining land parcels. There is some encouragement in those rules for you to consider zoning of the parcels appropriately in order to maintain the natural and scenic characteristics of that road. The rules are however, quit specific of the road itself and the road easement and there is a requirement to maintain the scenic and natural character of the road itself that are embedded in those rules and the language there is quit strict. The Town of Maiden Rock does have jurisdiction over the maintenance of the road, but the county here has taken over zoning authority for that whole Township of Maiden Rock and you guys are making the zoning decisions for the township. You are the local jurisdiction and have authority over some decisions effecting Rustic Road. We have pointed out in our appeal that we are concerned about widening the road. We think it is a probable situation that we are going to have to confront going forward especially if somebody that owns that house wants a school bus coming in to pick up kids to a 12 foot wide gravel road surface. There is no way you are going to get two vehicles to pass on that road. There is issues about risk to that Rustic Road that have to bare somehow in your decisions here and I realize you don't have control over whether road gets widened or not. There are impacts from the construction of this proposed dwelling of concrete trucks coming in and trying to pass each other and damaging any nature of the road which are part of what are supposed to be preserved. There is also damage to threaten plant species that is possible at the building site. There are issues like whether or not there should be screening of vegetation between the dwelling and the roadway. These are probably all in your jurisdiction in terms of the land use permit and even though your county code doesn't have anything specifically in it that shows how you should apply those Rustic Road rules. It doesn't excuse you from your obligation to follow the law in terms of making your decisions with or without something sitting there in writing to guide Mr. Kleinhans. Now, in his defense there was nothing specific in the code that told him how he should decide the matter. You folks as Board of Adjustment have to make the deciding termination of how you are going to interpret your responsibility under those State Rustic Road rules. I have been made aware of a paper that Mr. Theil wrote to the Land Management Department for this committee. Have you seen it yet?

(BT) They have not been provide with it yet, there attorney has.

(MM) Okay. So you will be speaking to them?

(BT) Yes.

(MM) I don't know if I will get a chance to speak after you do, but I have not seen the document yet, but I would like a rebuttal and if I don't have a chance to speak later, I would like to address some of those issues now.

(LW) Is there anyone else that wishes to speak? Yes Sir, your name please.

(AL) Andy Lamberson, Vice President of the Kiap-Tu_Wish Chapter of Trout Unlimited came forward, stated his name, address and was sworn in by Vice-Chair, Lee Wright.

(AL) Andy Lamberson - I do. Kiap-Tu-Wish is charged with responsibility of enhancing our cold water resources in Pierce and St. Croix Counties and has been active here for many, many years. I

would like to bring up a couple of points regarding this home, As probably many of you are aware of Trout Unlimited, Wisconsin DNR, and West Wisconsin Land Trust has a major restoration project of Pine Creek. There will be over \$200,000 spent directly on the stream reclamation as far as rock, and labor, and what was done this year and what will be done next year. There are a few things we would like to bring up in opposition to this home. One was already discussed about that it lies within the floodplain. Many of us who have lived here for a long time and been in the area for a long time know it floods both above and below that piece of property because that creek runs above and below it. What we are really concerned about is that if the development does occur that there is a threat of flooding the home site of the water supply and the septic system causing a potential contamination for the ground water and surface water. As we all know Pine Creek has experienced numerous events in the past as to the point of moving the bridge that was just replaced. The water supply, well, and septic systems on the property may very well have an adverse impact on Pine Creek flow and water quality. The other concern is that the septic system is probably our largest concern. The septic system could very well be a detrimental effect on the ground water quality which affects directly the Pine Creek Water shed. I think as we all know that is the gain and loss stream meaning the stream rises to the surface, flows for awhile, disappears, and comes back up and down numerous times in that area. Our concern is that if the septic system is inundated it will increase nutrient loads to the stream and bacterial levels from the human waste. At a minimum the documentation should be provided to demonstrate that there is adequate separation of which there are state and county laws governing that and with the soil type there that separation is adequate. It is very sandy and rocky soil, so there is a lot of infiltration in that area between the septic system and the ground water table. We all have talked about the Rustic Road and what a treasure that is. One of our biggest concerns is the things that we have worked at in the past is that this should not be done at tax payers expense. That is the upgrades of the road, at least one bridge that will have to be built below the house to come down County Road AA across that stream crossing, the widening and that should not be a tax payers expense for one home. Again our local Trout Unlimited Chapters, the State, the Knolls Fund, the Wisconsin DNR, & the West Wisconsin Land Trust have invested hundreds of thousands of dollars, maybe even close to a million dollars to restore this area and it is all for the public good . It is all in the public easement. It is accessible to everybody and it is a treasure that needs to be protected. I think that should be at all of our concerns that we have something here that is an incredible unique treasure and we need to make sure that we error on this side caution, especially concerning the ground water implications of the septic system. I appreciate this opportunity to speak.

(LW) Is there anyone else that wishes to speak?

(JK) Judy Krohn came forward, stated her name, address and was sworn in by Vice-Chair, Lee Wright.

(JK) Judy read a letter that was dated October 25, 2007 to the members of the Pierce County Board of Adjustment. Judy stated that she and her husband, Gib, bought there property in Maiden Rock Township in 1973 and how they have enjoyed the peaceful nature of Pine Creek Road, now know as 20th Avenue. A copy of this letter is attached along with a copy of the minutes.

(LW) Would anyone else that would like to speak?

(ND) Nancy Danneker stated her name and address and was sworn in by Vice Chair, Lee Wright.

(ND) I have a typed version of a letter addressed to the Pierce County Board of Adjustment submitted by Sally Ann Farrar for your consideration in the matter of the Smith property land use permit. She is unable to appear in person, since she is out of state this evening. In this letter Sally talked about an experience that helped her see that under the exact right condition, Pine Creek has the potential to become a major drainage into the Mississippi, and just how quickly that can happen. Not only that, the River (Pine Creek) that ran through the Smith's land totally disappeared that day. I'd heard other stories of the creek disappearing and changing course in the valley, but I had never actually seen it happen. This Bob Bixby that she is talking about has land adjoining. And at this point I know that Sally Ann has considered buying Bob's piece and has changed her mind. (A copy of this letter is attached with these minutes.)

(LW) Anyone else wish to make comments this evening? Please state your name and address.

(NR) Nicole Rodriguez came forward, stated his name, address and was sworn in by Vice-Chair, Lee Wright. First is about the trout pond. My boys go to Plum City School and that trout pond has been there for many years and has lived through many floods and has not been harmed. I live on a gravel road and that gravel road has been there for many years. There are Farmers every day making a living. We work with each other and we are neighbors. If you met a combine that is as wide as the road, I pull over and let him go because he is my neighbor. I just find that the property that we are talking about has been on the market for how long? Does anybody know? Just curious, how long has it been on the market for sale Mike? You don't even know but you have lived there for years and pass it everyday.

(MM) I know it has been up for a long time, but I don't know how long it has been for sale.

(NR) You have lived there for 30 years, but you don't know how long it has been on the market.

(MM) I couldn't quote you an exact year.

(LW) This is not a debate this evening.

(NR) So what I am saying is just that it has been for sale, somebody has bought it and I am sorry there are new comers. I am sorry that we just can't share the one perfect roadway that you have. I just find that James and Jennifer Smith are trying to do something well for your community that you pick up garbage on everyday, they would do the same thing. That is all I have to say, but I am on their side. I just find it hard that people are so animate about this property that has been for sale for awhile now and then somebody actually pays for it and now it is a problem. Why was it on the market to begin with for all those years?

(LW) Is there anybody else who would like to speak?

(EJ) Evelyn Johnson came forward, stated her name, address and was sworn in by Vice-Chair, Lee Wright. We have lived in the area a long time to and we thoroughly enjoy the Pine Creek area. On the one map, you see the legion club there and our last great flood in Maiden Rock when we got 7 inches in a half of hour. It took out the Main Street in front of the school house there because of the lack of farming practices out in the county. Louie Barber, from the ASCS Office, their staff came in and they helped those farmers up above put back in their ravines. They put in the big dam above Maiden Rock and they did all the watershed development above Maiden Rock in that farm area to

protect Maiden Rock so we would not be wiped out again. Our Main Street was like a big gully and the water was so high that night, but how often do we get 7 inches of rain in a half an hour. That is a rare happening. It flooded through our local café where they are now. School was postponed that year because the water went through the gym. The staff was down cleaning out the school because of the high flood. That night, I as a 4-H leader had the 4-H kids at the local legion. We are about a half mile down the river from where they want to build. There was water surrounding the legion, but not a drop of water came in on the floor. The kids were all in the legion and yes the flood came down Pine Creek, but it never came up high. Pine Creek never came over its banks right there ever in all the years we have been there. Yes, it does wash out the roads and right now the county is doing something about County AA because the water came down the hill, not from Pine Creek and flooded lots of dirt over the road. If you go down there now, they have excavated a nice roadway ditch so that when the water comes down they are planning to put in 2 culverts on AA. That is to take care of the water that comes down the bluffs. It isn't because Pine Creek goes over its banks all the time, that isn't what is doing the flooding, it is just the rain. We are on bluffs and that water comes down the bluffs and we are going to get in the low area. We live near a dry run too and I mean the sand mine went through the same thing because where they were located in floodplain and we saw a lot of high water in the sand mine area to. I think a lot of it has to be done with the Land Conservation on top of the bluffs too. The county has done a lot of the roadways. If the water comes down that heavy, yes they have provided the roadways to take care of it. As we know, any of us can be stranded any place and how far do we venture out in this area. The policeman drove down that night to Pine Creek and told us please do not leave tonight because County Road S was all washed out. We have to cope with mother nature. When the Bixby's lived back there, the 4-H kids camped back there one time. The road back there was a nice area. Judy had her horses back there and it was a very nice building area. The Bixby's lived there for quite a number of years and had their horses there. They did just fine and never were flooded out. Thank you.

(LW) Is there anyone else that has any comments? Your name sir?

(JM) John May came forward, stated his name, address and was sworn in by Vice-Chair, Lee Wright. I bought acreage down there to camp a couple of summers and lived there after that. I have never had trouble getting home. Yes, the water does come down and occasionally affects the road. It is always passable the next day. I meet people all the time. The road is a little bit more than 12 feet wide, but between AA and the Smiths just around the corner from me that is the best part of the road and it is passable. I do not see a problem there.

(LW) Is there anyone else that wants to speak? Would you state your name.

(RG) Rick Gauger came forward, stated his name, address and was sworn in by Vice-Chair, Lee Wright. I am the executive Director of the Wisconsin Land Trust and we own the land that runs from basically 35 all the way to the property we are talking about. We are the largest land trust in the state of Wisconsin. We cover 18 counties all the way up to Superior. We have a number of priority areas. Priority areas are areas that you have studied the conservation value of the property and you established how important it is to protect it and to keep it protected because it has a value for the community, for wildlife, for the people that live there, for recreation, for hunting, fishing and etc. We establish these priority areas using science from the county, from the state and from the federal government. Some of our areas are for instance, Lake Superior Coastal Plain, the St. Croix River National Scenic River Way, and another one is Pine Creek. They are not established lightly, and they are important to a number of organizations that work in those areas. Giving an example

along the St Croix River Way National Park Service is subsequently protected that and we are working with them to continue to protect properties. One of the things we are worried about is houses being put right in the middle of the protected piece. We are not against development at all. We are not against houses being in place where they need to be. We want to see that. We want to see the properties used. The people need to move to these properties and be there, but to put it in the middle of it really doesn't make sense. We also work with our neighbors and the American Legion is a neighbor of ours now. They have a turkey shoot on the property and the turkey shoot is a really big deal. We would really have a hard time allowing that turkey shoot to continue because it goes onto our property. We feel like we are doing our part and it helps to have zoning and decisions made with in the local government. So this is a later event, and yes, it has been on the market for probably two years. We did not think it would sell. We did not think we would necessarily have to buy it. Now we are looking at it and we have actually made the commitment that we would buy it for what the purchase price was to protect it. They don't want to sell and that is perfectly fine, but then again back to this it is right in the middle of the priority area.

(LW) Anyone Else.

(JS) Jennifer Smith stated her name, address and was sworn in by Vice-Chair, Lee Wright. My husband and I purchased this property and closed on it near the end of August. It has been on the market for over 2 ½ years. It came with a county approved building site. It is not in the middle of land conservancy. It is on the edge of land conservancy. I just wanted to set the record straight that nobody from the land conservancy has ever called me and make an offer to purchase this land. If I would have know that it would have come to all of this, I would have never purchased this land. It was listed on the MLS for over 2 ½ years with a building site. I met with the county and the township even before I wrote the offer. I have heard rumors that the land conservancy keeps telling people that they are making us an offer, but nobody has ever made us an offer. Nobody has even called us. I don't know how he can stand up not only at the county meeting but also at the township meeting and say that. I don't understand how he can raise his right hand and say that because nobody has ever contacted me. What we are proposing to do is build a home in Pine Creek. This is not intentionally meant to hurt anybody in the area. That was never my intention. We were looking for a piece of property and it fit what we wanted. It came with an approved building site. We bought it. That is all I have to say right now.

(LW) Is there anybody else that hasn't had a chance to speak? Okay Andy, if you want to make a quick comment to her response.

(AL) Andy Lamberson - I personally looked at that property more than 2 ½ years ago. A friend of mine has also looked at that property. We both have wanted that property for a long time and however, it was our understanding that we would not be able to build a house on it for a couple of reasons. One that is was on the Rustic Road and the other I had some friends that were going to come over and look at it and said it was too close to the ground water table. It was pretty obvious it would flood and if you would go and walk on the property, and look at the creek channel that goes through the property, you can see how high that bank was eroded where the water has gone. It doesn't take much of an engineer to figure out that you are going to be in trouble in a big flood. So, how it came on the market with an approved building site comes as a bit of a surprise to me. When we looked at it, it was not an approved building site.

(LW) Is there anyone else that hasn't had a chance to speak?

(LK) Linda Keefe stated her name, address and was sworn in by Vice-Chair, Lee Wright. I am speaking as a resident of 12 years. I have been chairman for 2 years and I just want to say that as town chairman that one of my biggest fears is the time when I worried about that road back there. I am really surprised that there was an approval to build a house there and I know that the whole issue of giving the permit for the driveway was a very difficult decision for the town board. They felt they really didn't have a choice if the county was giving them a permit to build a house there. So just as an ex-town chairman I would like to say that there were many days, John that you couldn't get back to your house and that road is very dangerous and I so believe if the house goes in there whether or not the Smiths want or care about getting an ambulance back there or fire trucks or anything. The township will end up having to do something with that road. They can not possibly count on that road not being washed out again. It has happened in the last 12 years and we had to get state funding to repair it two years ago. There was funding that was given 10 years ago for the same road. I just wanted that to be on the record.

(LW) Anyone else wish to speak this evening? Your name sir?

(JK) Jeff King stated his name, address and was sworn in by Vice-Chair, Lee Wright. So you are saying that no matter what, through the years that road will continue to wash out. There will always be funding for it or there won't be funding for it?

(LK) Linda Keefe - What I am saying is that it happens frequently. The roadway is damaged by water .

(LW) Okay, we shouldn't debate this evening? If you have any specific questions debate it amongst the people. If you have any questions or wish to make a statement about anything please feel free to do so. To debate it back and forth, we just can't allow that. Did you have something you would like to say to us?

(JK) Okay. So I go through you to her?

(LW) Do you have a concern or an issue you would like to present to us?

(JK) Jeff King - We know that the road is going to wash out down the road in the future, it is going to happen again. Correct? That is a question, Yes or No.

(LW) I don't think anybody can say that.

(JK) Jeff King - We don't know then. We don't know if it is going to flood down there again. YES?, NO?

(LW) I think we understand what you are asking. Does anybody else have any questions or comments? If not, would the board have any questions in general or of anyone specifically?

(EH) I have some questions. I was down there and looked the place over and walked the area. I did walk the area that you had cleared off and to me there is about a 3 ½ to 4 foot drop of a ditch that is taken out. It looks to me like the water took it out, right back where the cleared area is. The brush that was cleared off was piled in that, am I correct that, that is what the water did?

(JS) No. That is a bench area. There is the building site, then there is the bench. They told us we couldn't build past the bench. That is a nice flat open spot that goes for about probably 300 yards before you actually get to the creek.

(EH) What took the ditch out of there? Was that the water that made the ditch back in there?

(JS) No, it was the clearing of the lot with the excavator. I am guessing that is what you are talking about.

(EH) Where they cleared there is a 3 ½ to 4 ft. drop.

(JS) Yes. That is just naturally there.

(EH) To me that is what the water did.

(JS) Yes. Probably over the last 2 or 3 years.

(EH) I attend to assume that sometime the water has come down and washed that ditch out of there. Then Evelyn Johnson mention that Pine Creek does flood over the road. Does it flood over the road? The road in front of where the house would be?

(EJ) I don't know that it floods over the road there.

(EH) That is the statement that you made, that it floods over the road.

(EJ) Well, because it is all coming down from the hill, yes.

(EH) Well I don't care where it comes from, it just matters if the water floods over the road. I believe that is a statement you made.

(EJ) They are building the ditch there because the water comes down from the hill and goes over the road. Maybe this is something that has to be looked at more in Pine Creek is the planning of the land on top. Any rain we get, any road can get flooded.

(EH) When I came past there I turned around and drove past the site. I turned around shortly after I got past there and there was a sign there for real estate and the Smiths were on the real estate, was that part of what you are talking about?

(JS) No. That is the adjoining property. That used to be a full forty. We bought the first 20 and that is the other 20 that is down there for sale.

(EH) That is the only placed I dared to turn around that day.

(LW) Are there any other comments or questions from the board?

(KP) Ken Peterson - John, do you live down by the legion club?

(JM) John May – Yes. Right across the road.

(KP) Between there and the building site does it cross Pine Creek on the slab bridge?

(JM) No. There is not a waterway there.

(KP) When I went up there today I crossed it several times beyond there but I didn't remember anything between there and the legion club.

(JM) No there isn't.

(KP) So that is higher than?

(KP) Yes.

(JS) Jennifer Smith - There is a spring coming out by the legion, but you do not cross any of the creek beds before my building site. The one on my property is a dry run and then you go up to Bill's property and then you go off from Bill's property and there is a dry run right there.

(LW) Does the board have any other questions?

(AL) Arby Linder - I would like to ask the ex-chairman of Maiden Rock Township a question. She stated that she was clearly scared of this road and the condition of it and they stuck money into the road. What were you scared of Linda?

(LK) Linda Keefe - I know it is a very narrow road. It is the kind of road that gets no sun so we had to close it down in the winter time. It was always one of the first roads we checked and we had to make sure that everybody was safe and it is a scary road. It is narrow and it doesn't have the drainage that you would like a regular road to have. There are no houses beyond the legion club so I always felt that at least getting to the legion club I knew that there was just John's place there, but this house is beyond the legion club and that would have been more worry some for me personally. We would stop and close the road there at the legion club and it was not open between there and up at the top where it hit 197th and up 244th.

(JS) The only reason that road was closed is because the township never plowed it. Now they have issued a driveway permit and we have agreed to supply the turn around.

(LK) Linda Keefe - No, that is not true. That road is closed because it is too dangerous to drive on. To your driveway, they will now plow because you are not very far beyond there. John knows he had to call many times when he couldn't get back there. I just wanted to express that, that I thought it was a difficult decision for the town board to make and I am sure that Mr. Kleinhans had a difficult decision as well.

(AL) Arby Linder - I am a town chairman and I would be very quick to close that road and not collect taxes off it, if I didn't want to maintain it.

(LW) Are there any other questions from the board members?

(MG) Mike Graham - Mr. Lamberson, you made a comment something to the affect that road upgrades to that road were basically imminent. Does anyone know if that road is going to require upgrading because of one residence being constructed there?

(AL) Andy Lamberson - You probably should check with the fire department what their requirements are to get a fire truck or ambulance in there. If this becomes something other than a rustic road and they have to do the improvement to it to widen it to get the ability to get a fire truck, ambulance or possibly a school bus in there. If we no longer have a rustic road, a much wider road is going to affect that spring that feeds the river right there. Is there a plan imminent for updating that road or not?

(JS) Jenny Smith – No, there is no plan currently.

(AL) Andy Lamberson – I am on the planning commission for Hammond and we have approved some new subdivisions there and we have to make roads a certain width for the fire trucks to go down. That would be quite an expense for only one home.

(JS) Jennifer Smith - We covered that issue with the township when we applied for our driveway permit. They brought up the rustic road regulations and it stated right in the regulations that the township would not be required to upgrade the road after measuring it. That was one of the things that was brought up during the course of the decision on the driveway permit. We went through all of this there to get the driveway permit.

(MM) Mike Machaud – The road between County Road AA and the bluff is a lot wider than 12 ½ feet. It has washed out between County Road AA and the legion club. From the legion club another half mile back to this building location is where I physically got out and took the tape measure and went across the gravel surface and it is only 12 feet. We are in a crazy situation here, because the township ordinance requires an 18 foot driveway and they have a 12 foot road leading up to it.

(LW) Are there any other questions from the board? Okay. I would like to have a staff report.

(BT) Bill Thiel – I could ask questions of Mr. Kleinhans if you prefer. State your name for the record.

(JK) My name is Jim Klienshans.

(BT) What is your position?

(JK) County Zoning Administrator

(BT) You are the person on behalf of Pierce County that issued a permit or permits to the Smiths for construction of a house as an accessory Structure? Are you Not?

(JK) Yes.

(BT) When approximately did you issue those permits?

(JK) September 21, 2007.

(BT) Now this is for two buildings, a house and an accessory structure. Correct.

(JK) YES.

(BT) Are either of those structures in the floodplain?

(JK) The house is not located in the floodplain. It is in zone X on our firm maps. The accessory building there was a question about and I had a certified elevation. Mrs. Smith provided a certified elevation by a surveyor to indicate how high that accessory building was located above the potential house location. So we verified that elevation was approximately 8 feet above the residential site.

(BT) So you determined that the house was not in the floodplain and the accessory building is 8 feet higher than the house site. Is that correct?

(JK) Yes.

(BT) Did you consider staking of the site of these two structures?

(JK) Yes.

(BT) For what reason?

(JK) To verify compliance with all the setback requirements and to determine that the buildings as proposed that were consistent with the plans that were approved in the permit.

(BT) Now in effect you did perform a floodplain study under Chapter 238-A (b) of the Pierce County zoning code? Correct?

(JK) Yes. We did cross section analysis, we did onsite inspections, we verified conditions on the floodplain map were indeed adequate to provide for a building site.

(BT) Now section 238-6 of the floodplain zoning code indicates that maps and flood profiles of the official floodplain zoning maps and have approved by the Department of Natural Resources and if more than one map is referenced, the regional floodplain profile is covering boundary discrepancies. Did you consider that there might be a boundary discrepancy with regard to the Smith property?

(JK) I did, because it is so close and the fact that the stream bisects this property. We performed several site inspections and I had the assistance of the Dept. of Natural Resources staff to complete this.

(BT) Did a flood profile exist for this property?

(JK) NO.

(BT) Section 238-6 calls for reference to the procedure under Chapter 238 -8 in the event that there is a discrepancy. Are you familiar with that?

(JK) Yes.

(BT) I will read to you 238-8 (b). It states when profiles do not exist, the location of the boundary shall be determined by the map scale, visual onsite inspection, and any information provided by the Dept. of Natural Resources. Please describe what method you used to determine the sites of the house and the accessory structure were not in the floodplain.

(JK) We used the FIRM maps. That is the basis for the floodplain ordinance that is adopted by the county. We used scaling off the map. We determined that there was a building site between 20th Avenue and where the floodplain begins on the southwest corner of the property. We went out and verified the location for the building site. We had a soil tester submit an application for a septic system. He reviewed the soils that he identified and approved a mound system for the building site. We measured setback distances to shore lands, to the road centerline, to the building site, from the sewer system to the ordinary high water mark, and from side yard lot lines. We spent a considerable amount of time over the last few years researching this site to see what worked and what didn't.

(BT) When you were on the site, did you verify that the height of the site for the house and the accessory building were above the floodplain level?

(JK) Yes.

(BT) I believe you described that as being in zone X which is outside of the floodplain. Is that correct?

(JK) Yes.

(BT) Did you also review any surveying data provided to you by the Smith's surveyor?

(JK) Yes.

(BT) What benefit in that surveying data assisted you in arriving to a conclusion on this particular situation?

(JK) The surveyor presented information certified elevations, that the building site and the proposed accessory structure were above regional flood elevations.

(BT) You supplied this information for the board in your packet that you send them?

(JK) Yes I did.

(BT) Now, Did you consider any flood analysis data provided by the Pierce County Hwy. Dept in the processing of determining whether or not these sites were in the floodplain?

(JK) Yes. I reviewed the bridge design for the new bridge on County Road AA.

(BT) What relationship is that bridge on County Road AA to the Smith property site?

(JK) The bridge is located approximately a mile or so down stream. The bridge design was based on 14 square mile drainage area. The Smith property does not contain half of that drainage area. The bridge design referenced a temporary bench mark. All the FIRM maps and USGS quadrangle maps referenced National Geodetic datum, which is the basis for the floodplain maps. I met with the Highway Dept. on the bridge. We looked at the potential high water that the bridge was designed for. We indicated that elevation on the USGS quadrangle map that was submitted to our committee in the staff report for review. The elevation was highlighted in red at approximate elevation of 700, which does not approach the Smith property. It does not come within a quarter of a mile of the Smith property.

That is considering the entire water shed that is coming through that bridge.

(BT) So this data from the county highway department confirmed your field results and reference to the maps that you have on file. Is that correct?

(JK) Yes.

(BT) Now, I presume, Jim that in your capacity as a zoning administrator you determine to issue the permits in question on the basis that these structure sites were not in the floodplain. Is that correct?

(JK) Yes.

(BT) Is your opinion not in the floodplain to a reasonable degree of safety based on experience and training as a zoning administrator?

(JK) Yes.

(BT) Have you been called upon prior to this time to perform floodplain analysis under Chapter 238 of the Piece County Zoning Code?

(JK) Yes.

(BT) How long have you been employed as a zoning administrator here?

(JK) 13 years.

(BT) Roughly on how many occasions have you done this kind of work for?

(JK) Dozens.

(BT) Have you consulted with the DNR regarding the result of your analysis?

(JK) Yes, I checked with the shore land specialist and the Dept. of Natural Resources, floodplain engineer.

(BT) Who would that be?

(JK) Gary Lepak.

(BT) Did you receive any response back from Mr. Lepak as to the method of approach which you utilized in your results?

(JK) Yes. I would like to read that for the record. Based on your staff report it appears that you have followed the correct procedures. The floodplain maps that you used are correctly listed in your floodplain ordinance and are approved by FEMA and the Dept of Natural Resources. I am not sure of the mapping source of the information that was included in the appeal application. It was quite different from the information that I have. A comment about the FEMA floodplain maps for the area, it is called a flood hazard boundary map and identifies the general floodplain area. It isn't based on a detailed study, it is considered the official floodplain map and must be used by the county. If a detailed flood study or proof of an experienced flood shows this map to be in error, the county can use the best available data to clarify its decision. I am not aware of any information or actual floods that affected the building site location.

(BT) Now the appellant has indicated in his appeal that the county should have required a hydrological and hydraulic study to be performed in regard to the Smith property. Are you aware of that?

(JK) Yes.

(BT) Is it correct to state that the requirement performance of those types of studies is found under Section 238 – 17 of the floodplain zoning code?

(JK) Yes, it is.

(BT) Again you determined that the sites of the house and accessory structure are not in the floodplain. Is that correct?

(JK) Yes.

(BT) I will read to you section 238-17 it states that no floodplain development shall be allowed barring the production of the hydraulic and hydrological analysis. Based upon that section, was it required that a hydraulic and hydrological analysis be performed in regard to the Smith property?

(JK) Prior interested parties wanted to develop back where the Bixbys was. At that point they would have required hydraulic analysis to determine the impacts of building a road through Pine Creek. The Smiths elected to build between the road and the creek so there was no need for hydraulic analysis.

(BT) Once again, where they intend to build is not located in the floodplain is it?

(JK) That is correct.

(BT) Also in the appellants appeal he indicated that there was new information at or about the time of the issuance of the permit which had been provided by the Pierce County Hwy. Dept. Would it

be correct to state that to the best of your knowledge that would be the information that you relied upon in relationship to the County Hwy AA bridge?

(JK) Yes.

(BT) You did take that into consideration, correct?

(JK) Yes.

(BT) The appellant also indicates that it is his belief that section 238-27 of the floodplain zoning code applies. The title of that are standards for development in floodplain. Are you familiar with that section, Mr. Kleinhans?

(JK) Yes, I am.

(BT) Indeed, with regard to that section, sub (b) states residential uses. Any habitable structure including a manufactured home which is to be erected, constructed, reconstructed or moved into the flood fringe area shall meet or exceed the following standards. One of which is that contiguous dry land access shall be provided from a structure to land outside of the floodplain except as provided in sub (b) (4). Is it correct to state that the flood fringe area is one of 3 sub zones within the flood plain zone?

(JK) That is correct.

(BT) So in regard to the reference in 238-27 (b) to residential uses, this refers specifically to a proposal to build a house in the flood fringe area. Is that correct?

(JK) That is correct.

(BT) Then as to a house to be built in the flood fringe area is required that you have contiguous dry land access at all times. Correct?

(JK) That is right.

(BT) The Smith house is not being built in the flood fringe area is it?

(JK) That is true.

(BT) It is outside of the floodplain, therefore this section does not apply to this construction, does it?

(JK) That is right.

(BT) The appellant has also raised the issue of the application of provision of the WI. Administrative Code Specifically Chapter Trans RR-1 which deals with Rustic Roads. Are you familiar with that administrative code regulation?

(JK) Yes I am.

(BT) What is the basis of your familiarity with that?

(JK) I read the code and I am familiar with it. I spoke to Mr. Machaud about it during the processing of this permit and I discussed it with Mrs. Smith going through the permit process.

(BT) Is it your understanding that 20th Avenue which is the street which accesses the Smith property is indeed designated as a state rustic road?

(JK) Yes.

(BT) Based on your training experience of 13 years as zoning administrator for Pierce County, does Pierce County under its zoning code restrict or in any fashion limit the building of structures in relationship to there being sited along rustic roads.

(JK) No. There is no reference in the zoning code to rustic roads.

(BT) So the concept of rustic roads doesn't even appear in the zoning code.

(JK) That's right.

(BT) Does the concept of a rustic road appear as a matter of regulation in the floodplain zoning code chapter 238?

(JK) No.

(BT) So indeed when you are confronted with a situation such as this, were you determined that the building site is outside of the floodplain under Chapter 240 of the Pierce County Code, right?

(JK) Yes.

(BT) That is the Pierce County zoning code, right?

(JK) Yes.

(BT) Under the Pierce County zoning code if a party meets all of the criteria for purposes of issuance of a building permit, you are required to issue that permit, are you not?

(JK) Yes, that is correct.

(BT) Once again the provisions of Tran RR-1 related to rustic roads is not incorporated specifically or by reference in the Pierce County Zoning Code, is that correct?

(JK) That is correct.

(BT) It is not a factor which you consider in whether or not to grant a zoning permit under chapter 240 is it?

(JK) That is true.

(BT) I have no further questions.

(LW) Does the board have any questions or comments?

(EH) Ed Hanson – I do not feel that I am qualified looking at these maps and state that it wasn't in the floodplain. Jim, could you point out to me on these maps where you definitely show that it is not in the floodplain?

(JK) The shaded area is the blue line. Everything that is blue is the floodplain area on the property. There is over 200 feet from the centerline of the road to where this drops off.

(EH) Did you observe that ditch that I was talking about?

(JK) Yes.

(EH) What do you think caused that?

(JK) I do not know. Somebody else has owned that property prior and who knows if they farmed in there, or if it was water or if it was natural like that.

(EH) It appeared to me to be natural, but then I just took a look at it that one day. So you feel confident that this is not floodplain here.

(LW) Does anybody have any other questions of Jim?

(LW) Mr. Machaud you brought the action before this board so I am going to give you some minutes here to respond if you have any comment you wish to make.

(MM) I would like to say that Mr. Thiel did a good job of interrogation of his own client and did a real good job of explaining to you how Mr. Kleinhans came to the wrong conclusion here and that whole discussion was based on the assumption that the floodplain map was accurate. So you folks as the Board of Adjustment have the ability, the authority and the power to arbitrate boundary disputes on floodplain boundaries and that is what you are here for and are allowed to make those petitions to this board. Since we only have that FIRM map to go by, with no elevations indicated on this property on that part of the map it is not clear where floodplain elevation for either a base flood or a regional flood. You do have to scale a map and it is difficult to interpret. It is not accurate in the first place and I would just like to speak a little more about County AA bridge. I talked to Jim a little before the application was filed and made him aware that there was bridge information available from the Dept. of Transportation. It appeared to me that during that phone conversation that it was new to him that there was information available. So, between the day before and the day of the application, it was my understanding he did make a call to Mr. Harris from the Dept. of Transportation and talk about the map, but I do not know for sure that he had the maps in his possession or that he did a thorough analysis of the information on the map. If you look at the actual FIRM map, it does show that the elevation at that bridge is 700 feet. It is true that if you go a mile up stream that the elevation is going to be higher than that bridge. The issue here is not elevation, it is hydraulic loading. It is true that there is 14 square miles that drains down to that

County AA bridge. It comes from 2 different branches of Pine Creek. There is an east branch and a west branch. The east branch has a little less than half of the 14 acres of drainage coming down it. The real question is, how many cubic feet per second are flowing by that building site and what is the flood profile across that valley floor and what does that translate into in terms of an actual 100 year flood elevation? Prior to that bridge data, all we had to go by was this FIRM map. Now we have a hydraulic study that has been done by Cedar Corporation. We have the model in the computer that can run another analysis at this spot a little bit further up stream with hardly any trouble at all. We can determine where the boundaries actually are at that point on the Smith property. We are saying that you cannot say definitively from those maps what the elevation is. That is the problem with those maps. I am sure you guys have run into floodplain issues all the time. It is your job to take a look at that. Mr. Thiel referenced the procedure that Jim goes through under chapter 238 to determine floodplain or not. Under 238-43, when you have a boundary dispute, when there are no floodplain elevations or profiles and in this case none exist. Other evidence may be examined. You have heard lots of testimony from people here to day on how serious flooding is in that area. Mr. Kleinhans approved the land use permit the same day it came in his office and has been rushing into letting these people build and getting themselves washed out and creating extra cost for taxpayers and try and rescue people to get in there. Let's find out whether it is in floodplain or not. You cannot tell from that FIRM map and that is the issue here. I want to speak a little bit about Mr. Thiel's paper that he just gave to you. I did have the luxury of getting a copy of that today and one of the issues he raises in that paper is we might not have standings.

(BT) I withdraw that argument.

(MM) Thank you Mr. Thiel, I appreciate that. I would like to point you to page 2 of this response. In Chapter 238-3 Statement of Purpose is intended to regulate floodplain development to protect life, health and property of the Smiths. Also to minimize rescue and relief efforts undertaken at the expense of the taxpayer and minimize the occurrence of future flood blight areas in the floodplain. Anything that washes down off of their property, whether it is at their house or 200 yards away from their house and will wash down stream, it is going to run in that trout stream. That trout stream is protected under state law. One of the purposes of this whole code is to discourage the victimization of unwary land and home buyers. The Smiths didn't understand that valley when they came here. Your roll here is to act in the public interest, preserve the health, safety and welfare and to minimize the cost of the tax payers and to protect rustic road.

(BT) I would direct the attention of the board of the staff report by Mr. Kleinhans dated October 25, 2007 specifically to the extent that he did consider the flood data in regard to the County Hwy AA bridge, which reflects that flooding over the new bridge would impact ground elevations at 690 feet to 700 feet above sea level. If you will look further on pages 5 & 6 he states the subject property and this is based on not only his reference to the FIRM map, but his site view as ground elevations of the building site higher than 740 feet higher above sea level according to USGS data. The stream gradient of Pine Creek must be considered for the potential encroachment over such distances. It wasn't a matter of procedure that I was questioning Mr. Kleinhans on, but instead his method of approach as resulting in an opinion that he was comfortable with based on his training experience that the Smith property was not in the flood plain.

(LW) Mrs. Smith, your interest is affected by the decision of the board this evening, so if you have any comments, I would like to hear them right now.

(JS) I pretty much said it all in my last statement.

(LW) Jim, do you wish to give a staff report at this time?

(JK) A turn around will be installed for township trucks. I am confident that the emergency equipment and the plow trucks won't get stuck in their yard. I have checked with the Dept. of Natural Resources as far as endangered species in that area and the National Heritage inventory did not project any hits on that property. So I consider that being in a sensitive area. I have done a lot of research in that area I went out and beyond what we normally review for a residential building. I know that rustic road talks about low density development and this area is not zoned for low density development. I consider how it is zoned and what is permitted. I looked at the site numerous times. I talked to many people about their interest in that property and after numerous site visits, I determined that the building site was approvable and so I issued the permit.

(EH) Ed Hanson – The road itself is feet higher than you cleared off there. So somehow there is going to be some gravel for crushed rock built up as the road comes out from there for the turn around for the trucks. There will have to be quit a bit of fill hauled in there to bring that site level up with the road. I just wondered if that has been addressed at all.

(JS) Yes, it has.

(EH) I suppose I should feel comfortable that everything has been done, but yet I feel that there seems to be two pretty strong feelings here as to whether or not this is in the floodplain or isn't in the floodplain and right now I don't feel confident that I could say whether it was or whether it wasn't.

(JK) Ed, I did do a cross section from the road out to the building site and down through the stream bed. I will give you an idea what those elevations looked like. I used a temporary bench mark of the road bed as 100. At the building point it is about 98.5 feet so it drops down about 1 ½ feet. At the edge of the stream bank where we would determine where the ordinary high water mark is, it is at 97.3. Bottom of the stream bank is about 89.8, so it drops down about 9 feet down to the bottom of the bank. On the other side of the stream, the north side of the river bank it is up to about 98, so it is pretty consistent with the elevation at the building site. The sewer area is 101.5 which is about a foot and a half above the road elevation. I understand that it does drop down a little bit from the road, but they need to put a driveway in there and get their house set in there as well.

(AL) Arby Linder – Jim, I am correct if I say that the township gave them a driveway permit to that place?

(JK) Yes, we did not issue them a land use permit without it.

(LW) Does anyone else wish to speak?

(JH) John Higley (Attorney) – I am here to offer advice that you think you need.

(LW) Do you have any questions regarding the legality of the floodplain maps? These are maps that are of legal record of our county. That is the document that we are supposed to rely on for our decisions here.

John Higley (Attorney) – the decisions that you need to make are whether or not the zoning administrator either abused his discretion in determining that the dwelling was in a floodplain or outside the floodplain. You would need to determine whether the factors that he examined in terms of the on site data of the elevations and the individuals that he consulted with somehow wasn't an unreasonable investigation. You would also need to conclude that the work that he did was then unreasonable and therefore the conclusion he reached was unreasonable. I do have one comment about the rustic roads issue. You will see some information in there from Mr. Thiel in terms of the rustic road program and 20th Avenue's designation as being a factor in the issues that are before the board here. It is my opinion of the board that the rustic roads designation is not a factor that should enter into your deliberations. To take it one step farther I don't think that the rustic roads program places much of any obligation on even the county board to do that which it thinks is necessary for a roadway. The county has not chosen to include the rustic road criteria in its zoning or in its floodplain zoning ordinances. Therefore they have not offered that to this board as a factor in deciding appeals from decisions from the zoning administrator.

(LW) Are there any other questions amongst the board?

(SW) Susan Wilkens – Is it possible to ask a question?

(LW) Yes, if you keep it short.

(SW) Susan was sworn in by Vice Chair, Lee Wright. Susan stated her name and address as being W3601 2nd St., Maiden Rock, WI. I had a conversation with someone with authority on the staff here in Pierce County and that individual stated that the floodplain maps that are used are inaccurate enough to have had an area that was on the bluff 300 feet up in Diamond Bluff zoned floodplain. It was made clear to me that these maps are not highly accurate and that, it needs to be taken into account. If in a situation like that an area on the bluff 300 feet up could be zoned floodplain. I think that also one could speculate that an area in a valley that isn't zoned floodplain could possibly be in the floodplain and I think that it needs to be taken into consideration.

(LW) Any other questions or comments, and if not I would like a motion.

(EH) My only comment is that I have watched it in the spring and I know how fast these floods can come up and how fast they can move. I know that we are quite a bit higher than the floodplain that was put there 100 years ago and somebody knew something about where you build a house. If I were building, that would be one of my considerations is to be absolutely sure that you don't get caught in a flood. I helped clean out after the Spring Valley flood and I happen to know what it is like to shovel mud and I hope that you are positive where you want to build.

(AL) Arby Linder – I was born and raised on the Rush River. I have a very difficult time both ways with this because I work with Andy all the time as head of the Eau Galle Rush River Sportsman Club protecting sport streams. That is our job and this is what we do as volunteers. I worry about the sewer. I am sure Jim has done a good job on it, but as a conservationist it really

worries me. I live on the Rush. We got flooded out several times and I still get flooded out. Would I rebuild there? Never.

(KP) Ken Peterson – I believe the office did do diligence in researching this well beyond for this project. On the basis of that I would move to authorize the construction and reject the appeal.

(LW) Motion has been made to uphold the decision of the zoning administrator in regard to this building permit. Is there a second to that?

(MG) Mike Graham – I will second that motion.

(LW) A motion has been made and seconded to uphold the zoning administrator's decision in approving this building permit. All those in favor signifying by saying aye.

Approval from Ken Peterson, Mike Graham
and Ed Hanson.

(AL) Arby Linder – I am going to sustain because of my position.

(LW) Three is a majority and majority rules. The zoning administrator's decision is upheld and the building permit stands as issued. Again you have 30 days to appeal this decision in court in this county. Mrs. Smith, also during that appeal period there is a possibility that this decision could be over turned by the courts if they wish to pursue it. My suggestion is that you seek advice prior to starting construction during that window of time where the appeal could be challenged. Is there anything else?

(LW) Lee Wright – A motion was made by Arby Linder and seconded by Ken Peterson to adjourn. Motion carried. Meeting is adjourned at 8:54 p.m.