

Oneida County Board of Adjustment
Tuesday, March 12, 2013
1:00 pm – Committee Room 2, Second Floor
Oneida County Courthouse, Rhinelander WI 54501

Chairman Harland Lee called the meeting to order at 1:00 p.m. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Norris Ross: "here", Guy Hansen, "here", Harland Lee, "here", Phil Albert, "here", Bob Rossi: "here", John Bloom: "here."

County staff members present: Peter S Wegner, Assistant Zoning Director; Lila Dumar, Secretary III; Brian Desmond, Corporation Counsel.

Other individuals present: See Sign in Sheet.

Chairman Harland Lee stated that there had been a question as to the jurisdiction of the Board of Adjustment in this case. The Board has reviewed the information provided by Mr. Speerschneider and Corporation Counsel Brian Desmond and has determined that the Board does have the jurisdiction to hear this appeal. The appellant has filed an appeal with the board and we are addressing that appeal under the jurisdiction that is provided to us under state and county ordinances.

Chairman Harland Lee stated that the public hearing will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. The Board of Adjustment is made up of five regular members and one alternate, both being present today, who will take part in the hearing until the public hearing is closed, at which time alternates will not take part in the deliberation. Anyone wishing to testify must identify themselves by name, address and interest in the appeal and shall be placed under oath.

Chairman Harland Lee swore in Peter S Wegner, Assistant Zoning Director; Mark and Julia McDonald and Tom Blake, WDNR.

Secretary Phil Albert read the notice of public hearing for Appeal No. 12-008 of Mark and Julia McDonald, 4808 Helgeland Drive, Sun Prairie WI 53590, requesting relief from a discretionary enforcement letter dated September 20, 2012 from Peter Wegner, Assistant Zoning Director, regarding steps to be taken to comply with Section 9.32 A Zoning Permit Requirement; Section 9.94 A(2) (d) (6, 8 and 9); Section 9.94 A (3) (d), (f), (i); Section 9.95 A (1), (2) & (5); Section 9.97 Shoreland Alteration Permits, Chapter 9, Oneida County Code of Ordinances.

The Notice of Public Hearing was published in the Northwoods River News, on February 26

& March 5, 2013 and was posted on the Oneida County Courthouse bulletin board on February 19, 2013. Mr. Albert provided the proof of publication; and noted that the media was properly notified.

Secretary Phil Albert noted that prior to the public hearing on today, the Board visited the site at 2109 Nancy Drive, being Lot 31, Doolittle Barden's Nokomis Shores, Section 34, T36N, R6E, PIN #NO 1077, Town of Nokomis, Oneida County, Wisconsin. Observations of the Board: Property was snow covered. Boat house was observed from the deck of the home and from the shore. Property boundaries were not marked and there was snow cover. Well and septic was identified. Outline of construction adequately marked by the structure itself and stairways down to the boathouse have been shoveled and were visible. The measurements used were those on record based on Peter S Wegner, Assistant Zoning Director's measurements from an earlier date. Property drops steeply to the shore from the house. No erosion was noted due to snow cover. The new boathouse was within the view corridor, had been re-roofed from a flat roof to a slanted roof (apparently after the violations were cited.) The stairs to the house go directly from the house and are within the view corridor and in the center of the lot and then circle to the right around and through some adjacent trees. Two doors were noted in the boathouse. One in the front, a sliding glass door, and one in the rear of the structure, both on the right hand side facing the lake. The property does steeply decline down to the water. More steep on the right side than on the left.

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the County's or opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. You may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

SWORN TESTIMONY-APPELLANT.

Mr. Speerschneider: Thank you. I want to provide just some very brief introductory remarks. I'm not sure of all the file materials you have in front of you, so I'll try not to duplicate. My name is Timm Speerschneider. I am an attorney from the law firm DeWitt, Ross and Stevens. I have been in land use litigation like this for 25 years. I am familiar with the format. I want to renew the jurisdictional objection just so it is clear for the record. As we set forth in our original and subsequent submittals, the McDonald's do not believe that you have jurisdiction over a discretionary enforcement letter. The ordinances are very clear as to what the enforcement procedure should be. Just so the objection is noted. I want to begin with the document that is being appealed from...September 20, 2012 letter from Peter S Wegner, Assistant Zoning Director, where the compliance steps are identified. Just briefly, from our perspective and lay out where we think the disputes are. The first was (A)

"You will be allowed to keep the retaining walls 35-75 feet from the OHWM." We would agree with that. We think there is some confusion regarding that. Because when you look at the drawing and from the site visit, there is a retaining wall or certainly a significant part of a retaining wall as it relates to the boathouse structure on what you refer to as the right side, looking out at the lake. And what I refer to as the north side of the boathouse that is within that 35 ft area. When you look at the drawing attached to the letter, it has that area crossed out. And when you look at the picture, it has "removed retaining wall." That wall that you are looking at right there as it extends out from the boathouse is outside of 35 feet. So, we think that there is...we would certainly agree that we are allowed to keep the retaining walls that are between 35 – 75 feet and we believe that the wall that is shown or a good portion of that wall is outside of that distance. The second, (B) *"You must reduce the steps to 4 feet wide in those locations where they currently exceed 4 feet maximum width."* Mr. Mc Donald will explain a little bit more about the nature of these steps and how they are snap stone and how they are not precise measurements. But there is a series of steps, the steps that as you walk down the center that are in excess of 4 feet. We believe they should be allowed to be maintained. That there would be significant erosion caused by the removal of those stairs at this point in time and reduced to the 4 feet maximum width. The next is (C) *"Reduce the patio square footage to 52 sq ft."* Quite frankly as Mr. McDonald will indicate, the patio doesn't serve any purpose now that there is the pitched roof on the boathouse, so we don't need to have any patio square footage. What we do need, is four feet of steps. And that patio extends out where actually what we would propose to do would be just to leave a four foot wide curve as you went down to the boathouse and just leave that and remove all the rest of the patio square footage, which I believe was a total...I think close to 200 square feet. Mr. McDonald will be able to discuss that. (D) *"Remove the existing flat roof and deck or replace it with a roof with a minimum pitch of 2.3:12"*. I think you saw that that was done. The replacement option was taken and that should be in compliance. (E), (F), and (G) I think is where the heart of the dispute is. And that's (E) *"Remove all retaining walls located between 0-35 feet from the ordinary high water mark including the retaining wall located on the west corner of the boathouse."* We believe that the retaining walls are essential erosion control features of the property at this point. That they are an integral and they should be allowed to be...those parts of that retaining wall that are within 35 feet should be allowed to be maintained. And then (F) *"Remove the stairs that have been placed outside of the view corridor."* We believe that these stairs are visually inconspicuous and that they are permitted under your ordinance under Section 9.95 (A)(2) and 9.94 (A)(3) where visual and inconspicuous stairs are allowed outside of the view corridor. And finally, (G) *"A new permit may be obtained to place the stairs along side the boathouse meeting all requirements of the ordinance."* We don't believe that that is necessary. There have already been two permits...actually there is a third permit that was issued for the house. But there are two permits, shoreland alteration permit that was already issued, and a zoning permit that was already issued to the extent that remedial action has to be taken. That can be taken in the confines of those permits and simply be amended to reflect what the Board ultimately decides. So that is sort of a summary of where we believe the dispute will be. What I want to do is just provide a little be of what the basis for the appeal, again, even though we don't think we should be here. The essence

of the argument is that the County knew, or should have known, based upon the application materials, particularly the part of the application, and I think you have the applications in front of you and I think you probably reviewed them. But those that talk about the elevations. And when you look...there are duplicative drawing with regard to the shoreland alteration and zoning permit application as they basically require the same thing. But when you look at the elevations, the north side elevation in particular, and you can look at the south side elevation. But the north side elevation is where the door is, where the retaining wall is, and when you look at that, it is incumbent, at least from my eye, non-engineering eye, that there is going to have to be some sort of erosion control feature in order to gain access to that doorway. And those materials, in addition to the inspections that occurred, made it clear that there had to be some sort of erosion control feature, and that there was going to be some sort of retaining wall that was going to be located at that location. In fact, the permit essentially should be amended to allow for the location of the those features and the steps. It was very clear when you look at the photographs, that when the inspection occurred when the forms were up, that the stairs were going to be removed and relocated. Now Mr. Mc Donald is going to testify in more detail as far as the actual process that he underwent to obtain the permits. I just want to comment on and bring your attention to is your ordinance does not require that there be engineer drawings submitted for this type of building activity. And what Mr. Mc Donald will testify to is that he was basically told that this was a back of a napkin type of drawing. I think that's good. That every land owner does not have to go out and hire an engineer and have detailed engineering drawings. But when you have an ordinance that allows for that, there is often times, there becomes a situation where it may not be entirely clear what is being proposed and what is being constructed. I come from Madison. They measure things to the ¼ inch. And you have to have an engineer with a very very specific drawing that accompanies any type of development project. But here your ordinance does not call for that. I think you compensate for it. And I think when you look at both the shoreland permits, your permits specifically say, call Oneida County for an inspection when and before concrete is poured. Okay? And that was done in this instance. And what I am going to hand out are photographs. The key photograph is this photograph and there should be copies for everyone. This photograph was in Mr. Mc Donald's appeal documents; and it is from September 28, 2011. That you should have. These three photographs, I don't believe that you have. What they show in the summer of 2009, the photograph shows the site before. There are two more, these are post construction activity. They are dated 4-20-12 and 7-9-12. And finally, there is a document that Mr. McDonald had in his file, that when I made an open records request, it is not in the county's file, but it does have county zoning staff handwriting on it. That I am going to hand out as well. What is not in that picture is that the steps have not been constructed. What you look at the later picture after construction, that actually has the steps, you can see in the far left corner and they definitely are inconspicuous. I just want to call out a couple of things. The before pictures, so you can see what the site was like before; and those of you that were there today, you saw the boathouse that is off to the north. But you can also see that there was essentially a nonconforming structure or shed that is back in those trees. That is between the canopy and the boat. You can see the steps as they clearly go down all the way to the ordinary

high water mark (OHWM). And then you can see this, some sort of rock garden feature or something that is off to the south. It's always helpful to have a sequence of pictures. As you can see, the stairs are gone, you can clearly look at this and see that there is going to be some sort of erosion control feature there in order to gain access to that door. Again, you can be critical of Mr. McDonald not having precise drawings. The drawings he submitted are with the applications, but this is a shared responsibility. That is why the county does come out before you start investing significant money and it is why they want to check the forms as to how they are located and how the site is configured. And the final exhibit is the handwritten drawing, and again, this was not in the county's file that I requested, but it was in Mr. McDonald's file. We believe it was prepared by Mr. Krueger at some point after January 25, 2010. You can see how he has the stairs. They are essentially going through the boathouse. So there is some recognition at some point that the existing stairs were going to be removed and they were going to go off to the side. So, I just want to wrap up my introduction by...if you compare the 2007 picture with the July 2012 picture, what you can see is that the impervious area has actually been reduced within the 35 ft setback. There was a significant reduction in the amount of stairs as they came down to the ordinary high water mark. The non conforming structure has been removed. And that rock garden to the south has also been removed. As a result of this project from an erosion control perspective, the site is actually in better condition. So, I'll just let Mr. McDonald....

Mr. McDonald: Thanks for putting up with us and the process here today. I know you guys have received most of this, I'm going to reiterate. But I want to give you just kind of a highlight of where we have been and where we are. We bought the property you visited today about six years. In early 2008, I contacted county zoning to talk about the possibilities of putting a boathouse on the property at 2109 Nancy Drive. I was pleased to hear that it could be done and was at that time made to understand that a flat top boathouse was also possible provided that the grade allowed accessing it without having to add stairs to get up on top. So the lot had to be such that you could do that. That was in early 2008, when I made my first inquiry. We got more serious about doing that. And I had heard rumors that the potential was coming that there were going to be no more permits issued for boathouses. So I got more serious about doing something in late 2009. I made inquiry and spoke with Jeff Krueger from the zoning department. To the best of my recollection, early 2010, January most likely, I spoke with him on the phone and basically found out what is the process to put in an application to build a boathouse. We had a good discussion. It was in that discussion that the comment was made to me, because I asked the question, "Do I need engineered drawings?" "Absolutely not. You can do this yourself. It's as simple as jotting it on the back of a napkin." That is the quote that I was given. I did not need engineered drawings. So Jeff Krueger sent me a packet of information that would allow me to complete the application for the permit. And along with that packet came the drawing. Now, the real estate inquiry came along with the packet that Oneida County Zoning sent me. The drawing on here, I presume, is Mr. Krueger's drawing. Well, how did he know the lay of the land in order to do this drawing? Jeff Krueger and I had an onsite visit meeting together in March of 2010. At that time I wanted to place the boathouse adjacent to the neighbor's to the north, who has a boathouse. I wanted to put mine next to his. Over off

to the side, on the flattest part of the lot, outside of my viewing corridor which at that point in time, I didn't even know what a viewing corridor was, but essentially I didn't want to have to look at it. Jeff explained to me that that is not how it works. If you want a boathouse it goes in your viewing corridor. Okay. So what's my viewing corridor? It's what you look out. It's the clearest spot on your lot. It's what you look out. And Mark, on your lot, its right where your stairs go. That stairway, going down to the water, confines your viewing corridor. So when I got the packet of information including the information form, this was with it. This exhibit that we shared with you today--it show's the 30 ft excavation allowed, the fact that we can go back 40, it shows all of those things with my stairway right down the middle of where I should build my boathouse. And again, as the letter we wrote dated July 9th, we contacted contractors. But there was some delay and some time involved in actually getting to a point where I filled out the application and sent it in. I did that, late July, 2010 roughly. So in March, Jeff and I had walked the property and he had given me the guidelines of what you need to do; this is where it needs to sit; you can't be where you wanted, etc. My application is dated June 25th, so that is when I sent it in. On August 9th of 2010, Jeff Krueger and Pete Wegner came out to visit the site. The permit had not yet been issued. I happened to be at my lake home that day. And the purpose for their visit that day was to again look at the site, look at my application and are we going to grant this permit. From my recollection, the biggest concern with granting the permit was the slope, the grade of the land which I think I understand needs to be under 20%. I recall Mr. Wegner and Mr. Krueger and myself being there and discussing it for maybe 15 minutes that day. And it was understood following that impromptu meeting, and again, I was there by happenstance. Yes. The lot would support a boathouse and the permit was issued. I ultimately hired a contractor, Kring's Construction; they are neighbors of ours; they have a weekend home on Nancy Drive. Talked to them about doing the boathouse, they came over and agreed to do it. They quoted a price and in the process of that I let them know that I had some grandiose ideas about redoing the house as well and would they be interested or what were their thoughts on that. That's was evolved into the doing the house at the same time. Let me back up a little bit and talk about a little bit more about the application that I submitted. I did all the drawings myself. So the application that I submitted had a sloped roof on it. And I did that for a couple reasons. One was money concerns and two was the grade to allow a flat top. So I submitted my permit application with a sloped roof. My drawings, again, were done to the best of my ability. I didn't use any equipment in shooting the slopes. I could only estimate how deep in the ground, and you guys saw it today, the southeast corner of the boathouse is on the steepest part of my lot. How deep is that going to be under ground? Where do we place that? Again, as Mr. Speerschneider said, I appreciate the fact that going through a process like this the County does not require architectural drawings, and all this. But I'll sit here today and say I damn sure wish they had. We would have avoided a lot of the mess. I did those drawings to the best of my ability. We referenced the one drawing on the north wall, the wall that is adjacent to my neighbor's boathouse, were I drew in approximately grade, well above the service door. I needed to do more apparently. I needed to draw a bolder wall, I needed to draw a retaining wall, but I didn't do that because I am a novice. I was told I could do it on the back of a napkin. I did a little better than that, but I am a novice. The diagrams that I submitted with the

application show our existing stairway in a dotted line. I didn't believe there was any way, in fact, I never intended to save the existing stairway and walkway. I am a novice, but how do you maintain a railroad timber and brick stairway in a process like this? My original application asked for a 8 x 20 concrete apron on the front of the boathouse. One of the things I got feedback from the county on was you only get 4 because 8 would push you too far into the bank, you will be under ground in the back corner. So we pulled it back to 4. I think there are notations on the permit that was actually issued, crossing off the 8 and overwriting 4. So the permit was received, dated 8-10-2010 and issued from the department the day after Mr. Krueger and Mr. Wegner & I were on site looking at the grade and all that. We actually started work on the boathouse project on about September 8 or 9 of 2011. So from the time that the permit is received in my hands and we start, a year goes by before we start work. And this is in part because of contractors, we start talking about the house. Are we going to do them at the same time? And we decided this is ultimately where we want to be. Where we want to retire. We like the area, we like lake, we like the lot, we like everything. So let's go ahead and do it all at one time. What's the sense in tearing a property up twice? Let's do it all at once. So we commence the construction process on the boathouse simultaneously with the house in September of 2011. We've got a gentleman here from Arnott Trucking who did the excavation on the boathouse as well as the house. He may have a better date, but again, somewhere around Labor Day of 2011. Kring's is the contractor that is working for me. They line up Amelse Concrete out of Merrill to do the concrete. Amelse poured the forms for the footings for the boathouse on the 14th and put the wall forms up later in the day. The 14th of September. My permit stated that once those forms were up for the walls, you need to call the county. And they need to come out and inspect. And we did. We called them on the 14th and Jeff Krueger came out the same day. And he gave approval to the Amelse crew that they were good to go. This was fine. This is where, coupled with a novice doing the drawings, and the county accepting a novice doing the drawings, this is where we went south. Because I never heard anything was wrong about where this boathouse sat or what was happening until June 22, 2012. When Jeff Krueger came out to inspect and give the approval that they could pour the walls, all the steps on the property were gone. They had been stripped. There was no walkway. There was nothing. At that point there was no way to save the walkway and the packet of information that I provided with my letter back the county, I showed a drawing that says, This is where the old steps were and now we have these two new structures, a boathouse and a larger house and 60% of those existing steps would be under those two structures. So when the county comes out to inspect on September 14, 2011 that stuff is already gone. The form has been set for the service door in the front and it is clear that it is well under ground. Just as my drawing anticipated, the novice, sure enough it is underground. And it was apparent and obvious to me that there needed to be some erosion control to retain the hill to access that door at that time. My position is that if the county believed we are not going to allow you to do that, now is the time say it. Nothing was said. We continued with the process. We've got pictures of the forms standing. The upright forms for the walls were actually poured the following day, the 15th. They were subsequently, those walls were back filled on September 22, 2012 so the floor could be poured inside the boathouse. So this is all moving forward. Now, I mentioned that we also have and its in my letter, we

also have a house project going on now that we decided to do simultaneously. Krings is also building the home. They have been in contact with the county about the home, and there have been different stories about whether or not Krings's needs to pull a permit to do what they are doing with the home or if it is a remodel. Quite honestly, what we did, and you can see in the pictures, I wouldn't call it a remodel. It was pretty significant. He got direction that you don't need to pull a permit for this, but he couldn't believe it. He kept coming back and he said, we are getting mixed stories; I am going to pull a permit. My point here is that in pulling the permit for the home, we had another onsite inspection. Oneida County came out and again, it was Jeff Krueger. He came out to our site to inspect and do setbacks for the home. And if you look in your materials you've got a copy of the permit that was issued there and there is a setback measurement that is made from the OHWM to the home. And it is marked 88 feet. And the line that is drawn go right down the side of the boathouse where the excavation is and door is and the steps no longer are. Nothing is said. Whoa, wait a minute. Nothing is said. So again, we go forward. Once we got the boathouse in, the backfill done, we realized that we were at grade, and I made the determination to go ahead and do a flat top. I learned later, that when I pulled my permit that flat tops aren't allowed anymore. You can't do that. I would have known that had I asked for it. But I didn't ask for it. I assumed you could still do that. I was wrong. As you can see and as we discussed last summer when I met with Mr. Wegner on the site, I understand and acknowledge my mistake, I'll put the peaked roof on. And we have done that. So I am going to reference a couple of these pictures and point out some highlights. The summer 2007 picture, this is before I am even thinking about doing a boathouse. As you look at this picture, the left side of my lot is roughly where the little fishing boat is, pulled up on the sand, is much flatter than the right. Moving a boathouse further right puts me underground. Mr. Speerschneider mentioned when we bought the property there was a non-conforming storage shed within 35 feet of the OHWM that was 5' X 8' in dimension. To the right we have again, existing when we bought the place, and quite ugly, I might add, a rock garden. In the process of doing what we have done with the property, we removed both of those. And we've got probably 300 square feet plus of nonconforming structure within 35 feet of the OHWM that we have eliminated as part of our project here. If you look at 4/30/12, we've got the majority of our majority control in, including the retaining wall to access that service door. We still don't have any steps in. And then if you go to the last picture, 7/9/12, this shows the finished project. Ironically, it was taken on the day that I sent my letter back to the county. But at this point, the things I want to point out—the rock garden gone; the storage shed gone; the stairway that goes outside the viewing corridor is in the picture essentially in the same position as the storage shed was and a little bit above it. Whether or not you could see it today with the snow, we did not carry that walkway all the way down to the ordinary high water mark. Our old walkway went right to the ordinary high water mark. This walkway ends 28 feet back from the ordinary high water mark. So as soon as we get to flat ground, we are on natural sand and natural grass and whatever. Again, you can see here, we have vegetated; we've done what we needed to do. We had been prepared to start vegetation between the house and the top of the boathouse, but based on the letter of June 22, we didn't do it. We didn't spend the money. Again, you probably couldn't see this today, but you can in the pictures. The materials we

used in the project were all natural materials. We didn't use any stacking foundation blocks, we used natural block for that. We used natural snap stone for our steps. The reason that this is somewhat important is that snap stone is not a cut stone. It is not a precise measured stone. They literally break it in the quarry. It is different thicknesses. They try to keep it as close to 7... The dimensions of it, they are not square. They are odd shaped. Odd width. That is what we used. It is a natural product. The stairway that we took outside the viewing corridor was taken that way because there isn't space without removing mature trees between the erosion control wall by that service door and the existing large pine that you saw today. There is not room to do a stairway there. Especially without some kind of a hand rail or something. So we took them out through what you walked on today. Did I miss anything? Have I left anything out?

Harland Lee: Does the Board have any questions at this point?

Guy Hansen: So you had four onsite inspections?

Mr. Mc Donald: 3. Again, March 2010, Jeff Krueger and myself walked the property; August 9th; and then on 10/31 or 11/1 of 2011.

Mr. Speerschneider: You are missing the one where they came out to check the concrete forms. But you weren't there.

Phil Albert: When you originally did your drawings and planned for the two doors on the right side there, what was your intent at that time in terms of access to that side of the boathouse?

Mr. McDonald: My intent was to access the boathouse at the front, so that the controls...my design and my intent the whole time was to put two boats in.

Phil Albert: What was your intent the whole time as far as getting to the location of those two doors. You had two doors in your plan. How were you going to get to them?

Mr. McDonald: It was going to be a walkway similar to what we had. I never planned, thought or intended to do any kind of elevated wood stairway or anything like that. It was going to follow the contour of the land.

Phil Albert: How did you express that in the drawings that you made?

Mr. McDonald: I did not. I didn't realize that I had to. The only shoreland mitigation that was indicated to me was that I couldn't mow my grass within 35 feet of the OHWM.

Mr. Speerschneider: I just wanted Mr. Luttrupp, just briefly. Regarding the excavation.

Mr. Luttrupp: When we got there, there were stakes in the ground. We started digging....not audible.

SWORN TESTIMONY – COUNTY

Mr. Desmond: First thing, I have some case law that is pertinent to this matter. (Exhibit F). I think I need to bring to your attention here, is paragraph 11, 12 & 13 on page 5. This is a case that came out from Waukesha County. It was a zoning Board of Adjustment case where an individual was asking for a variance. What applies here, in that case, is that they determined that *the self created...the existence of a porch is not self created because he relied on assurances of the zoning inspector and therefore, it was not a self made hardship. We are not on a variance case here today, but the Court ruled that to allow this contention would constitute an estoppel of a municipality from enforcing its zoning ordinance. The rule of law in this state is clear that no such estoppel may arise against a municipality for the unauthorized acts of its officers. Even if the inspector issued a building permit, such permit would have been void as issued for a structure which is forbidden by the ordinance. Thus, the mere statements or assurances of the building inspector cannot confer such a right. The appellant is charged with knowledge of the zoning ordinance.* What is important here as we look through all that has gone on here, a lot was made of Mr. Krueger and Mr. Wegner being at the site. But it is important to note that they could have issued a permit for anything there. They could have said, "You can build a house here, by the lake shore." But, they don't have a right as staff members for the zoning department to change the legislative intent of the County Board which is expressed by the zoning ordinance. As a follow up to that is the Willow Creek Ranch LLC case. It states in that case too, *"that it is well established that erroneous acts or representations of municipal officers do not afford a basis to estop a municipality from enforcing zoning ordinances enacted pursuant to the police power."* The reasoning they give in this case, is that *"binding municipalities to every representation made by subordinate employees would produce severe results for the municipalities. Endless litigation would ensue over the words of those employees, and important municipal decision would be delayed pending resolution of those suits."* I just want to make you guys very clear as to what the law is in this regard. Their argument that Mr. Krueger knew or should have known....but regardless if he knew or should have known, he could have given them a permit for retaining walls in that spot, and the law clearly states that that permit would have been void. Any assertions he made, are not binding upon the County. It is unfortunate that we find ourselves in this situation, but again, if you look through the permits that have been submitted, I don't think zoning could have any other indication but the fact that the stairs were going to come right down next to the boathouse. If you look at his application that he submitted, which if you look at the dates...the one he submitted sometime after January 5, 2010. The only thing the County has to go on is the zoning application and that shows the existing stairs, and that the boathouse and stairs are going to be within that 30 foot viewing area. I guess at this point, I will ask Pete some general questions, focus his testimony so we don't take too much of your time, Mr. Lee.

Mr. Desmond: Mr. Wegner, with your initial visit to the site with Mr. Krueger, was that to determine where the placement of the boathouse would be?

Mr. Wegner: Yes.

Mr. Desmond: Can you explain kind of what you did there? What you determined based on your onsite?

Mr. Wegner: Jeff was at the site some time in March. And he had concerns regarding whether a boat house could be placed on the property due to slope and the existing view corridor. So the reason I was there with Jeff was to try to locate this specific area that would not exceed the 20 % slope; because if it was more 20%, the permit could not be issued. I was there on the 9th of August, 2010 with Jeff. At that time we located the only area that did not exceed 20% -- directly adjacent to the existing stairs. And as Mr. McDonald said, any further to the south would have been at a steeper slope; any more to the north he'd be out of the view corridor and in the existing wooded area. So that was the intent of the second inspection.

Mr. Desmond: We do allow people to submit hand drawings and when he submitted that drawing, is that what zoning relies on?

Mr. Wegner: Definitely. I don't know about the comment about on the back of a napkin, but surely we look at the permit. It says that the drawing should be to scale if possible. It's more than just a sketch on a napkin. It's got to be detailed enough that we can determine whether it is in the view corridor; with a maximum 30 ft width and it is on a slope of less than 20%. That's why it was crucial and that's why he put it on his permit that it was next to the existing walkway.

Mr. Desmond: Was that explained to Mr. McDonald when you and Mr. Krueger were out there?

Mr. Wegner: Definitely. When I was there with Jeff we definitely....although it wasn't staked, because that was the only area that it could be placed, there weren't any other options but that, if you wanted a boathouse.

Mr. Desmond: Do you know approximately how far it is between the tree at the north corner of the boathouse and the construction of the boathouse. In the pictures it is hard to tell exactly what the width of it is there.

Mr. Wegner: I know it was over 30 feet. Especially when you include the removal of that rock garden that was on the south side. The disturbance exceeded 30 feet in width.

Mr. Desmond: Do you know, between the corner of the boathouse now and where this tree is, do you know exactly that distance? Or do you have an estimate? Four feet or more? Less? Do you have any idea?

Mr. Wegner: Probably less. If you look at the photos it is pretty close. That's the tree right there. The tree that is closest to the boathouse. That's the one he is pointing out. The walkway would have been between that.

Mr. Lee: You are saying the walkway should be between that tree and the boathouse.

Mr. Wegner: Yes. Definitely.

Mr. Speerschneider: All you have to do is look at the pre-existing picture. The summer of 2007. You can see that's not the case.

Mr. Lee: You'll have your turn.

Mr. Desmond: Now the ordinance is...clear in the requirement of the width of a stairwell.

Mr. Wegner: Yes. Maximum width of 4 feet.

Mr. Desmond: And that is regardless of what materials you use in order to create the stairway?

Mr. Wegner: Correct.

Mr. Desmond: If Mr. Mc Donald wanted to re-route the stairs when he replaced them, would a permit have been required?

Mr. Wegner: Yes.

Mr. Desmond: Another shoreland alteration permit?

Mr. Wegner: A shoreland alteration permit and a zoning permit.

Mr. Desmond: And why is that?

Mr. Wegner: Because he is disturbing land within 35 feet and it is a structure; and I'm sure it was more than 200 square feet in size; and more than \$2500.00 in cost which would require the zoning permit.

Mr. Desmond: And Mr. McDonald, through his attorney, made the concession earlier today that the patio behind the boathouse will be constructed at four feet. Is there a section above that area where the walkway needs to be reduced to four feet?

Mr. Wegner: Yes. You can see it on the original enforcement letter that shows the diagram and what had to be narrowed. There is an area where he could have built four feet wide.

Mr. Lee: Can you show us what you are looking at please?

Mr. Wegner: Sorry. Basically right in here.

Mr. Lee: Do we have that copy?

Mr. Wegner: No. Here it is.

Mr. Rossi: We have that.

Mr. Wegner: Okay.

Mr. Desmond: With regards to the retaining wall that is on the back corner of the boathouse. Do you know of means to control erosion without the use of a retaining wall or a rock wall that he has there?

Mr. Wegner: Sure. Similar to what was done on the other side I believe you guys have copies of these in your packet. Here is....this slope is actually steeper than the one that was on the other side and used a vegetative mat. I don't think it is on here right now at this time. There is a mat that goes right over the top of this, to cure the erosion issue.

Mr. Desmond: That mat will help grow grass?

Mr. Wegner: Yes. And that could have been done on the opposite side. As far as the location of the door, the permit only showed one door. Not two doors. And that permit showed that the door was more towards the center, not at the end like this. But regardless, if you look at one of the photos, I think it is October 6th, you can see that the way the slope is, he could have had elevated steps right next to the boathouse within the view corridor to gain access to...

Mr. Lee: Not into the ground itself, but an elevated steps. Is there a way to bring those stairs down that would not create an erosion problem, which the appellant has indicated that there is.

Mr. Wegner: Definitely. He could go right along side here.

Mr. Lee: So with elevated stairs coming down to the back of the boathouse over to the edge of the boathouse; elevated stairs down...you can do this.

Mr. Wegner: Yes, that's what the County was...as part of the enforcement letter, was requesting that they stabilize it like this side, and then have elevated or grade stairs there, but because of the location of that door, they had to go further back. They could remove that door, because they would still have access to the sliding door and have it with less of a pitch so to speak. Or less of an incline.

Mr. Desmond: Is there anything else you want to add?

Mr. Wegner: Yes, quickly. I do not have this in my file. This is the first time I have seen it. The file that he is referring to is my enforcement file. So it is possible that there are things like this that aren't in my file. I guess my comment to this map would be, this was prior to Jeff & I going there and finding a location that met the less than 20% slope. And this onsite report that was attached to the permit clearly states this is the only location where he would be less than 20% slope. It says: "Less than 20% slope, ok per PSW onsite." Again, it was done on the 9th. As far as the view corridor, and the location of the boathouse and the stairs, when I was there with Jeff, I didn't know that Mr. McDonald was there by happenstance. I thought Jeff scheduled it. I thought he was there to meet with us. But I know we discussed the importance of it having to be located right next to the existing stairs. When they send a permit in, and they show existing stairs, we take it just at that, existing. I know his letter to the County, he talks about the existing stairs are underneath the footprint of the boathouse. If he understood that the existing stairs had to be in the view corridor, then why were they placed outside of the view corridor. And I know they cited something in the ordinance regarding an inconspicuous location. But that is after it is reviewed by the Planning and Zoning Department on their Shoreland Alteration Permit to see if there is no other available location for those stairs. And I am sure that in this case we would have suggested that they go right along side the existing boathouse above grade, versus weaving through the other part of the lot outside of the view corridor. Another important point is when they, the excavator, testified that he was there based on the stakes that were placed and he excavated there, I would say those stakes were placed a year after Planning and Zoning was there. Because he, in his letter, states that he did not start work until he picked this contractor, which was almost a year after the time that the permit was issued. He wanted this contractor to do the work for the boathouse and the house at the same time. Again, as far as staff being at the site four times, I know Jeff was there in March, I would consider that a preliminary because obviously, based on the onsite and the issued permit, it basically shows two different ideas. The onsite on the 14th, Jeff was there just to look at the excavation. It would be hard for staff to see whether stairs were going to be placed along side, because there is not a permit required to remove stairs or if they were not going to have stairs at all. But the key to all these dates and onsites is per his letter he states, that none of the outside work on the lot can be done until the snow melted and the ground thawed. He is referring to the Winter of 2011 and the Spring of 2012. He handed you some photos that shows the majority of that disturbance occurred after the dates of those photos. So staff would not have been aware of the extent of the project. Here is an example. June 10th. All the disturbance occurred, which went way beyond what staff would have been able to view on any one of those dates. And I would submit that that's

after this. The Spring of 2012 is when a lot of the work was done, just as his letter states. That is when the major violations occurred.

Mr. Lee: Pete, the Planning and Zoning Committee reviewed all of this information and actually made an onsite or at least some of the members of the committee made an onsite.

Mr. Wegner: I believe one member of the committee was at the site. We discussed this case with the Committee in closed session which resulted in the enforcement action that we are now taking.

Mr. Lee: Didn't the committee review this on two separate meetings?

Mr. Wegner: Yes.

Mr. Lee: There was an additional meeting and then Mr. Baier wanted to go out and take a look? I mean, the committee initially endorsed staff's findings. And then went out and had a review at Mr. Baier's urging. Came back, and again endorsed staff's findings. Is that correct?

Mr. Wegner: Yes.

Mr. Lee: Were there any objections within that Committee?

Mr. Wegner: I think it was a 4:1 vote. There was one objection.

Mr. Lee: A majority vote?

Mr. Wegner: Yes.

Mr. Desmond: Do you have in your records a letter from the Wisconsin Valley Improvement Company?

Mr. Lee: Yes, we do.

Mr. Wegner: Another thing I would add is the zoning permit and shoreland alteration permit for the boathouse were issued in 2010. The permit for the home, and there were comments that there was a discrepancy, or it wasn't clear what that permit required. I am 100% confident that anybody in zoning, based on what they are proposing would tell them that a permit is required. I am also 100% confident that the misunderstanding was probably with the UDC—uniform dwelling code. Because since they are leaving something, technically I don't think they need a UDC permit; and we have had that happen before where they just have a crawl space or slab and because it is being built up from an existing structure, they don't need a UDC permit. And then, I just need to note that they did not

come in to request this permit until over 30 days from when they started construction based on his letter. He said they started on October 3rd, and the permit was issued on November 8th, 2011. So it was a long time after they started construction. Lastly, looking at the permits that are part of the file, it states on the permits that they are to stay within the 30 ft viewing corridor; not to exceed excavation of 30 feet; if the excavator would have seen the permits, some of issues that they think we should have caught, they could have stopped right away, because the excavator would have seen on the zoning permit and the shoreland alteration permit, that it had to meet these specific requirements, regardless of novice drawings that were submitted. Just look at the conditions themselves, it was very clear that it had to be within the 30 foot corridor and couldn't exceed excavation of more than 30 feet in width. Also, there were comments made that he wasn't sure what was going to happen, which I believe, because when he decided to run with both projects at the same time, he needed to move fill from one spot to the other. Again, this all happened a year after the permit was issued. And all the ideas, thoughts and drawings are put into the issuance of the permits are all that we understood; anything that happens beyond that technically we weren't aware of until 30 days after they decided to come in for a permit when they already started construction on both projects, the boathouse and the house itself. So there was a lot of disturbance in between there that the department wouldn't have been made aware of.

Mr. Lee: Any questions for the County?

Mr. Albert: We've seen a lot of pictures and we've seen a lot of maps referring to the permit packet that was submitted from which the permit for the boathouse would have been issued. And the novice map that has been referred to, where does that show the staircase would have been located? Or is there a staircase?

Mr. Wegner: It shows the existing staircase and the boathouse being placed adjacent to the existing staircase.

Mr. Albert: And the assumption would have been that the dotted line showed adjacent, within the view corridor.

Mr. Wegner: Yes. If someone is going to move it, they say "to be moved." And I think they have on their permit certain portions of the home that are going to be removed for the addition.

Mr. Albert: When you (or whoever) issued the permit, there was a presumption there that there would be a staircase or that's how you would enter the boathouse.

Mr. Wegner: That they would be utilizing the existing staircase.

Mr. Albert: That isn't existing. It's been done away with. Correct?

Mr. Wegner: Yes, but it's not uncommon when they do the excavation to pull it to the side and put it back in right where it was located.

Mr. Albert: My understanding is the boathouse literally destroyed the existing staircase. So it would have had to be moved to one side or the other. The drawing shows it moved over to the right side as you face the lake. Correct?

Mr. Wegner: Yes.

Mr. Albert: That would have been presumed on issuing the permit that the stairway would have been there.

Mr. Wegner: Correct.

Mr. Hansen: I know the house isn't part of the discussion, but did you say that the addition to the house did require an additional permit?

Mr. Wegner: Yes.

Mr. Hansen: And they came after that permit actually about a month after the construction was started?

Mr. Wegner: Yes. The photos that are attached to that show the stage the building was in each time we onsite prior to issuance. It's completely new, with the exception of a wall.

Mr. Hansen: Can you explain this WVIC letter saying that WVIC actually owns the 30 feet from the shoreline and they did not comply with regulations.

Mr. Wegner: Yes. I received that letter from WVIC and Lon (Hoerter) maintains that they have to comply with what the permit was allowing. It doesn't say what happens if he doesn't. But I do know WVIC would have the ability to revoke their permit which is attached to the zoning and the shoreland alteration permit which gives them permission to put construction on WVIC property.

Mr. Hansen: So the requirements that they are citing are basically, the landowner has to follow county requirements? Is that what they are saying?

Mr. Wegner: Federal, State and Local laws.

Mr. Hansen: So they are saying they didn't comply because they didn't comply with the county.

Mr. Wegner: Right. He agrees that Mr. McDonald did not comply with the regulations regarding shoreland zoning and is now being required by Planning and Zoning to restore portions of the 30 ft strip and WVIC supports the zoning office in this requirement.

Mr. Lee: What would be located in that 30 ft swath?

Mr. Wegner: He says the boathouse is 8 feet from the OHWM; he reduces a large portion of it. I would say for sure half of the boathouse itself.

Mr. Lee: Half of the boathouse itself?

Mr. Wegner: Do you agree with that? More than half?

Mr. Albert: The boathouse is conforming. What's the matter with the boathouse? What's being alleged to be nonconforming that is within 30 feet of the OHWM I think is what is in question, right?

Mr. Hansen: That's what I'm asking.

Mr. Wegner: The concerns that the WVIC would have are any concerns Planning and Zoning would have within that 30 ft.

Mr. Hansen: So you made a statement here that they are in noncompliance and WVIC is just saying they agree with that. Back to this item c. Reduce the patio to 52 square feet. Now it's about 200. If they go with the four foot wide walkway like they have talked about, does that make it within 52 square feet?

Mr. Wegner: We excluded a 4 ft swath like he described of the patio, from what we would permit under special zoning permission. So that is already...

Mr. Hansen: Because the stairway is not a patio.

Mr. Wegner: A copy of the WVIC letter?

Mr. McDonald: I have one.

Mr. Lee: Other questions?

Mr. Ross: From this picture, their argument is that all this stuff has been removed, which would also be a violation.

Mr. Wegner: Yes.

Mr. Ross: I wasn't sure that's what they said.

Mr. Wegner: The rock garden.

Mr. Hansen: It's a violation to remove it?

Mr. Wegner: Yes. Because it is a disturbance within 35 feet from the OHWM.

Mr. Hansen: It looks to me like there were trees removed too. To widen the viewing corridor. It's hard to tell from the photos if that's accurate. But it looks like it. I would say so if you compare these two.

Mr. Wegner: There may have been because the excavation was wider than 30 feet. It almost went from lot line to lot line.

Mr. Hansen: So that's an issue also, that the excavation was wider than 30 feet?

Mr. Wegner: Yes. If you look at the photos he submitted, you can see that this has all been disturbed and it goes all the way down to the water.

Mr. Albert: Based on the September 20th letter, the items on the second page a-g, from what we've heard a-e have been dealt with, negotiated, corrected; f & g are the two points at hand and what we would be asked to do is give relief from those by granting an area variance in order for that stairway to continue to exist as it exists today. Is that it? Am I right?

Mr. Ross: I don't know that "e" has been mitigated.

Mr. Wegner: I would say that the ones that remain are "b, e, f & g".

Mr. Lee: I am going to...we are joined by Tom Blake from the DNR and at this point, I will ask Tom if he has any comments he wants to make.

Mr. Blake: I believe Mr. Speerschneider mentioned about the retaining walls that were less than 35 feet, something like they were essential for stabilizing the slope. Also that it is integral to the boathouse structurally to retain the boathouse from collapsing. So I heard Pete mention that there might be some nonstructural ways to stabilize the slope. The Board has the ability to weigh the evidence and decide which proposition is the correct one. I did look at the file and something you could consider was to have a neutral party help to make that decision. If you are struggling with that, and the slope needs to be stabilized and an after the fact permit could be granted to legalize the retaining wall (later on). Later on, first it has to be decided if the retaining wall is needed and in fact whether all the walls are needed. Then as far as the stone walkway, it sounds like the argument is that the stairs exceed 4 feet because of the product. It's unfortunate, but that doesn't mean that they don't need to comply. It needs to be made 4 feet.

Mr. Lee: Mr. Speerschneider, this is your opportunity to rebuttal. I want this to be brief. You had almost an hour in your presentation. So let's do this briefly.

Mr. Speerschneider: This is obviously a very important matter involving property rights.

Mr. Lee: I understand. But I also understand that we need to move this thing along.

Mr. Speerschneider: Well, I'm not going to argue with the Chairman, but I want the record to note my objection of being limited to time on such an important matter.

Appellant Rebuttal.

Mr. Speerschneider: I think it is pretty much undisputed that there was an error and that you can look at these pictures and that the County approved where the boathouse location is right now. They came out, looked at the forms and they approved it. Where that location is indisputable that the stairs come up along and actually intersect with that boathouse. The application that Mr. McDonald put in, even if you consider it to demonstrate the existing stairs were going to be used, and I'm not saying that wasn't a reasonable assumption based on the application, but once the County approved the boathouse in the location that I think the pictures clearly show, is within the viewing corridor, it is within 30 feet. But that the assumption that the stairs could come along side of it was proven wrong. And I think the drawing that Mr. McDonald submitted is an accurate drawing showing the way the boathouse is configured. Now the question becomes what do you do at this point in time when you have a County person who is out making an inspection who is operating on the assumption rightly or wrongly whether Mr. McDonald's drawing was correct or incorrect, sees the excavation and he has boathouse wall forms put up where existing stairs had been. He had been out there twice already. March, 2010. August 2010. So he was familiar with the area and he sees that. And the question becomes, what should have happened then? And I submit to you that what should have happened then is the project should have said, wait, we have a problem here. We have to look at this. But that is not what happened. I would submit this is not a variance. You know, the Schneider case, deals with variances. It is crystal clear that we are not here for a variance. We have a permit, and the County inspected according to that permit, authorized that the boathouse was in the proper location according to that permit. What was wrong was that the original permit application had shown the old stairs could apparently access this boathouse. But at that point in time it was clear that they couldn't. To me, the question is what would the County have done then? They don't need to issue a variance. All that needs to be done, the inconspicuous steps provision of the ordinance does not involve a variance. All it involves is a shoreland alteration permit and a zoning permit, both which we have. Which is why I say you can simply issue a permit to allow for those visually inconspicuous steps. I don't think anyone is disputing that they are not visually inconspicuous. We can all agree upon that. The issue is whether a shoreland alteration permit can simply be amended to conform to that, and I think that it can. I think this is a function. I agree with Mr. McDonald that it

would have saved a lot of money and saved my time had there been actual engineered drawings required, but again, I think it is indisputable that the boathouse is in the correct location. And it intersects with the old steps and that was readily apparent to the County when they came out to do what they do, make sure the boathouse is in the proper location. So I...it is not a variance issue. And it is confusing exactly what this committee is doing with regarding the enforcement action to the extent that it has power, it can simply say, amend the existing shoreland alteration permit to allow for the visually inconspicuous steps with regard to the other matters that is in dispute, the erosion control law that is within 35 feet. We heard Mr. Blake, from the DNR, indicate that I said, that the wall is an integral part of the boathouse because it provides for access through the door which was shown on the drawing. Again, you talk about the precision of that drawing. But when you look at the at-grade drawing that is in the application, it shows pretty much the location where it is located. And when I say it is an integral part of the boathouse, the erosion control law is to allow for access through that door. When the forms were put up, the County saw where the door was going to be. They saw what was existing out there. And I think that can be addressed by amending the existing shoreland alteration permit and amending the existing zoning permit to allow for those features to exist. Because that is what I think would have arguably happened had the County realized that the boathouse was intersecting the steps when they were out there in September, 2011. And in so far as the shoreland alteration permit, I think you heard the evidence that there has been an improvement in terms of the area's impervious surfaces. Not as much stairway within the 35 ft area. The existing structure that was there is gone. The rock garden is gone, but apparently the rock garden is wanted back. And seems to be inconsistent with the shoreland alteration permit provisions. I don't think you are going to find a landscape architect in the world that would say that the rock garden should be brought back, instead of having natural grass surface there. So, that just seems to be ridiculous being the fact that it is not even before this Board in terms of the jurisdictional aspects in the September 20th letter. So, I think that covers my rebuttal. I would turn it over to Mr. Mc Donald.

Mr. Mc Donald: First of all, I am really taking exception to being vilified by County staff over and over again. You know, we were shown a picture a few minutes ago that I took of the vegetation of the land and erosion controls on both sides, and new grass planted below it. But apparently that was a violation because it was outside of 30 feet. I don't understand it. Removal of the rock garden. That's a new violation. The first time I have ever heard that we went beyond out 30 feet is 20 minutes ago. I have never heard that. We could be cited for that and fined, from what I was told by Jeff Krueger, never heard it until minutes ago. The idea that my contractor got mixed signals on the home permit and ultimately said I am going to err on the side of safety. And he was fined for doing it late. But what is the point of back here to vilify me and make me look like I am some kind of cheat; that I've done all this terrible stuff intentionally. I take exception to it. This idea of the stairway going down the north side of that boathouse with an access door there is ridiculous. How do you do that? Mr. Wegner showed you a picture of the south side of the boathouse with rocks for drainage and all that. So I guess what we are saying is that we should do that on the north side too, rendering that service door inaccessible. Okay, if that

is the case, if that is what is needed to have been done, it should have been communicated on September 14th, before we poured, so we could re-do our plan. My boathouse is configured with two boats inside, with all of the controls in front. Accessing the boathouse today from the lakeside through the overhead door is impossible. I am not horribly obese, but I can't squeeze between the walls and my boats to get to the front of the boathouse. Had I been told on September 14th, this doesn't work. I have your permit in hand and you can't have a door there, I could have made a different decision and reconfigured things. But I wasn't told that. And the project continues and continues and then literally 5 days after we are done setting all of those snap stone snaps we get a letter saying to rip to all out. I have been cooperative. I have offered concessions, I've done what I think is right. But we are where we are today. And the WVIC note. I spoke with Lon Hoerter before getting that note, because I was a little perturbed. And I explained to him what was going on. And essentially what he is saying is that he is not going to support any variance from what the County will approve with 30 feet. Because WVIC owns 30 feet. Within 30 feet of the OHWM today, are about 2 ½ feet of those steps that go around to the right that are outside the viewing corridor. 2 ½ feet. And there is probably 15 feet of the stone retaining wall that allows us access to that front service door. So those are the only things within 30 feet right now that if the County absolutely says these are nonconforming and will have nothing to do with it, that's it. The boathouse is allowed. I don't think we have an issue with that. That's it. I'll keep my frustrations beyond that to myself.

Oneida County Rebuttal.

Mr. Wegner: I don't think anyone here, including Mr. McDonald, who already said that he wasn't there the date that Jeff was on the site. Nobody here knows what he did or did not see on the 14th of September, 2011. They submitted photos showing 9/29/11 and 10/6/11. At this point you can see just between these two dates the major differences in excavation. Let alone the huge difference in excavation that occurred after the final onsite that Planning and Zoning did on 10-31-11. A lot of things happened after-the-fact that we were not made aware of. As far as the drawings of the boathouse, he showed the south side below grade, this is not a novice drawing. He simply said, "This is below grade." He shows the north side, fully exposed. There is no grade on the side or anything like that. He took the time to do the one side...

Mr. McDonald: Pete, move your thumb please. Now, what does that say?

Mr. Wegner: Approx. grade. I'm not going to argue with you. The pictures speak for themselves. He shows "approx grade" here and went as far to do this, but didn't do the other one. Speaking of feeling vilified, to have someone tell me that myself, or anyone in our department would deliberately look away and lead them down the road of disaster by not letting them know things that are in noncompliance is ridiculous. I know that he has been made aware of the 30 ft view corridor. It's on both permits. He tells it in his own drawing. He shows "a 30 ft view corridor", "maximum 30 ft view corridor." So he can't say this is the first time he's been made aware of it. Furthermore, that's his drawing, "30-ft."

Mr. McDonald: That's not my writing. That was not on my application.

Mr. Wegner: Here it says "maximum width of excavation 30 ft." It says the same thing on the zoning permit. I don't know what is or what is not his writing, but that's what he submitted. On Jeff's onsite it shows 30 ft maximum width. So to say that he wasn't aware of that and he was there during construction, he could see whether or not the excavation was wider than 30 feet, whether he acknowledges it on a permit or was looking at his property during construction.

Mr. McDonald: Can I clarify something..?

Mr. Lee: Your attorney will have an opportunity to make a closing statement. This is not a back and forth.

Mr. Wegner: Regardless of the decision, we do not allow you to amend a permit. If a permit is required, we need a new permit submitted and to be reviewed. Our system does not have the ability to amend a permit itself. Finally, if you look at the photos that were submitted today, and the photos submitted with the appeal, there are so many different stages when staff was not here. And beyond that, a major excavation occurred. Based on his letter, that re-states what happened in the spring of 2012, we were not made aware of so we could not have stopped it or brought an issues to their attention.

Mr. Desmond: Just as a follow up. Mr. Speerschneider...you create a colorful picture about Mr. Krueger. He should have known. He should have said. When he was out there he should have noticed. And I submit to you based on the case law that has been submitted here, it doesn't matter. The case law is clear. If there is a violation of the ordinance, the County is not stopped from enforcing that ordinance based upon the words, assertions or actions or non actions by county zoning staff. So the only person be vilified here, is the big tall guy who is not in the room, Jeff Krueger. Unfortunately, that is the state of the law. Mr. Speerschneider thinks those are variance cases so they don't apply here. I submit to you that is the state of the law, whether a variance case, or not, that's what the law is. County staff cannot change the legislative intent of the County Board that was put into your zoning ordinance and zoning laws that are here, based on DNR laws or Administrative Code. Staff can't change that. As Pete said, Mr. Krueger had no intent of leading them down the wrong path. I think it is just how these things progress. They go out there to make sure the forms are in a good spot. He doesn't know what 5, 6, 8 months down the road what they are going to be doing, where they are going to be putting steps. If Jeff had a crystal ball and could see that snap stone was going to go down wider than 5 feet, I'm sure he would have said something. He doesn't know what they are going to be doing for steps when he goes out there. The code is clear. 4 feet wide. The permit is clear where the steps were going to be built and that is what County staff was expecting to happen and I think rightfully so. The law is what it is. Regardless of what type of case this is, that's the law.

Mr. Lee: Does the appellant have the obligation of knowing the zoning ordinances are?

Mr. Desmond: Yes. That's the state of the law. They have an absolute duty to understand the ordinances. If you don't know, ask. That's why I've told you a million times that's why I'm glad I live in the City of Rhinelander. I have to deal with the County Ordinances and I keep myself out of trouble. That's the thing, if you have questions, you ask.

Mr. Hansen: As far as the rock work, or the requirements. It looks to me like everything that is visible in this picture would be allowed as far as rock work. Retaining walls and such would be allowed to stay based on what the County is requesting. Is that accurate? As far as the retaining wall is obstructed by the cover on the boathouse.

Mr. Wegner: What we agreed upon, or what the ordinance would allow, I should say, is that he could apply special zoning permission to those retaining walls that are located between 35 and 75 feet. Our language doesn't say open deck or patio. It says, a structure. If you subtract out the four ft width of walkway, that's part of that patio....I guess it really doesn't matter. He is acknowledging that's not a problem. But the retaining walls themselves would be below the 200 square feet as permitted. The ones that are less than 35 feet, those are a concern.

Mr. Hansen: Item E, remove all retaining walls located between 0 and 35 feet of the OHWM does not include anything that is visible in this picture.

Mr. Wegner: On the corner there.

Mr. Hansen: That's greater than 35 feet.

Mr. Wegner: Only a part of it.

Mr. Lee: There is a retaining wall on this back corner here. Sort of protecting that back doorway, are you saying that stays or goes?

Mr. Wegner: If it is within 35 feet it has to go.

Mr. Lee: Well, is it or isn't it?

Mr. Wegner: A portion of it is. The back of the boathouse is roughly 44 feet from the OHWM I think. Between 40 & 44.

Mr. Hansen: And it has a four ft apron, so that's....

Mr. Wegner: I already included that.

Mr. Hansen: So there is 8-10 feet.

Mr. Lee: That's hard for me to tell. Does that run down to the high water mark or what?

Mr. Wegner: Yes.

Mr. Lee: Does it come down to the front of the boathouse? So some part down here is bad and this is okay?

Mr. Wegner: It was my understanding that the whole portion was within 35 feet. If they are saying there is a portion that is greater than 35 feet, yes, we could put that into the 200 square foot structure special zoning permission calculation. If there is a way to keep it, obviously we want to do that. If there is a way to issue a permit to allow, we definitely want to do that.

Mr. Lee: It seems to me that if you are going to remove that, the way this hillside is...it probably wouldn't be a good idea to take that out. You are going to have a lot of erosion down through here if you took down that whole thing. Setting the ordinance aside, just...

Mr. Wegner: You could also fill it and do the same thing as on the other side. Fill that opening up and put down the coconut mat.

Mr. Lee: Isn't that a little steeper though.

Mr. Wegner: That side is less steep.

Mr. McDonald: That would eliminate the front service door. We

Mr. Wegner: I would agree with that.

Mr. McDonald: If that retaining wall is removed in its entirety there is no service door.

Mr. Wegner: There is a service door on the front of the boathouse.

Mr. Lee: A sliding door?

Mr. Wegner: Yes.

Mr. Rossi: On the side of the boathouse....it's not....

Mr. McDonald: We had an extra door from our deconstruction from above so we put it in for additional light in the boathouse. That sliding door.

Mr. Lee: Is it necessary? That back door?

Mr. McDonald: No. The door at the front of the boathouse furthest from the water is necessary.

Mr. Speerschneider: That's where the controls are for the boat.

Mr. Rossi: You can't get an access through the sliding doors?

Mr. McDonald: The boat sits right on a dolly right immediately inside. I'm not going to get through there.

Mr. Speerschneider: It's a safety issue. If you look at the 7-9-12 picture. You can see how tight it is.

Mr. Rossi: Could they be moved lakeward or waterward?

Mr. McDonald: They pull from the front, they pull the boat and the dolly the boat sits on, they pull that up into the boathouse. So I have a 22 ft pontoon boat. To get that inside the boathouse, those controls have to be at least 22-24 feet inside the boathouse to pull them up in.

Mr. Rossi: I thought you were talking about a panel that activates these things.

Mr. McDonald: No.

Mr. Rossi: You don't need to throw a switch to get this thing going?

Mr. McDonald: Right. That's also in the front. It is attached...there are two separate winches that work independently from each switch up in the front of the boathouse.

Appellant Closing Statement.

Mr. Speerschneider: I just rebutted. But....no one was trying to vilify anyone. This is what happens when you have a process that relies upon un-engineered and precise drawings. And again, this doesn't happen all the time. A lot of the times it is caught during the process. I don't think the County deliberately tried to mislead Mr. McDonald. And I don't think Mr. McDonald deliberately tried to mislead the County. This is just the nature of what happens in these types of situations where there are not specific engineered drawings that are precise down to the measurements. And the question becomes, and again, this is not a variance. This is not a violation of the zoning ordinance. Those in conspicuous steps can be allowed as Mr. Wegner has indicated under a shoreland alteration permit. We have a shoreland alteration permit which is why I am suggesting that that can simply be amended. You don't have to grant a variance for the inconspicuous steps. You can grant, by amending the shoreland alteration permit, to allow for those inconspicuous steps. Just like you can

do that for the retaining wall that is within 35 feet; precisely how much is within 35 feet I think is somewhat in dispute, but I think it is pretty clear. I think the folks that walked down, you know along the boathouse where the apron was and you can see where that wall was in relation to the door and that there is a fairly substantial part of that that is beyond the 35 feet. So it would only be that part that is within 35 feet where the shoreland alteration permit would be relevant to. Again, I think it can be done via that mechanism. And it's not a case as a result of County staff not giving proper information that someone needs a variance. All this is, is a case of impreciseness on both parts that all needs to be done is simply amend the existing shoreland alteration permit and the existing zoning permit to conform to what is out there. Which I think everyone agrees is better than it was in the summer of 2007 when you had two nonconforming structures of over 400 square feet sitting within 35 feet of the OHWM.

2:35 pm – Chairman Harland Lee closed to any other testimony.

2:36 pm - Recess

2:43 pm - The Board of Adjustment reconvened.

The Board of Adjustment deliberated the case in open session.

Motion by Phil Albert, second by Guy Hansen for (1) the retaining walls located between 35-75 feet from the OHWM shall remain upon the issuance of a zoning permit meeting the requirements of Section 9.94(B) of the Oneida County Zoning and Shoreland Protection Ordinance as amended September 28, 2012; (2) the stairs shall be reduced to 4 feet wide in those locations where they currently exceed 4 feet maximum width; (3) the patio shall be removed with a 4 ft wide portion shall remain as a walkway connecting the upper and lower stairs; (4) the flat boathouse roof and deck shall be replaced with a roof with a minimum pitch of 2.3:12. The motion carried unanimously on a roll call vote.

Motion by Phil Albert, second by Guy Hansen, to extend the decision filing date to Friday, March 15, 2013. The motion carried unanimously.

Harland Lee, Chair

Phil Albert, Secretary
