

Zoning Board of Adjustment (BOA) – September 20, 2016  
(Approved by the BOA when they met on December 13, 2016)

**Zoning Board of Adjustment Public Hearing – September 20, 2016**  
**Martin A. & Mary E. Weiss – CUP # 2016-3**

Minutes from the Public Hearing are summarized as follows:

The meeting was called to order by chairman, Dale Klopp. Role Call – Barry Drazkowski, Ron Kazmierczak, Dale Klopp were present.

Mr. Klopp reviewed the agenda items for the hearing.

Notice of public hearing was read.

Hearing Minutes are summarized as follows:

Application presentation and testimony.

Ms. Mary Weiss explained that they cleared an area next to their cabin to build a garage and had to cut out part of the hill. That is what is being talked about today; they want to get it approved, so they can move forward with the garage construction. This ended Ms. Weiss presentation.

There were no public comments.

- Mr. Kazmierczak – Did the cabin itself pre-date our steep slope ordinance.
- Mr. Owecke – We had the steep slope ordinance when the cabin was built
- Mr. Kazmierczak – How long ago did you put the cabin up. Do you know.
- Ms. Weiss – The cabin was there when we purchased it 5 years ago
- Mr. Kazmierczak – I was just wondering if we had an issue with the cabin when it was built
- Mr. Owecke – The cabin was not in the steep slopes overlay district
- Mr. Kazmierczak – Is there a reason that the garage couldn't go on the downslope side of the cabin; it appears and again, I don't have a topo map, if you put it on the other side, it would not be in the steep slopes
- Mr. Owecke – It would not be

Mr. Owecke showed the Board of Adjustment photos from his visits to the site at this time. Mr. Owecke stated that he was at the site three times. He pointed out the cabin and driveway in one photo and the hillside behind the cabin where the applicant is proposing to build the garage.

Mr. Owecke explained that on the first site visit staff did not know what was going on because they had the hillside all dug up. Mr. Owecke pointed to an area on a photo that had a substantial amount of fill material; he stated staff were concerned about that because it looked like it was disturbed, filled or graded with over an acre of land and that would require a conditional use permit also.

Mr. Klopp pointed to a photo questioning whether it was fill material or gravel. Mr. Owecke pointed to the photo and stated it was gravel that the applicant brought in for the pad for the garage.

Mr. Klopp asked Ms. Weiss to come and look at the photos with the Board members.

Mr. Klopp questioned whether Ms. Weiss was out there during the excavation and further questioned material that he sees on the site, pointing to a photo and referencing northwest and whether that material is what was dug out from the side.

- Mr. Klopp – I know when I was back there, they were digging out from above the cabin where the wall is and if that material is from where the excavation was done, where you will put the garage.
- Ms. Weiss – Probably so, I honestly can't say.
- Mr. Klopp – To the northwest, I don't see any, unless there was a hill there that they leveled off.
- Ms. Owecke – That is the thing I figured out, but I did not know. It was an agricultural field, but there was nothing there, all this earth dirt that was deposited there.
- Mr. Owecke – That was not really a huge concern, but it was something that needed to be addressed.
- Mr. Klopp – Were these pictures all taken the same day

Mr. Owecke stated that the group of photos he is showing now were all taken the same day; the first day they were out there.

- Mr. Owecke – It was a little puzzling to have all this and not having talked with Marty or Mary, we didn't know what the intention was.

Mr. Owecke pointed out on a photo the excavation site for the garage and pointed out on the photo where the steep slopes were and another location was west with a twenty-two percent slope and a sixteen percent slope on the other end.

- Mr. Kazmierczak – Was this photo taken right after the rain, Mike.
- Mr. Owecke – No, this was a dry period
- Mr. Klopp – I think this is before the heavy rain.
- Mr. Owecke - I have pictures and did go out a day after we had one of our rain events.

Mr. Owecke pointed out a field on the second visit and explained that he had contacted Mary and Marty to let them know they had to apply for a conditional use permit and when they went back to the site, all the material was gone; taken out; removed. He continued by saying the site looked completely different, which was good to see. Mr. Owecke pointed out on the photo how easy it was to see how erodible that soil is; there was quite a bit of soil loss just from that one rain event.

Mr. Owecke explained that by the time they made their third visit, silt fence had been installed; actually two rows of silt fence. Mr. Owecke referenced a map that was sent to the Board to review prior to the hearing; it shows a wetland area and stated there is a designated wetland in that area. He went on to explain that there is a row of silt fence at the bottom of this pointing to the field on the photo (not enough information to include details of what field it is in these minutes). Mr. Owecke continued by saying that area was all disturbed, all open and then another row of silt fence up above, closer to the development site; they did a good job installing the silt fence. Mr. Owecke stated that it looks like the wetland area is being protected from sedimentation.

- Ms. Weiss - We also planted rye
- Mr. Owecke – As far as I'm concerned this area, (pointing on the photo) is not a concern any more.

- Mr. Klopp – Was the rye up when you were out there last
- Mr. Owecke – Everything had just been planted, so it wasn't quite up yet.

Mr. Klopp asked Ms. Weiss to come to the front again.

Mr. Klopp pointed out a photo and questioned the distance between the wall of the garage and the soil wall.

- Ms. Weiss – I am not a builder. I know it will be filled once it is built. They have to have an area where they can get behind there and it will all be filled. The wall that we are building there (not sure what she was pointing to on the photo) is structurally sound for anything and is actually quite expensive what we are putting in to retain that
- Mr. Klopp – My concern is above the ground
- Mr. Owecke – From my understanding from the construction, there is going to be a poured cement wall and then it is going to be back filled with material so the slope will be stabilized.
- Mr. Draskowski – So back filled to the wall
- Mr. Owecke – Right
- Mr. Kazmierczak – Back fill with gravel or something
- Mr. Draskowski – With drainage
- Mr. Owecke – I would think at least around the base of it
- Mr. Kazmierczak – Why didn't you go on the other side of the cabin; wouldn't it have been a lot easier; not have to dig into the hill and a lot cheaper
- Ms. Weiss – Yes, it would have been a lot cheaper. Marty felt this was the best spot for it and would look the nicest and would not block any of our view.
- Mr. Klopp – As far as coming out on this as far as being able to see north and west (not able to get enough information from the audio to know what side he is referring to include in the minutes)
- Ms. Weiss – If I am not mistaken the wall we are putting here (not sure where she is pointing on the photo) is ten feet.
- Mr. Klopp – Yes, I would guess that.
- Mr. Draskowski – This here (pointing to a location on the photo {questioning whether the location was for the ten foot wall})
- Mr. Kazmierczak – Mr. Draskowski was just clarifying the ten foot wall was the excavated wall
- Mr. Klopp – It is stated that you want this as a garage. Do you have plans to have any living quarters in there.
- Ms. Weiss – No bedrooms, but I don't know if you have a copy of the drawing, a sketch where the garage attaches to the cabin there will be a laundry room in there; just because all that space.
- Mr. Klopp – Mike, I have a question for you. As far as the disturbed ground and it is stabilized now, from what you said, how close is it to the wetland.
- Mr. Owecke – The closest wetland is going to be to the north side of the pond on that end; it is fairly close; they installed the silt fence where they did was a really good measure to protect that.
- Ms. Weiss – Do you have a map where the wetland is.
- Mr. Owecke – Yes they (referring to the board) do.

- Mr. Klopp – What you seeded down; did you mulch it at all or just seed it.
- Ms. Weiss – Just seed it.
- Mr. Drazkowski – That would be the area in front of the development; where the fill was.
- Ms. Weiss – Kind of off to the side
- Mr. Klopp – It would be to the north and northwest
- Mr. Drazkowski – Where the fill was removed and graded; so that has been all re-seeded
- Ms. Weiss – It is kind of like a bruise; it look worse before it gets better; it looks different now.
- Mr. Klopp – Mary and her husband live in Pepin County; what Township do you live in.
- Ms. Weiss – Lima
- Mr. Klopp – Do you know what they; I know each individual Township has their own Zoning; do you know what the requirements are; say you wanted to do what you are doing here in Buffalo County in Pepin County. Do you have to go to the Town Board for any kind of permit; just wondering what kind of Zoning they have in Lima Township.
- Ms. Weiss – Honestly, I don't know; we have done a lot of building; we did not intentionally start excavation knowing we needed a permit.
- Mr. Klopp – With the structure.
- Ms. Weiss – With this structure; which in Pepin County, you do the excavation and then you get a permit when you are ready to start construction. That was an honest mistake. With all the building we have done, I don't know if we have ever ran into this before.
- Ms. Weiss – I apologize for Marty not being here, he had a prior commitment out of state; he probably could answer your questions better than I can.
- Mr. Klopp – You are doing fine.
- Mr. Kazmierczak – You are doing a great job.
- Mr. Drazkowski – Looking at the picture of the site, there are pvc pipes coming up. Is that drainage or is that going to be like a drain inside the garage.
- Ms. Weiss – Actually, the connection onto the cabin is for water run-off and then it is drained out.
- Mr. Kazmierczak – One looks like it is probably for electricity.

Brief discussion was held on the purpose for the pvc pipe in the photo.

- Mr. Klopp - I would assume this one (not sure which one of the two pvc pipes in the photo he is referring to) is a drain.
- Mr. Kazmierczak – She said they were going to put a washing machine in the hallway.
- Mr. Klopp – Questioned the hook up for the washing machine; unless you are thinking of sump pump
- Ms. Weiss – No.
- Mr. Klopp – Those (referring to the pvc pipes) are going to be inside the garage; the way this looks.
- Ms. Weiss – I know in our existing garage at home, we have a drain.
- Mr. Drazkowski – The fact that it is real close to the house so when you look at her drawing, it would be right in that area that you come into the garage.
- Ms. Weiss – The one closest to the house, I am almost positive is for the runoff from the roof.
- Mr. Klopp – Do you know what kind of septic system you have. Is it a holding tank or mound system.

- Mr. Owecke – It is a mound system and was put in, in 1989
- Mr. Owecke – It is off to the south and east.
- Mr. Owecke – Yes. It is west of the house. Sized for a 3 bedroom dwelling. It is plenty adequate.
- Mr. Drazkowski – You said it is off to the west. That actually would have been a constraint on building on that side; that would have disrupted the drainfield.
- Ms. Weiss – If we would have put the garage on that side, we have had to come out towards the entrance to our land and that would have obstructed our view.
- Mr. Klopp – Mike you have been out there, as far as the disturbed ground in this area (not sure what area he is referring to) was that seeded or anything.
- Mr. Owecke – No. I would image they are probably going to have to do something.
- Mr. Klopp – That is where they will use the fill.
- Mr. Kazmierczak – My guess is that they don't have any fill. It is going to be hauled in; rock or something, but I think they spread the fill that Mike showed pictures of; that is all excavated material.
- Mr. Owecke – Yes, they did leave one pile of fill. I don't know if it is going to be enough, but there is some material there.
- Mr. Kazmierczak – What I think kind of struck me in those pictures, it seemed like the soil is almost muck type soil; real dark compared to the stuff where the excavation was.
- Me. Owecke – It is silt loam.
- Mr. Kazmierczak – The excavation was actually more of a clay type soil. The color difference is what is throwing me.
- Mr. Owecke – No. It is silt loam.
- Mr. Drazkowski – You could see that from the site going off and those piles almost that darker color; that was more the top soil; silty loam is just a soil particle size scale up from the clay; but it is so erosive because it just dissolves in water.
- Mr. Kazmierczak – Just to clarify, you answered this once, but I need to make sure I understand your septic system; if they moved the footprint of the garage on the other side of the cabin; that is where the drainfield would have been.
- Mr. Owecke – Right. The drainfield is off to the west; potentially you could have built it immediately south.
- Mr. Kazmierczak – Top of the aerial (not sure what aerial he is referring to) is north
- Mr. Owecke – Right
- Mr. Kazmierczak – So, you could have gone south
- Mr. Owecke – You could have gone south, and I understand that is going to obstruct their view; that is where they have some grass and yard area. I fully understand the selection of the site; they really don't have any view of that slope behind; to the north of the cabin; it is actually not a bad place to put a garage.
- Mr. Klopp – Barry do you have any other questions.
- Mr. Drazkowski – No questions regarding this. I am looking at the guidance out of the Zoning Ordinance pertaining to the steep soils overlay and recommendations; as I read through that, I think the big thing that keeps coming up in my head is the engineering on that back wall to stabilize that when you are dealing with silty loams because of the amount of water it holds. When the silty loam freezes, it creates a lot of horizontal stress against a wall; so both the drainage is important in terms of actually not putting silty loam back in there, but how you build that back fill and how you put the drain in there, to really protect

the back wall of the garage, even though it is a poured concrete. There is a great deal of stress.

- Mr. Kazmierczak – Even without freezing, there is a lot of hydrostatic pressure there.
- Mr. Drazkowski – Exactly where you can get water coming up when you are putting your wall and footing in your garage can force water up unless you have drains in there. That is really my biggest concern; is the engineering. It seems like everything else from erosion, the access, the neighbors, as I read our guidance from the Zoning code.
- Ms. Weiss – For the engineering, I can probably ease your mind on that. Komros did the designing of the wall and the concrete work. It is costing quite a bit.
- Mr. Kazmierczak – Mary, can I ask you who is doing the excavation work for you.
- Ms. Weiss – American Express
- Mr. Kazmierczak – OK. Thank You.
- Mr. Kazmierczak – I have no further questions.
- Mr. Drazkowski – I have no further questions either.
- Mr. Klopp – I don't have any other questions.
- Mr. Klopp – Mike, as far as the after the fact; if a person pays within thirty days, then it is less
- Mr. Kazmierczak – Three times instead of five times. Right.
- Mr. Drazkowski – You identified that has all been taken care of.
- Mr. Kazmierczak – In light of; this is not a variance, so we don't look at the hardship issues or anything else; it is a conditional use; the comments that you had or recommendations from the staff as what is being done, I think addressed the issue there. Our concerns are with the engineering as well. I think that coupled with that they really didn't have an option to go to the other side. I would move that we approve the conditional use permit; it is a permitted use as a conditional use in a steep slope area and it looks like they are doing everything we would need them to do to make it work. So I would make that motion.
- Mr. Drazkowski – I will second that.
- Mr. Klopp – There has been a motion made and seconded to approve conditional use permit #2016-3 for Marty and Mary Weiss. Is there any further discussion.

The proposed conditions were included as part of the staff report that were sent to the Board of Adjustment members to review prior to the hearing. They were referenced during the hearing, but were not read aloud. The proposed conditions are as follows:

1. *Apply for an obtain a Zoning Permit for an accessory structure*
2. *Silt fence must remain in place until the entire development site is stabilized.*
3. *Minimize open/disturbed areas as much as possible.*
4. *Vegetation is the most effective erosion control measure; seed and mulch disturbed soil as soon as possible and as soon as final grading is achieved. Utilize erosion control matting on disturbed slopes where additional stabilization is required.*
5. *Retaining walls shall be constructed where necessary to stabilize extreme and otherwise unstable slopes.*
6. *Any further land alteration or development may not begin until all required applications are complete and permits are issued.*
7. *Notify the Zoning Department when further land alteration/development activity is to begin.*

- Mr. Drazkowski – To ensure that the conditions you described would be
- Mr. Klopp – I guess I would like to include another condition to put in to drainage along the upper wall and I assume after it is all said and done, it has to be seeded in and probably like to see that mulched besides.

- Mr. Owecke – That is one of the conditions; #4.
- Mr. Klopp – Ok. Did you mean the mulching on the works; everything; they didn't mulch that.
- Mr. Owecke – Not the field. I am satisfied that has been stabilized; but any other work around the garage when they do to back fill; whatever they need to do to stabilize that immediate construction site would be seeded and mulched.
- Mr. Klopp – I have been back there a couple of times; you look at the hillside above it, with trees; does there need to be any diversion as far as water.
- Mr. Klopp – I would put that in as a recommendation; otherwise you will have a big problem.
- Ms. Weiss – That is already worked in. I am sorry, I probably should have brought my building plan. That has all been discussed and planned out; like a waterway.
- Mr. Kazmierczak – Mr. Chair, I guess I would offer kind of a counter proposal to your recommendation that is that rather than us do the engineering work, that we be sure that the applicant has a registered engineer that is doing that work and that he addresses all those issues, rather than us trying to tell them how to do it. My recommendation would be that we require them to have an engineer to take a look at those issues, with all due respect, I just don't think it is appropriate for use to design their project for them and they should pay someone to do that and the liability issues associated with us doing those kind of things are not good for the county. So rather than us telling them what to do, I would suggest that we have them, and it sounds like you already have them. As a condition of this, they have a registered engineer do the appropriate design.
- Mr. Owecke – Typically every instance in the past, we have had in the steep soils overlay, that has been a condition that they have an engineered plan and I didn't include that because they already were.
- Mr. Kazmierczak – That is what threw me, I just looked at the conditions we were talking here on that and I didn't see that condition here. That is why I brought it up.
- Mr. Klopp – So we will put that in as a condition.
- Mr. Kazmierczak – Yes, please. The standard condition language that we use.
- Mr. Kazmierczak – You have already done that Mary, it's just that I think there is a liability associated with us telling you how to route water around your project when there is someone working for you that is doing that.
- Mr. Kazmierczak – I make the motion to add that condition. Seconded by Mr. Klopp.

Mr. Klopp stated that there has been a motion made and seconded to have a licensed engineer on the site as far as designing of the project to address erosion issues. All in favor. No opposition. Carried.

Mr. Klopp stated, there has been a motion and second to approve Conditional Use Permit #2016-3 as amended. All in favor. No opposition. Carried.

- Ms. Weiss – As far as engineering, do you need proof that we have done this.
- Mr. Owecke – If you could contact the engineer and have them email us the plan.
- Mr. Kazmierczak – All we want to do is make sure that it is appropriately done. It sounds like it is and I don't think you would spend the money that you are spending on this project without doing that, but it is just that we need to make sure the slopes are stable.
- Ms. Weiss – So with that condition are we approved.
- Mr. Klopp – yes

Mr. Owecke explained that the Zoning Department will issue the Conditional Use Permit as well as the Zoning Permit and then the applicant can go ahead with their project. The permits should be ready in a couple days.

Approval of Minutes. Motion by Mr. Kazmierczak, seconded by Mr. Drazkowski to approve the minutes from the February 9, 2016 Board of Adjustment hearing as printed. All in favor. Carried.

Mr. Kazmierczak asked for a minor change in the May 19, 2016 hearing minutes; page 15, line 29, to replace the word “our” with “out”. Mr. Kazmierczak stated it that is more understandable with the change.

Motion by Mr. Kazmierczak, seconded by Mr. Drazkowski to approved the minutes from the May 19, 2016 Board of Adjustment hearing as amended. All in favor. Carried.

Mr. Kazmierczak asked for a minor change in the August 23, 2016 hearing minutes; page 11, line 15, correct the spelling of “Plump”, to be clear we are still working with the same company. Motion by Mr. Drazkowski, seconded by Mr. Kazmierczak to approve the minutes from the August 23, 2016 Board of Adjustment hearing as amended. All in favor. Carried.

Mr. Klopp made a motion to adjourn. Seconded by Mr. Kazmierczak. All in favor. Carried. The Public Hearing was adjourned at 9:50 a.m.

Respectfully submitted,  
Recording Secretary  
Julie Lindstrom