

STATE OF WISCONSIN
OZAUKEE COUNTY
DEPARTMENT OF PLANNING, RESOURCES & LAND MANAGEMENT
BOARD OF ADJUSTMENT

May 5, 2009 - 9:30 a.m.
Ozaukee County Administration Center
Port Washington, Wisconsin
Reported by: Liane M. Baranek, RMR

Board Members Present:

John Riordan, Chairman
Stephen Castner
Barbara Jobs
Catherine Stern
Marjie Tomter

Also Present:

Andy Holschbach, Department of Planning, Resources
& Land Management

Dennis Kenealy, Ozaukee County Corporation Counsel

Agenda:

Teddy and Pamela Krol, Owners - Request for a
Conditional Use Permit
Present: Teddy Krol, Elizabeth & Duffy Brelsford

LIANE M. BARANEK, RMR
Baranek & Stanke, Court Reporters
262-284-3869
262-679-3069

P R O C E E D I N G S

1
2 MR. RIORDAN: We can reconvene the Board
3 of Adjustment now that we have returned. We met at
4 8:45 and we went to see the site, and this is a
5 public hearing open to the public. Anyone may
6 address the Board providing they are recognized by
7 the chairperson -- I'm the chairperson -- identify
8 themselves, and print their name on the attendance
9 sheet. Did we pass that attendance sheet? Okay.

10 Adequate time will be provided to address
11 the Board regarding the various requests. The
12 hearing is being recorded by a court reporter;
13 therefore, I ask that you do not interfere,
14 interrupt or interject comments while another person
15 has the floor. Please speak one at a time so the
16 court reporter can accurately record the meeting.
17 Thank you.

18 Have the Press and various public
19 interested parties been notified, Mr. Holschbach?

20 MR. HOLSCHBACH: Yes, they have.

21 MR. RIORDAN: And so would you like to
22 read the--

23 MR. HOLSCHBACH: This is a request for a
24 conditional use permit by Teddy and Pamela Krol,
25 owners, to allow for a reduced setback of a deck to

1 the Lake Michigan ravine from 75 feet to 40 feet
2 based on the geotechnical report prepared by Jeffrey
3 G. Smith of Wisconsin Testing Laboratories in accord
4 with Section 7.0309 A.3. of the county ordinance.
5 This will allow an after-the-fact 16x32-foot deck on
6 the back of the residence to remain which is located
7 57 feet to the ravine.

8 This is in the Town of Port Washington, SE
9 1/4 of the NW 1/4 of Section 22. The address is
10 3616 East Norport Drive, Port Washington.

11 MR. RIORDAN: All right. There's a
12 technical report attached to this, right?

13 MR. HOLSCHBACH: Yeah. There was a site
14 evaluation done by Wisconsin Testing Laboratories
15 and it was done specifically by Jeffrey G. Smith.
16 He's a P.E. with Wisconsin Testing Laboratories. Do
17 you want me to get into that real quick?

18 MR. RIORDAN: I think it would be
19 worthwhile, yes.

20 MR. HOLSCHBACH: Okay. First of all, I
21 just want to back up just a little bit here. The
22 way the legal notice was written, it talks about a
23 request for a 40-foot setback. Actually the request
24 is for -- to let the deck remain where it is, which
25 is at 57 feet.

1 It's a little confusing I think, because
2 the way our ordinance reads, if you look at Item 3
3 of our staff report, I quote what our ordinance
4 says, and it says "When a detailed subsurface
5 investigation report by a Wisconsin registered
6 geotechnical engineer indicates that a ravine is a
7 stable formation, the setback shall be as
8 recommended in the report -- Well, this report
9 recommended 40 feet, okay -- subject to a minimum
10 setback of 40 feet from the edge of that particular
11 ravine and subject to the approval of the Board of
12 Adjustment."

13 That's what our ordinance says. In this
14 case an actual investigation wasn't really done.
15 Soil borings weren't actually physically done, but
16 rather, an opinion letter was provided by the
17 geotechnical folks, and I understand the opinion was
18 based on previous work that was done somewhat in
19 this vicinity, and our department felt that in this
20 case an opinion letter would suffice.

21 If you feel comfortable with it or have
22 concerns about it that should all be discussed
23 certainly, but I just wanted to mention that, so the
24 request is to let the deck remain basically, so
25 we're looking at a 57-foot setback.

1 MR. RIORDAN: So at this time could we
2 hear from the applicant, Mr. Krol? Is that how you
3 pronounce your last name?

4 MR. KROL: Yes.

5 MR. RIORDAN: Just if you'd like to make a
6 comment at this point.

7 MR. KROL: Well, we are requesting that
8 the deck remain at 57 feet, and like it was
9 mentioned, we have no interest of bringing the
10 ravine setback to 40 feet at all because we're not
11 going to build anything closer to that, and we're
12 just hoping to have -- keep the deck the way it is
13 and keep it with the house.

14 MR. RIORDAN: Okay. And at this point is
15 it a good idea to have the people who are attending
16 make their comments? There are two guests here
17 today.

18 MRS. BRELSFORD: I'm Elizabeth Brelsford.
19 I'm Ted's neighbor to the west, and that's my
20 husband back there, and we have no objections, you
21 know, to the deck because it's a very nice piece of
22 work.

23 You know, my interest came, and I had
24 talked to Andy as well, is the way that the geotech
25 report was worded, you know, about the 40-foot

1 setback, because if that's an issue, that I would
2 totally object to and I don't think that that's
3 legally on the table.

4 I think it -- I'm hoping that it's been
5 clarified, that the issue is that his deck remain at
6 the setback that it is, and with that both my
7 husband and I would certainly concur.

8 MR. RIORDAN: Should we read the staff
9 report at this point, Andy, or--

10 MR. HOLSCHBACH: That's up to you as a
11 board if you would like me to read it.

12 MR. CASTNER: You need to have it read or
13 incorporate it by reference into the record.

14 MR. RIORDAN: All right. That's agreeable
15 with everyone on the committee?

16 * * *

17 STAFF REPORT:

18 Department findings:

19 1) On December 5, 2008, during the
20 inspection for a second-story addition, department
21 personnel observed that a deck was constructed on
22 the south side of the residence without a zoning
23 permit. The deck is located 57 feet from the
24 ravine. Section 7.0309 A.2. requires a 75-foot
25 setback for all structures to the ravine. The owner

1 was advised to seek a geotechnical engineer to see
2 if the ravine is stable and provide a written report
3 to this department as to what the reduced setback
4 should be subject to a minimum of 40 feet to the
5 ravine in accordance with Section 7.0309 A.3.

6 2) Jeffrey G. Smith, P.E., with Wisconsin
7 Testing Laboratories, LLC, a company who specializes
8 in geotechnical investigations testing, submitted a
9 written evaluation report to this department March
10 27, 2009 on the stability of the ravine bluff and
11 possible consequence that the new deck will have on
12 the stability of the ravine. Mr. Smith indicates
13 that a typical deck supported on posts extending
14 below the frost line could be located as close as 40
15 feet to the bluff without impacting the stability of
16 the bluff or being at risk of sliding into the
17 ravine. The new deck on the south side of the
18 subject residence is set back approximately 57 feet
19 from the closest approach of the bluff and is,
20 therefore, well within the safe zone per Mr. Smith.

21 3) Section 7.0309 A.3. of the County
22 Shoreland and Floodplain Zoning Ordinance, Erosion
23 Hazard Setback from Ravines, states "When a detailed
24 subsurface investigation report by a Wisconsin
25 registered geotechnical engineer indicates that a

1 ravine is a stable formation, the setback shall be
2 as recommended in the report, subject to a minimum
3 setback of 40 feet from the edge of that particular
4 ravine and subject to the approval of the Board of
5 Adjustment."

6 * * *

7 MR. RIORDAN: Then Steve, do you want to
8 start it off with any questions or comments?

9 MR. CASTNER: Well, I don't see a material
10 issue other than the fact that Andy brought up when
11 we were out on the site which is that all ravines
12 along the lake are inherently unstable, and that's
13 just the nature of the geology.

14 They're larger now than they were a
15 thousand years ago, and a thousand years from now
16 they will be larger yet. We don't know how fast
17 they'll move. Probably it relates to the storm
18 events and the groundwater discharge on the sites
19 and the soil layers and that sort of thing, but in
20 the microsense I don't think that the deck as built
21 is really material.

22 If the deck is threatened by subsidence of
23 the ravine, then the house will be threatened by
24 subsidence of the ravine, and if it's a matter of
25 having to remove the deck, that's not a big deal, so

1 I don't see the materiality to the public interest.
2 It's the property owner's burden insofar as what the
3 ravine might do in the future. That's all I have to
4 say.

5 MR. RIORDAN: Any further comment?

6 MR. CASTNER: No, that's all.

7 MR. RIORDAN: Andy, is there any
8 history -- recent history of rather dramatic changes
9 in the bluff or the ravines, or is that thousand
10 year/thousand year analysis accurate?

11 MR. HOLSCHBACH: Each specific area is
12 different, and I'm not living there, but I saw what
13 you saw this morning, and certainly you see some
14 little -- we saw some areas that showed evidence of
15 the ravine recently slumping, small little areas.

16 Any major significant areas in that
17 portion of the ravine? Not that I'm aware of, but I
18 don't walk the ravine to know every little area. I
19 would depend more, since I haven't walked them, on,
20 you know, landowners that are present today.

21 MR. CASTNER: May I raise another issue?
22 A year or so ago I was advising a client concerning
23 a house on the lakefront in Mequon and the house was
24 set back an appropriate distance from the bluff at
25 the present time, but--

1 MR. HOLSCHBACH: This is the Lake Michigan
2 bluff now?

3 MR. CASTNER: Right, but the question
4 arose what would be the legal status of the property
5 if the bluff subsided a short distance to the west
6 and then the setback would be substandard. Would
7 that house become a legal nonconforming, and I
8 looked at the City of Mequon ordinance at that time
9 and there was no saving clause that said that you
10 only have to have a setback at the time the house is
11 built and then if the bluff subsides it doesn't
12 become nonconforming, so that's a potential issue
13 here.

14 If the ravine bluff would subside, if we
15 were to permit retroactively the establishment of
16 this deck at 57 feet and then that's the present
17 distance from the bluff, and then if the bluff were
18 to subside a couple feet, then it would be
19 nonconforming to the permit, and I'm not aware -- I
20 haven't looked in the last few days at whether the
21 county ordinance has a saving clause there, so
22 that's a potential consequence that the house could
23 therefore become a legal nonconforming structure and
24 there would be severe restraints on the ability of
25 the owner to perform structural repairs on the

1 house, so I just bring that up, so if the bluff
2 subsides a couple feet or a foot, and the distance
3 from the deck to the bluff is less than the
4 permitted 57 feet, then the house would appear to be
5 nonconforming, and if there was some reason that the
6 roof structure had to be replaced, some structural
7 element had to be replaced, that would not be
8 permitted.

9 MR. RIORDAN: Are you suggesting that that
10 be, since this is a request for conditional use, a
11 condition; that if there's a change in the bluff
12 that that would trigger something?

13 MR. CASTNER: No, not really. I just
14 raised it as a point for the owner to be aware that
15 if the bluff subsides, then the house could be legal
16 nonconforming and that would make it more difficult
17 to sell the house in the future.

18 MR. HOLSCHBACH: And we do deal with
19 people that have had erosion, especially on the Lake
20 Michigan bluff, where they do lose a lot of land
21 and, as a result, their home now is a legally
22 nonconforming structure, so it limits them in a way.

23 MR. KROL: With that statement, you know,
24 to remedy that situation, would it now cut the deck
25 down after that situation occurred, or remove the

1 deck all together from the main structure? That
2 would correct--

3 MR. CASTNER: You could--

4 MR. HOLSCHBACH: That may be an option.

5 MR. CASTNER: If the bluff gave up a foot
6 you could pick a foot off the deck, I suppose.

7 MR. KROL: If it was the house, of course,
8 now we have serious problems, but as a deck I would
9 imagine then all we would need to do would be to
10 just reduce the amount of deck, right?

11 That would just correct that setback
12 clearance all together, so like you're saying, it
13 was at 67, now we're at 66, because the deck is
14 attached to the home it becomes part of the home,
15 right, and the whole house is nonconforming? By
16 reducing the size of the deck at that time would,
17 you know, would put it back into conforming. Is
18 that correct to my assumption?

19 MR. CASTNER: Right. I just raised it so
20 you're aware that--

21 MR. KROL: I'm glad you mentioned it.

22 MRS. BRELSFORD: That was my same issue.
23 If the deck would go, take the deck off then.

24 MR. KROL: Right. Right. Thank you.

25 MR. RIORDAN: Cathy, did you want to

1 comment?

2 MRS. STERN: I'm not sure I quite
3 understood. Does Mequon have a saving clause you
4 said?

5 MR. CASTNER: I didn't find one.

6 MRS. STERN: You didn't find one. Does
7 our county know of such a thing?

8 MR. HOLSCHBACH: We do not have one in our
9 ordinance because we're looking at -- you know, the
10 reason that we have an ordinance is for public
11 safety and things, and we don't know what's actually
12 going to happen with the Lake Michigan bluff. No,
13 we don't have a savings--

14 MRS. STERN: I think for protection of all
15 those people who have residences in that area, don't
16 you think it's something you ought to think about?
17 Otherwise we have to go out and monitor -- we'd have
18 to be on the monitoring system all the time.

19 MR. HOLSCHBACH: Personally I would think
20 that a savings clause probably isn't real
21 appropriate based on what the intent of the
22 ordinance is. It's for public safety, and I think
23 if a person does lose a lot of bluff, you know,
24 there's reason to be concerned.

25 MR. CASTNER: There have been houses on

1 Lake Michigan that have become endangered by that,
2 so -- physically endangered, so whether they're
3 conforming or nonconforming from a land use
4 standpoint is sort of secondary to the physical
5 threat.

6 MR. HOLSCHBACH: See, and that's why we
7 have the Board of Adjustment. Your duty is to look
8 at legally what can occur and to look at the real
9 life situation and its practicality, and do--

10 MRS. STERN: Right. I was just thinking
11 beyond that because Steve had a really good point
12 there. That's all.

13 MR. CASTNER: Well, I'm not suggesting
14 that that be -- that there be any amendment or that
15 that be provided for because I think that, you know,
16 it is what it is, and if the bluff subsides, the
17 legal nonconforming status might discourage, you
18 know--

19 MR. HOLSCHBACH: Future development.

20 MR. CASTNER: --future development or
21 people buying those houses in the future, and that's
22 what the law really contemplates.

23 MR. RIORDAN: Cathy, anything else to add
24 or question?

25 MRS. STERN: No. I wish that -- Ignorance

1 is not really an excuse. I don't know why you just
2 didn't go to the town first. I mean you're new.
3 That's a great place to go, find out what's
4 happening on that level and avoid all this pulling
5 everybody else in. I'm sure you'll do that in the
6 future for anything that you want to do, but--

7 MR. RIORDAN: Barbara?

8 MRS. JOBS: I think they've said it all,
9 right?

10 MR. RIORDAN: I have a few questions.
11 What is precedent? When we so easily say it all,
12 give out an exception, doesn't that encourage
13 everyone else to see that it's not too difficult a
14 route to go?

15 MRS. JOBS: Are you saying make an
16 example; because they didn't get a permit that
17 somebody will do this in the future?

18 MR. RIORDAN: I'm not saying that--

19 MRS. JOBS: Okay.

20 MR. RIORDAN: --but that's a question that
21 could be said, yes.

22 MRS. JOBS: I agree with Cathy totally
23 that it would have been the clean way of doing it if
24 he would have went to the town and this could have
25 all been avoided.

1 MR. HOLSCHBACH: Actually it should be
2 coming to the county because the town doesn't have
3 anything to do with--

4 MRS. STERN: The town would have sent him
5 to the county.

6 MR. HOLSCHBACH: The town should have sent
7 him to the county.

8 MR. KROL: If I could suggest in the
9 future, I mean to address your question, I think a
10 lot of people don't get permits just because they
11 don't know that this board exists.

12 Certainly when we purchased the home we
13 didn't know this board exists. Certainly everyone
14 knows that there's a legal municipality that will
15 look at what you need to do and whether you can do
16 it, you know, building or not, so we thought about
17 that.

18 Of course, we didn't call at that
19 particular time so that's our fault, but for this
20 board, being a thousand feet from the lake in that
21 area, we didn't know, and I don't think anyone else
22 knows unless they've dealt with you in some way and
23 were informed, so maybe sending letters out or, you
24 know, some information that you guys exist.

25 MR. HOLSCHBACH: I'll admit it's a

1 problem. I mean not everybody does know. I'll
2 agree with you, and we do the best we can. We have
3 our fair display at the County Fair to let people
4 know about our ordinance and the regulations. We
5 put things in our newsletter. We work real closely
6 with the towns so the town inspectors, which people
7 probably are a little more in tune with perhaps with
8 structures and so on, the towns generally do send
9 applicants to us.

10 That's probably the best way of people
11 getting informed. Town of Belgium, they actually
12 have a form where the applicant or the person
13 wanting to do the project, they come in for almost
14 all of the projects and we have to pull out our maps
15 and review the site and see if they're in the
16 shoreland area or not and sign off if they're in or
17 not.

18 MR. CASTNER: But when a deck is built
19 without a permit there's no opportunity for that.
20 This is a county ordinance which is a law just like
21 the town ordinance is, just like the state laws, and
22 everybody's subject to it and everybody's charged
23 with knowing what it is.

24 When you bought your house you got title
25 insurance and the title insurance had an exception

1 for shoreland zoning, and if you read the title
2 insurance -- which you probably didn't -- you would
3 have understood that that regulation was in place
4 and you would have known that, and everybody else is
5 in the same boat so, you know, it's a matter of
6 keeping the eyes open.

7 MR. HOLSCHBACH: And for new developments
8 we do -- if there's a plat involved, subdivision
9 plat, we show the shoreland area and we show the
10 buildable area so that does alert the buyer to the
11 fact that there is shoreland and floodplain zoning.

12 MR. RIORDAN: Just so you know, even
13 though I'm the chairperson, I'm probably the least
14 experienced of all these experts sitting up here so
15 I have some questions that are for my learning
16 edification so I will ask them, and the ordinance
17 called for a detailed subsurface investigation. Is
18 this a detailed subsurface investigation?

19 MR. HOLSCHBACH: No. I had indicated
20 earlier that we do not have a detailed subsurface
21 evaluation here. What we basically have is an
22 opinion letter stating that the deck will not, I
23 would say, aggravate the erosion of the ravine.

24 MR. RIORDAN: Would a detailed subsurface
25 investigation require borings?

1 MR. HOLSCHBACH: Typically a detailed
2 investigation does require soil borings and then an
3 interpretation of the borings, and they would
4 actually survey the slope of the bluff and know the
5 angle of repose and the height of the bluff and--

6 MR. CASTNER: And also the soil layers and
7 whether there are sand cells in there that might
8 cause a greater subsidence, groundwater pressure and
9 so forth.

10 MR. HOLSCHBACH: Right.

11 MR. RIORDAN: And our application form for
12 conditional use calls for the height of the bluff
13 and the depth of the ravine and the degree of the
14 slope along the bluff and the ravine. If that's on
15 here, maybe somebody can just point that out to me
16 because I see -- I don't know what this means over
17 here, 5.1. It looks like five feet, one inch, but
18 what is that?

19 MR. HOLSCHBACH: That's actually showing
20 the -- This is the top of the bluff and that's a
21 pipe.

22 MR. RIORDAN: So really we haven't -- we
23 really didn't require what the application requires
24 be fulfilled here.

25 MR. HOLSCHBACH: No. We as a department

1 felt, you know, we looked at the situation here and
2 the level of impact as well. Certainly if it had
3 been a new house that would have been absolutely
4 required.

5 MR. CASTNER: John, that was my point,
6 that there really doesn't seem to be a material
7 issue, because if the bluff subsides to the point
8 that the deck is threatened, then the house is also
9 threatened, and the deck is a minor structure and it
10 could be removed, you know, and so if there's a
11 subsoil report that says that the bluff is in
12 imminent danger of collapse, what difference does it
13 make that there's a few foot deck on there? The
14 house is in bigger trouble.

15 MR. RIORDAN: I appreciate that, Steve.
16 I'm just asking these again for my education.

17 MR. CASTNER: In a lot of cases it
18 certainly should be the full investigation so that
19 all the factors that Andy mentioned are known.

20 MR. RIORDAN: Is anyone recommending any
21 conditions for this approval; just to live within
22 the definition of a conditional use?

23 I'm hearing none. Any other comments from
24 anyone before I ask for a motion? No other
25 comments? Would anyone like to make a motion on

1 this to approve or deny?

2 MRS. STERN: I'll try to word this
3 correctly. I would make a motion that we do accept
4 this application for conditional use permit and that
5 the deck remain at the setback that has been
6 created--

7 MR. HOLSCHBACH: 57 feet.

8 MR. CASTNER: 57 feet, Cathy.

9 MRS. STERN: 57 feet.

10 MR. RIORDAN: Period? Is that the end of
11 the motion?

12 MRS. STERN: I'm trying to keep it simple.

13 MR. RIORDAN: Question on the motion, if I
14 may ask this question?

15 MR. HOLSCHBACH: You should probably get a
16 second.

17 MR. CASTNER: Second.

18 MR. RIORDAN: Okay. The motion has been
19 first and seconded.

20 If the bluff subsides X amount, are we
21 then saying that's a condition for change?

22 MR. CASTNER: Then the property would be
23 noncompliant with the permit.

24 MRS. BRELSFORD: That's going to occur
25 regardless of--

1 MR. CASTNER: Which is going to occur
2 regardless of, but it makes the property a legal
3 nonconforming use in my opinion.

4 MR. RIORDAN: Okay. So Cathy, would you
5 repeat that motion, please, that's been seconded by
6 Steve, I believe, if you can?

7 MRS. STERN: Okay. I would recommend that
8 we accept this application for the conditional use
9 permit and allow the deck to remain at the setback
10 of 57 feet as created.

11 MR. CASTNER: Second.

12 MR. RIORDAN: Barbara, would you like to
13 vote?

14 MRS. JOBS: I'll vote yes.

15 MR. RIORDAN: And I vote yes.

16 MR. CASTNER: Aye.

17 MR. RIORDAN: Motion passed.

18 MR. KROL: Thank you very much.

19 MR. RIORDAN: Good luck. Be safe.

20 MR. KROL: Thank you.

21 (Discussion off the record.)

22 MR. RIORDAN: Can we reconvene the
23 meeting? We have to approve the minutes, right?

24 MR. HOLSCHBACH: Right.

25 MR. RIORDAN: Approval of minutes of

1 October 7th, 2008 meeting. Does anyone have any
2 changes, modifications, comments, recommendations or
3 complaints or criticism?

4 MRS. JOBS: I'll move for approval.

5 MRS. STERN: That's a while back. I
6 remember reading them and they looked fine to me at
7 that time, so I would make a motion that we would
8 accept those meeting minutes from October 7th, 2008.

9 MR. CASTNER: Second.

10 MR. RIORDAN: All those in favor say aye.

11 (Vote taken.)

12 MR. RIORDAN: Unanimous approval.

13 Communications and other miscellaneous --
14 Oh, no. The discussion. You think we can get
15 Marjorie here to join this discussion?

16 MR. HOLSCHBACH: She was going to call in.
17 Maybe she'll walk in.

18 (Discussion off the record.)

19 MR. RIORDAN: This is an item that I think
20 I asked you, Andy, to put on the agenda, unless your
21 recollection is different from mine, and you read
22 it. It comes from the same thing that I always
23 bring up at every one of these approvals where we're
24 looking at the incremental impact of an approval
25 that affects the floodplain, and I would just like

1 to read the wording that the department usually uses
2 in the reports that we get, which states "While the
3 Lake Michigan floodplain is large enough that this
4 individual project is not likely to seriously reduce
5 the flood storage capacity of the total floodplain,
6 each floodplain project adds more fill. The
7 cumulative effect of similar projects can have
8 significant and serious negative impact on the
9 floodplain and the near shore habitat", and my
10 question always is, who's doing the metrics, and all
11 this discussion was in the minutes that we've all
12 just approved of the October 7th meeting, and so
13 Andy said well, what would you recommend, so I
14 thought about this and I fired back a comment about
15 not approving -- prohibiting filling in the
16 floodplain without support of an urgent and
17 exceptional condition, and I think that's why Dennis
18 is here. He's going to tell us why that's illegal
19 or improper or unethical or whatever.

20 MR. KENEALY: Okay. I was just -- This is
21 kind of new to me. I mean I just saw it on here.
22 Andy mentioned it, so I wasn't sure where you were
23 coming from or what you were requesting.

24 MR. RIORDAN: Did that help, what I read?

25 MR. KENEALY: I understand what you're

1 saying now. It dovetails -- I mean I haven't been
2 to a lot of meetings lately, which is fine; I used
3 to be here all the time, but that was the continual
4 problem.

5 I mean you are an exception-granting group
6 and it's a lot of times subjective. You're not
7 going to get away from that.

8 MR. CASTNER: I thought you were going to
9 say you are an exceptional group.

10 MR. KENEALY: That too. But basically
11 under the statutes you're set up to grant, you know,
12 exceptions, variances or whatever, and the statutes
13 set forth certain things; unnecessary hardship, you
14 know what's in there, and then the court -- Steve is
15 well aware of that -- kind of give you some more --
16 I don't want to say parameters, trying to define
17 those areas that the statutes allow you to work in.

18 If I gather right what you're saying is
19 that's kind of uncomfortable and you don't want to
20 say no to all these projects, but the cumulative
21 effect is disconcerting to you so you would like the
22 county to, in essence, say no.

23 MR. RIORDAN: I would like to see someone
24 be a leader, and it's not just the county, as Andy
25 has pointed out to us before, it's all the counties

1 in the State of Wisconsin that have floodplain and--

2 MR. HOLSCHBACH: Villages and cities.

3 MR. RIORDAN: --and the villages and
4 cities and other states around the Great Lakes basin
5 here, so it's a much larger area, and I'm just
6 wondering if there isn't some way to get somebody
7 doing the metrics, the accounting of what we're
8 doing here; the ultimate impact, this cumulative
9 effect, so we're not making these decisions blindly.

10 MR. KENEALY: You're not looking at it --
11 I mean a change in our zoning code in essence to
12 prohibit fill would be very -- you run into issues
13 of the taking of property and how far you want to go
14 with your zoning code.

15 If that's where you're going, that's very
16 difficult, if not improper. If you're looking for
17 a -- I guess you're looking for a study?

18 MR. RIORDAN: Well, someone who does the
19 accounting, the metrics; how much of the floodplain
20 are we impacting, and everyone else?

21 MR. KENEALY: That's beyond my area that
22 I'm here for you. I understand what you're saying
23 now. I'm saying if you're trying to change the code
24 you have a lot of problems doing that. If you're
25 talking here, I have to defer to Andy on that.

1 MR. CASTNER: That's a matter of state law
2 which is grounded in federal law, and I think it's
3 preemptive actually. The one-tenth number--

4 MR. HOLSCHBACH: One-hundredth?

5 MR. CASTNER: One-hundredth number, right.
6 We wouldn't be called upon to grant a conditional
7 use for filling in the floodplain, would we?

8 MR. HOLSCHBACH: You know, the way our
9 ordinance is set up, all of the projects--

10 MR. CASTNER: I don't think we ever have
11 been, not a conditional use.

12 MR. HOLSCHBACH: Well, sure. I mean it
13 used to be -- Well, no, it wasn't a variance. It
14 was a special exception permit. Now we refer to it
15 as a conditional use.

16 MR. CASTNER: Well, I was thinking of the
17 1/100 standard. As I say, that's really grounded in
18 federal law and then in state law, and if a
19 landowner wants to fill in the floodplain and can
20 show, can demonstrate that it's not going to
21 increase the regional flood level by more than
22 one-hundredth of a foot, the landowner has the right
23 to petition the county zoning board to amend the --
24 first to get a permit to do the filling, and if the
25 filling is accomplished, to petition the county

1 board to amend the county ordinance to take that
2 filled area out of the floodplain zoning area and to
3 request FEMA for a Letter of Map Amendment or a
4 Letter of Map Revision so that it's no longer shown
5 in the floodplain map. It's now like any other
6 ground, any other land, and so I'm not sure how much
7 discretion this body really has on that issue.

8 MR. HOLSCHBACH: And that's a question I
9 always had as well, because our ordinance says if
10 the fill is not increasing the floodplain elevation
11 by a hundredth of a foot, it cannot result in that.
12 If it does, we would have to deny it because now
13 you're in violation of NR 116 and our state rule.

14 MR. CASTNER: Right, state statute, which
15 is based on a federal -- on Clean Water Act statute
16 and regs so there's federal preemption. We can't
17 change it.

18 MR. HOLSCHBACH: But now it's kind of
19 interesting. I'll just note this. Now that the
20 DNR, when they -- the new floodplain modeling that
21 they have done, it assumes now that if a land is in
22 the flood fringe, the floodplain, it's just the
23 flood fringe portion, that if you put fill in that
24 flood fringe there's no impact. You're not going to
25 increase the floodplain elevation by a hundredth of

1 a foot, so now any project that comes before us
2 that's in the flood fringe we do not require them
3 even to do a study because the DNR model that they
4 would use is not indicating now that it would go up,
5 so sometimes I wonder now, you know, on what basis
6 do you -- are you able even to deny putting fill in
7 the flood fringe of the Milwaukee River?

8 MR. KENEALY: I think the trend is not to.

9 MR. CASTNER: I think the burden is on the
10 applicant to show that the standard is met and the
11 applicant merely has to point to the DNR model. We
12 would have to rebut by having our own study done to
13 show that, in fact, it would increase by more than--

14 MR. HOLSCHBACH: We as staff now would not
15 even tell the individual to spend his money on doing
16 a study because we already know, and the DNR has
17 told us that the study is not going to result in a
18 hundredth of a foot increase.

19 MR. KENEALY: And you're always battling
20 the DNR granting approvals too freely. They kind of
21 opened that up. You're right. Steve is exactly
22 right. You're going to challenge it, you're going
23 to be more restrictive, you're going to have to get
24 your studies to challenge the DNR interpretation.

25 MR. RIORDAN: But there can be no studies

1 unless somebody's doing the accounting, the metrics.

2 MR. KENEALY: You're talking a very broad
3 concern. I don't know where you would go to -- Like
4 you're saying, okay, we want to see somebody
5 evaluate the impact of this cumulative effect in the
6 last ten years, 20 years to show us so we have
7 something to look at saying this is one more
8 cumulative effect, this is how it's affected things
9 thus far that's factoring in our decision whether to
10 grant it.

11 Now who would do a study, boy, you're
12 talking--

13 MR. HOLSCHBACH: It's not a study but it
14 would actually become part of NR 116, the Wisconsin
15 law--

16 MR. CASTNER: You should talk to DNR
17 resource people in Madison, to Mary Ellen
18 Vollbrecht.

19 MR. KENEALY: That's a valid point, but to
20 put your finger on someone who would give you that
21 information that it could be -- so you could use it
22 -- I mean you can get all kinds of information and
23 you're not going to be able to use it because it's
24 not going to be in a form that--

25 MR. HOLSCHBACH: I spoke with Gary

1 Heinrichs this week. He's the floodplain manager
2 from the State of Wisconsin DNR, and he says yeah,
3 you know, we're not looking at the cumulative
4 impact, and I mean he didn't have a real strong
5 comment one way or the other on this, but certainly
6 if we are really looking at trying to protect the
7 floodplain, the flood fringe has a purpose and it
8 would be nice if we could protect the flood fringe
9 so that it isn't filled, but the way the -- Right
10 now state code exceeds federal code. It's the state
11 law, NR 116, that has this one-hundredth of a foot
12 requirement in it.

13 I just wanted to note when the Environment
14 and Land Use Committee last amended the shoreland
15 and floodplain zoning ordinance, they did include
16 language in here now that says no filling in
17 floodplain areas for lots created after the
18 effective date of this ordinance. No filling shall
19 be permitted within the floodplain to accommodate
20 those uses listed in Section 7.0709.D unless a
21 variance is granted by the Board of Adjustment in
22 accordance with Section 7.1006 so, you know, new
23 developments now -- we're limiting fill further but
24 we do still have this clause that they could come to
25 the Board of Adjustment if there was some

1 circumstance that they felt should be heard.

2 MR. KENEALY: I don't know if this
3 Heinrichs -- I don't know him personally -- if he
4 has his finger on any studies or federal area that
5 would do that. I can tell you they're probably not
6 going to initiate one.

7 MR. CASTNER: It really sounds like an
8 engineering issue as far as the modeling is
9 concerned, so if you were to attempt to have that
10 modified, you'd have to have an engineering study
11 that would rebut the correctness of the DNR's model.
12 It's all engineering.

13 MR. RIORDAN: It seems to me it's more
14 than just the State of Wisconsin, though, Steve.
15 It's all the states that border this Great Lakes
16 basin.

17 MR. CASTNER: Right.

18 MR. RIORDAN: And so I'm just a little
19 burned over here, you know?

20 MR. CASTNER: Well, I assume that the DNR
21 model is consistent with USCPA. That's why I was
22 saying, because that's the same standard nationwide,
23 that one-hundredth of a foot for filling floodplain
24 and getting a FEMA Letter of Map Amendment, I
25 believe, isn't it?

1 MR. HOLSCHBACH: It's actually NR 116.

2 MR. CASTNER: I know it's there, but I
3 believe that -- I believe that that number is -- I
4 believe it's nationwide.

5 MR. KENEALY: I think, if I grasp what
6 you're saying, you're not talking the specifics of
7 these foot and two, you're talking can we get
8 something from someone or get someone encouraged to
9 do an evaluation or study that we can see.

10 MR. RIORDAN: Or that does the metrics,
11 just the accounting. It's building all the time.
12 Every time we do an approval we're flying blind
13 here. It's a tiny little thing, but it will add up.

14 MR. KENEALY: Not so much the specifics of
15 saying okay, I understand this, we got to fit our
16 decisions within this constraint, but can I see how
17 that's been affecting things as we go and how this
18 may--

19 MR. CASTNER: You'd have to go to the
20 hydrology model and take it apart and attack it so
21 you'd have to -- I mean that was constructed by
22 engineers, by hydrologists, so you'd need other
23 hydrologists and then it becomes a matter of -- It's
24 entirely an engineering issue, John.

25 MR. RIORDAN: Whatever you want to call

1 it.

2 MR. CASTNER: That's what it is, so you'd
3 have to defeat the current model by not just
4 attacking it, and other hydrologists would have to
5 do that, but they would have to make a convincing
6 case.

7 MR. KENEALY: I think you want that to
8 build on a study, though, not necessarily attack
9 what they're saying.

10 MR. RIORDAN: Right.

11 MR. KENEALY: I think he wants to build a
12 study, not attack. I don't think what he's saying
13 is let's get our group here and do battle over this
14 flood fringe, but can we get all these people or
15 studies or someone to put together what you're
16 saying and show us what the fact has been.

17 MR. CASTNER: Well, if the DNR model shows
18 that filling in the flood fringe does not -- Is it
19 that the model says that it doesn't increase the
20 regional flood level by more than 1/100th or does it
21 say there's no cumulative effect?

22 MR. HOLSCHBACH: The model assumes that
23 the flood fringe is filled.

24 MR. CASTNER: Then it assumes there's no
25 cumulative effect, so the model has to be attacked.

1 That's all.

2 MR. RIORDAN: Someone has to do it who's
3 capable of doing it. I don't think it's a county
4 level.

5 MR. CASTNER: No, no. What I'm suggesting
6 is it's on a nationwide level. Andy is saying that
7 he thinks that the 1/100 of a foot standard
8 originates in NR 116, that it's on a state level, so
9 it's one or the other.

10 MR. HOLSCHBACH: I believe it is.

11 MR. CASTNER: It's either on a federal
12 level or a state level. Either way, the task is the
13 same. You have to get expert hydrologists to tear
14 that apart and make a convincing case that it's
15 wrong, so you're going to have hydrologists versus
16 hydrologists fighting over this and the arbiter is
17 either going to be, you know, the state legislature
18 or Congress, whichever level it originates on, and
19 that's where you're headed.

20 MR. RIORDAN: I would think--

21 MR. KENEALY: You didn't know a simple
22 question was going to get you into that much
23 politics.

24 MR. RIORDAN: I was thinking of the Great
25 Lakes compact, the five states and the one province

1 of Canada.

2 MR. CASTNER: Well, that's state
3 legislatures and provincial legislatures, so it's
4 just what I said. If you're going at it from the
5 Great Lakes standpoint, that would have to be
6 addressed in each one of the legislatures and
7 provinces at the legislative level.

8 MR. RIORDAN: But at the moment when we
9 sign off on anything we have, you know, we're just
10 saying we don't know what the cumulative impact will
11 be and forget that sentence.

12 MR. CASTNER: Well, we're bound by -- I
13 think we're preempted. I think it's either state
14 law or federal law which says that we can't have a
15 stricter standard.

16 MR. KENEALY: I think you're exactly
17 correct. You don't have that data. You can look at
18 the effect and the studies on that parcel and then
19 maybe the neighbors if you have some studies or some
20 information, but you're correct that it's going to
21 be very difficult for you to say the effect that
22 this may have on the south shore of Milwaukee.

23 MR. HOLSCHBACH: There are communities
24 that are more restrictive than the state and you can
25 be more restrictive than the state. For example,

1 Kenosha County is one that limits fill in a certain
2 portion of their county in the floodplain, and they
3 have an exceptional area where they do allow fill in
4 a floodplain, so they're more restrictive.

5 MR. KENEALY: You can still get permits.

6 MR. CASTNER: Then if it's not
7 preemptive--

8 MR. HOLSCHBACH: They actually prohibit
9 fill in the floodplain in certain areas.

10 MR. CASTNER: In the fringe?

11 MR. HOLSCHBACH: It just says floodplain,
12 period.

13 MR. CASTNER: Well, if it's not
14 preemptive, then it would be a matter of amending
15 this county's ordinance. You first would have to
16 determine is the higher level regulation at the
17 state and federal level, does that preempt the next
18 one, everyone down? Prevent them from having a
19 stricter standard? If it's not the case, then it
20 would have to be a county legislative matter, county
21 board.

22 MR. HOLSCHBACH: That's how I actually
23 would see it.

24 MR. KENEALY: And then you do get it as
25 being prospective also because otherwise you're

1 going to be taking some property--

2 MR. HOLSCHBACH: That's right.

3 MR. KENEALY: --that was allowed to have
4 it beforehand. Then you're getting into that issue
5 of taking the property. You can make a prospective
6 property possibly. That's I think a little further
7 than what you were looking at.

8 MR. HOLSCHBACH: I just want to say this.
9 We have a lot of folks that come in in our office
10 and they have projects that they want to do and they
11 will come in and ask, the realtors come in and ask,
12 they want to know is this property in the floodplain
13 or not, and we get a lot of people that once they
14 know it's floodplain -- and we discourage people
15 from building in the floodplain, the staff, so
16 there's a lot of people that once they know that
17 this land is floodplain they don't want to build in
18 the floodplain.

19 They realize the consequence of building
20 in a floodplain so they tend to stay out of the
21 floodplain and, as you see, the floodplain fill
22 projects, they come before you and there's only just
23 a few throughout the year now. There's not many at
24 all.

25 The biggest area of concern here in the

1 county is the Lake Michigan shoreline where you have
2 the already developed lots. They're in the
3 floodplain and now people want to make improvements
4 and the entire lot is in the floodplain, and those
5 are the ones that come before the Board.

6 MR. CASTNER: But even if the Ozaukee
7 County Board amended the ordinance and had the right
8 to amend the ordinance to be more restrictive to,
9 say, prohibit filling in the floodplain, that would
10 have very little effect on the Great Lakes basin and
11 so, therefore, it either has to be addressed in all
12 those legislatures or on the federal level, and
13 federal -- U.S. and Canada, so--

14 MR. KENEALY: Not to pawn things back to
15 Andy or anything, but Wisconsin obviously had some
16 liaison to that compact. They must have an office
17 or officer. If you're looking for anyone to try to
18 see if they've done or would do a cumulative effect,
19 probably through the Wisconsin -- whoever Doyle had
20 working that would be my suggestion to see what
21 studies they got or--

22 MR. HOLSCHBACH: But the impact is more of
23 a -- the impact was instituted mainly out of concern
24 of losing volumes of water, transporting water to
25 different parts of the country. I don't think there

1 was much regarding floodplain per se within the
2 impact. It was more of a water quantity type issue.

3 MR. RIORDAN: The Great Lakes water
4 compact, isn't there a section of it called
5 rule-making that is still ongoing at the present
6 time?

7 MR. KENEALY: I think it's active yet,
8 right. I don't know what, you know, the committee
9 -- if they take suggestions. Maybe they do. That's
10 maybe the person to talk to.

11 MR. HOLSCHBACH: The person I think is
12 FEMA. You have to go to FEMA. FEMA is the
13 regulator of the floodplains here in the United
14 States and they're the ones that you would want to
15 directly approach but, of course, you'd have to --
16 probably want to approach your federal legislators.
17 They're going to have a huge say-so as to what the
18 legislation is going to be.

19 MR. RIORDAN: All right. And little old
20 John Riordan can't do too much. There are lawyers
21 here who know about the law.

22 MR. HOLSCHBACH: But the State of
23 Wisconsin could be more restrictive still further if
24 they wanted to be. They could require that for each
25 fill project that we have a study done to tell us

1 what volume of floodplain is lost, and you develop a
2 system where everybody has to report the loss of
3 floodplain, but you're going to want--

4 MR. CASTNER: That would be so expensive
5 that few people could bear the burden.

6 MR. HOLSCHBACH: Oh, it would be crazy.
7 That's right.

8 MR. KENEALY: It's a little bit like what
9 you did here earlier.

10 MR. HOLSCHBACH: But just to study it,
11 fine, but you'd want to prevent a negative impact of
12 the floodplain in so doing your cumulative analysis,
13 right?

14 MR. RIORDAN: I just would like to read a
15 little something quickly here. It comes from the
16 *New York Times*. Consider the source. Published
17 April 26th, 2009. It's entitled "End The University
18 As We Know It", and it has several points and
19 suggestions, and one of them is abolish permanent
20 departments and create problem-focused programs.

21 Under that, "Consider, for example, a
22 water program. In the coming decades, water will
23 become a more pressing problem than oil, and the
24 quantity, quality and distribution of water will
25 pose significant scientific, technological and

1 ecological difficulties as well as serious political
2 and economic challenges. These vexing practical
3 problems cannot be adequately addressed without also
4 considering important philosophical, religious and
5 ethical issues. After all, beliefs shape practices
6 as much as practices shape beliefs."

7 It goes on with lots of other stuff, but
8 that's where I'm coming from. So does anyone -- if
9 we were to move to a direction of a conclusion,
10 summing up, write a letter to your president or--

11 MR. HOLSCHBACH: You're looking at me?

12 MR. RIORDAN: No, anyone who likes to
13 add--

14 MRS. STERN: What was the question?

15 MR. RIORDAN: How to move this along, if
16 there's any way, or should we forget it as a Board
17 of Adjustment and ask that this sentence not be put
18 in these department findings; the cumulative effect
19 of similar projects can have a significant and
20 serious impact on the floodplain in the near shore
21 habitat, so what can we do about it?

22 MRS. STERN: If I may ask something here,
23 SEWRPC has been working intensely with Southeastern
24 Wisconsin, and I would certainly say that your
25 department takes into consideration all of those

1 current and update water recharge areas, the
2 redefining that they've done on a daily basis
3 almost, and the maps are exceptional. John, have
4 you seen them?

5 MR. RIORDAN: I have seen some of them,
6 yes.

7 MRS. STERN: Okay. They are as best as
8 we're going to get, I do believe, and given that
9 information, I would hope that the department holds
10 up to what those maps are intended to do.

11 Now I also -- I wish we did not fill in
12 any more floodplains, period, but we know that is
13 not possible with humanity involved here, okay? But
14 the modification of it should be so strong in favor
15 of not filling it, and I can't impress that enough
16 to your department.

17 MR. HOLSCHBACH: Oh, yeah.

18 MRS. STERN: You have all those maps, you
19 should be able to make those decisions so we don't
20 have to feel guilty about it.

21 MR. HOLSCHBACH: Right. That's why I said
22 earlier there's a lot of people that come in and we
23 show them the map and show them the floodplain and
24 they tend not to want to fill in the floodplain.
25 They avoid the floodplain. They don't want to be in

1 the floodplain. They realize the realistic
2 situation that the floodplain results in. And keep
3 in mind in the floodplain there's two parts of a
4 floodplain. There's a floodway, which really fill
5 is prohibited in basically, generally speaking, and
6 then you have the flood fringe which we allow for
7 residential development and so on and so forth, and
8 this new idea now that the DNR model assumes that
9 the -- there's no increase in the flood fringe, I'm
10 still wondering for the Board of Adjustment on what
11 basis do you deny filling in floodplain? The way
12 our standard code is, none. I mean you have to
13 allow for--

14 (Ms. Tomter entered hearing room.)

15 MR. KENEALY: You have to find some
16 exceptional negative consequence to deny it. The
17 assumption's kind of gone the other way now. You
18 assume the fill versus assume that you need a reason
19 to fill. Now it's assumed you can fill. You better
20 have something to show that it's really coming back
21 with some consequences. They changed the burden
22 there a bit.

23 MS. TOMTER: It seems kind of odd to call
24 it a floodplain and then assume you're going to fill
25 it.

1 MR. KENEALY: No, flood fringe.

2 MS. TOMTER: Oh, flood fringe. But, you
3 know, with all the weather changes and things that
4 we're seeing, I think we may be seeing more
5 flooding. There certainly has been heavy flooding
6 in areas that haven't had as much, and we all pay
7 the price if homes flood and the insurance goes
8 sky-high and all sorts of things go wrong other than
9 just the environmental consequences.

10 It just makes sense to even have a
11 moratorium. Let's see what's going to happen, if
12 climate change is going to make a difference.

13 MR. HOLSCHBACH: I mentioned earlier, too,
14 that the county, the Environment and Land Use
15 Committee, when we last revised the -- amended the
16 shoreland floodplain zoning ordinance, they did
17 include language for newly-created lots, that no
18 fill be placed in the floodplain.

19 MS. TOMTER: Oh, that's good.

20 MR. HOLSCHBACH: But with the exception
21 there's always the opportunity for folks to come
22 before you, the Board of Adjustment, for you to hear
23 the real-life situation because there may be unique
24 things that come up. I don't know.

25 MR. CASTNER: Marjie has a good point; if,

1 in fact, the climate is changing and there will be
2 heavier storm events, the current floodplain maps
3 could be invalid.

4 MR. HOLSCHBACH: Sure.

5 MR. CASTNER: They may be invalid. The
6 flood fringe may extend further into the upland than
7 what we know.

8 MR. HOLSCHBACH: Sure. That's been talked
9 about. As the climate changes, well then the model
10 has to reflect the increase in rainfall, which it
11 would.

12 MR. RIORDAN: So in summarizing, did we
13 get to anything there? Anyone can summarize this
14 better than my mind is able to summarize it at the
15 moment? Cathy was recommending that we--

16 MR. KENEALY: I'll leave you--

17 MR. RIORDAN: Thanks for joining us,
18 Dennis. --concentrate effort towards SEWRPC.
19 That's a seven-county area organization, right?
20 It's not the whole kit and caboodle.

21 MRS. STERN: Yes, but they have sources
22 beyond that, too. I mean they are intensified in
23 demographics and the area, and especially our water
24 supply is extremely important.

25 MR. CASTNER: Does the Great Lakes Coastal

1 Commission have a staff, do you know?

2 MR. HOLSCHBACH: Great Lakes -- Wisconsin
3 Coastal Management Program?

4 MR. CASTNER: Yeah. Well, the Great Lakes
5 Coastal. They're part of the Great Lakes Coastal
6 Commission framework, aren't they? Anyway, is there
7 a staff there that--

8 MR. HOLSCHBACH: There's no one that I
9 know.

10 MR. CASTNER: Nobody to really approach
11 there.

12 MR. HOLSCHBACH: No. That's been a
13 problem actually.

14 MR. CASTNER: I think the people to talk
15 to are the hydrology experts at DNR in Madison.
16 That's where I'd start because it's an engineering
17 issue. It's not -- Ultimately when you come right
18 down to it it's not a legal issue, it's an
19 engineering issue, and to require a backing away
20 from the current model, the people that put those
21 models together would have to be persuaded of their
22 invalidity. That's all. It's a mathematical
23 statistical exercise, so that would be the place to
24 really start.

25 If they would be resistant, then I would

1 say that it could be handled at the legislative
2 level, that the appropriate legislative committees
3 could ask for a re-study and -- but it still comes
4 down to engineering. It still comes down to the
5 same -- it's not -- you know, it's not a matter for
6 lay opinion, it's a matter for expert study and it's
7 pretty complicated stuff.

8 MR. RIORDAN: So Steve, if this came up X
9 number of months ago at the October 7th meeting, you
10 read those minutes, it was all kind of laid out
11 there, and I thought I would like to try -- Andy
12 suggested maybe I would put something together.

13 Well, I got to today without having
14 anything really concrete, but you seem to have the
15 kind of mind that can lay this out rather clearly
16 and logically, and I wonder, would you be willing to
17 draft some sort of letter that we could all just
18 have our two cents' worth and push it on to the--

19 MR. CASTNER: What you're talking about
20 would consume a tremendous amount of time, would
21 require tremendous effort. I don't have the time to
22 do it.

23 As I say, it would have to -- if I were
24 doing it I would start with the DNR. I would have
25 to have a hydrology expert at my side. I would go

1 to the DNR, I would ask for a full copy of the
2 model, the calculations that they base this on. I
3 would have another hydrology expert tear that apart
4 and see if there were weaknesses in there.

5 That would be my first step, and then
6 depending on what that finding is, I'd maybe take it
7 another step of asking the DNR to reconsider. If
8 they wouldn't, then the political approach, but
9 you're talking about a large, expensive, multiyear
10 project.

11 MR. RIORDAN: And I'm not talking about
12 you doing a large, expensive, multiyear project.
13 I'm just talking about what you just did; Liane has
14 that all typed up there right now. Just put it in a
15 letter form. That's a start.

16 MR. CASTNER: I wouldn't do it without
17 doing the research and knowing exactly what I was
18 talking about and making the case.

19 MR. RIORDAN: It's the philosophy. I know
20 you're not trying to make a case; just hey, we're
21 raising a red flag on this point and we think
22 somebody ought to be paying attention to it.

23 MS. TOMTER: You're looking more, John, us
24 requesting a study or someone who's knowledgeable to
25 do the study rather than trying for us to figure out

1 if there's weaknesses and--

2 MR. CASTNER: Because I know what would
3 happen to the letter. The letter would find its way
4 into the round can, you know. Without being
5 prepared, doing the level of preparedness that I'm
6 talking about, that's where it would go, because
7 those people have done the work and they believe
8 they're correct so, you know--

9 MR. RIORDAN: Can you see any avenue to--

10 MR. CASTNER: Writing a letter saying gee,
11 I wonder if your model is faulty, they would write
12 back and say well, we wonder that it's correct, you
13 know. I don't think that would, you know, bear any
14 fruit.

15 MR. RIORDAN: Anyone else have any
16 thoughts on how to move this, if it's worth moving?

17 MS. TOMTER: John, what would you like to
18 see as the outcome?

19 MR. RIORDAN: Somebody who does the
20 metrics.

21 MS. TOMTER: I mean in terms of the
22 floodplain. What would you like to see?

23 MR. RIORDAN: Someone who does the
24 metrics; the impact of every decision that we and
25 other boards of adjustment make that impact the

1 entire Great Lakes basin.

2 MS. TOMTER: So you're looking at what are
3 the costs that are not seen, the unseen costs of the
4 decisions that we make in terms of the environment;
5 how much damage are we doing without having it
6 obvious?

7 MR. RIORDAN: I think if you look at that
8 article in the *New York Times* it uses some words
9 about the impacts of quality and quantity and
10 distribution of water.

11 MR. CASTNER: What you could do is you
12 could write a public records request to the DNR
13 requesting a copy of the mathematical model, and
14 then you find a hydrologist who will help -- donate
15 his time to help, to advise you, to go through it
16 and analyze it for you.

17 MR. RIORDAN: Is it just me who's looking
18 at this thing and has this level of concern, or do
19 others here share that? Be very honest. I
20 appreciate your input.

21 MS. TOMTER: What I'm real concerned
22 about, you know, in my perfect world, nobody builds
23 in a floodplain, period, and if you built there you
24 get to move. You know, I would like to -- I'm a
25 no-development kind of gal, the least infringement

1 on nature as we can, because I think we've so overly
2 infringed and the unseen costs are incredible, but I
3 think, you know, we can't do that.

4 MR. CASTNER: It's a real concern,
5 particularly in New Orleans, and I think not so much
6 with Lake Michigan but with the rivers and streams.

7 MR. RIORDAN: Well, maybe we should end
8 this because people have got to run, unless somebody
9 else has got input, but you can all read it in the
10 minutes and see where we go from there. What do you
11 think?

12 MR. HOLSCHBACH: Well, when I spoke with
13 Gary Heinrichs this week I simply mentioned, you
14 know, the whole floodplain is important, flood
15 fringe included, and I just explained to him that we
16 make all these decisions but we really don't know
17 what the cumulative impact is and we should know
18 that, and he tends to agree; well, sure, but how do
19 you do that, how do you do that, like Steve says, in
20 a costly manner?

21 Engineering is so expensive. I always
22 dread when I have to tell people that they have to
23 hire an engineer to study an unstudied floodplain so
24 that they know what the elevation is. I mean it
25 costs thousands of dollars.

1 and miscellaneous? Okay. Any other matters allowed
2 by law?

3 MR. HOLSCHBACH: I don't have anything.

4 MR. RIORDAN: Future meeting dates. We
5 should have Marjie in here for this one.

6 MR. HOLSCHBACH: I can speak for her since
7 she's not in here, but Thursdays work for Marjie,
8 and we were wondering if we could use the first
9 Thursday of each month instead of the first Tuesday
10 of each month as our standard meeting date? Would
11 that work?

12 MR. CASTNER: That's okay with me.

13 MR. RIORDAN: That's okay with me.

14 MR. HOLSCHBACH: Marjie, we're just
15 talking about our next meeting date. We're looking
16 at meeting the first Thursday morning of each month.

17 MS. TOMTER: That's perfect.

18 MR. HOLSCHBACH: As long as that works for
19 everyone else, we as an office then would be looking
20 to the first Thursday of each month.

21 MS. TOMTER: If that works for other
22 people, that's wonderful on my end.

23 MR. RIORDAN: Cathy, that works for you?

24 MRS. STERN: Most of the time it does,
25 except that when we leave we're gone on Thursdays

1 and Fridays. That's our departure date if we're
2 going off to a sale, so that would be the only
3 hang-up there.

4 MR. HOLSCHBACH: And that's mainly through
5 spring and through the fall?

6 MRS. STERN: Hm-hmm.

7 MR. HOLSCHBACH: But it's sporadic, too,
8 right?

9 MRS. STERN: Oh, yes.

10 MR. HOLSCHBACH: It's not every Thursday.
11 Then I would say we should shoot for every Thursday.

12 MR. CASTNER: That's fine.

13 MR. RIORDAN: So unless there are other
14 matters--

15 MR. CASTNER: So moved.

16 MR. RIORDAN: First and seconded. Meeting
17 adjourned.

18 (Proceedings concluded at 10:40 a.m.)

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STATE OF WISCONSIN)
) ss.
OZAUKEE COUNTY)

I, LIANE M. BARANEK, Notary Public in and for the State of Wisconsin, do hereby certify that the foregoing proceedings were taken before me at the time and place set forth in the caption thereof; that the foregoing proceedings were reported by me stenographically in shorthand; and that the foregoing proceedings constitute a true and accurate transcription of my original machine shorthand notes taken upon the hearing to the best of my ability.

I FURTHER CERTIFY that I am not a relative or employee or counsel to any of the parties hereto, nor a relative or employee of their counsel, and have no interest in the outcome or events of said action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office, this 14th day of May, 2009 at Port Washington, Wisconsin.

LIANE M. BARANEK
Notary Public
State of Wisconsin

My Commission Expires:
December 27, 2009.

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