

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BECKER

SEVENTH JUDICIAL DISTRICT

Case Type: Other Civil

Minnesota Department of Natural Resources,

Court File No. _____

Plaintiff,

vs.

SUMMONS

Cormorant Township and Richard Hanson,

Defendants.

THIS SUMMONS IS DIRECTED TO THE ABOVE-NAMED DEFENDANTS.

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a written response called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at: 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

7. **THIS LAWSUIT MAY AFFECT OR BRING INTO QUESTION TITLE TO REAL PROPERTY** located in Becker County, State of Minnesota, legally described as follows:

Government Lot 1 lying between Lot 1 Dahlgren Beach 1st and Lot 1 Jim's Beach; Section 27, Township 138, Range 43, Cormorant Township.

The object of this action is the variance granted by Cormorant Township dated May 11, 2010.

Dated: July 6, 2010

Respectfully submitted,



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AG: #2661371-v1

STATE OF MINNESOTA

DISTRICT COURT

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Case Type: Other Civil

Minnesota Department of Natural Resources,

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Plaintiff,

vs.

COMPLAINT

Cormorant Township and Richard Hanson,

Defendants.

INTRODUCTION

Plaintiff Minnesota Department of Natural Resources as and for its Complaint against Defendants hereby states and alleges as follows:

PARTIES

1. Plaintiff Minnesota Department of Natural Resources (“DNR”) is a state agency with responsibility for oversight of zoning of the State shoreland pursuant to Minn. Stat. §§ 103F.201-.221 (2008).

2. Defendant Cormorant Township is a public corporation located in the County of Becker, State of Minnesota.

3. Defendant Richard Hanson (“Hanson”) is the applicant for a variance from Cormorant Township.

JURISDICTION AND VENUE

4. This is declaratory judgment action brought by DNR for judicial review of a variance granted by Cormorant Township Board of Supervisors to Hanson allowing for the reconstruction and expansion of an existing seasonal cabin into a finished four season house and garage within 14 feet of Ida Lake. Ida Lake is inventoried as public waters of the State of Minnesota pursuant to Minn. Stat. § 103G.201 (2008). This Court is authorized to review the grant of a variance by a town pursuant to Minn. Stat. § 462.361, subd. 1 (2008), Minn. Stat. ch. 555 (2008), and Chapter 9, Section 4-H of the Cormorant Township Zoning Ordinance.

5. Venue is proper pursuant to Minn. Stat. § 542.02 (2008) because the real property at issue is situated in Becker County.

APPLICABLE LAW

6. Minnesota Statutes Sections 336.10-181 and Sections 394.32-.33 (2008) authorize towns to exercise zoning authority as a municipality to promote the health, morals, convenience, order, prosperity, and welfare of its citizens.

7. Minnesota Statutes Section 462.357, subd. 6 (2) (2008) states that a municipality may grant a variance from the requirements of its zoning ordinance:

in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. "Undue hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, would not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.

8. Minnesota Statutes Section 462.357, subd. 1(e) permits the repair or reconstruction, but not the expansion, of a nonconforming structure without a variance.

9. Minnesota Statute Section 103F.221 (2008) requires a municipality having shoreland in its corporate boundaries to adopt ordinances affecting the use or development of its shorelands that are in substantial compliance with Minn. R. 6120.2500-.3900 (2009).

10. Minnesota Rule 6120.3900, subp. 6 (2009) requires that “a copy of final decisions granting variances from local management controls must be sent to the Commissioner of [DNR] or the Commissioner’s designated representative and postmarked within ten days of final action.”

11. Defendant Cormorant Township has adopted as its zoning ordinance, which includes a shoreland management ordinance, the Becker County Zoning Ordinance pursuant to “An Ordinance to Encourage the Most Appropriate Use of Land,” dated January 25, 1994, and filed of record in the Office of the Becker County Recorder on February 8, 1994, as Document No. 403608 (hereinafter referred to as the “Cormorant Township Ordinance” or “Ordinance”).

12. Appendix A of the Ordinance provides that Ida Lake is a Recreational Development lake. Appendix A of the Ordinance also provides that the required setback from the ordinary high water level of a Recreational Development lake is 100 feet and the minimum lot area required for new construction is 40,000 square feet.

13. Chapter 10, Section 2 of the Ordinance defines “shore impact zone” as “[I]and located between the ordinary high water level of a public water and a line parallel to and 1/2 the setback from it”

14. Chapter 8, Section 3.C.2.a of the Ordinance requires that land alteration within shoreland areas not result in increased shoreline erosion or runoff. Section 3.C.2.b requires that

DNR approval be obtained for topographical changes below the ordinary high water level of public waters. Section 13.A requires a permit from Cormorant Township for certain land alterations taking place within the shore impact zone. Section 13.E states that the Zoning Administrator may require an applicant for land alteration within the shore impact zone to provide certification from a landscape architect or professional engineer that the requirements of the Ordinance are followed.

15. Chapter 8, Section 11.1.3 of the Ordinance states that:

[v]ariances shall only be permitted if they are practical physical difficulties or particular physical hardships when the strict letter of the Ordinance is imposed. "Hardship" as used in connection with the granting of a variance means the property in question can not be put to a reasonable use if used under the circumstances allowed by this Ordinance. Economic considerations alone shall not constitute a hardship if a reasonable use of the property exists under the terms of the ordinance.

16. Chapter 8, Section 11.K of the Ordinance states that "[n]o variance shall be issued for replacement, or for the addition of a bedroom or bathroom on property served by a system unless the individual subsurface sewage treatment system is in compliance with the [Cormorant Township] ordinance on individual subsurface sewage treatment systems as evidenced by a certificate of compliance."

17. Chapter 8, Section 11.L of the Cormorant Township Ordinance states that "[a] notification of any decision involving shoreland areas shall be sent to the Commissioner of the Department of Natural Resources or the Commissioner's designated representative within ten (10) days [of decision]."

18. Pursuant to contract between Becker County and Cormorant Township, the Becker County Zoning Administrator acts as the Cormorant Township Zoning Administrator, providing virtually all zoning services for Cormorant Township except for the Township

retaining the power to act as the Board of Adjustments for all variance requests brought within Township.

FACTS

19. Hanson owns real property located on Ida Lake at 1497 Dahlgren Beach Road, Cormorant Township. This real property is legally described as follows:

Government Lot 1 lying between Lot 1 Dahlgren Beach 1st and Lot 1 Jim's Beach; Section 27, Township 138, Range 43, Cormorant Township.

20. The real property has approximately 235 feet of lake frontage, is up to 173.10 feet in depth, and is 20,700 square feet in size.

21. Currently located on this real property is a 576 square foot uninsulated seasonal cabin located 14 feet from the ordinary high water level of Ida Lake. As the cabin is located closer than the 100 foot setback requirement of the Ordinance, it constitutes a nonconforming structure.

22. By application dated April 5, 2010, Hanson applied to Cormorant Township for a variance that allowed him to remove approximately 50 percent of the existing structure and replace it with a new four season house proposed to be 28 by 38 feet in size with a new attached 24 feet by 34 foot garage.

23. A variance is required because the entire structure would be within the 100 foot setback required for structures on Ida Lake.

24. Acting as the Cormorant Township zoning administration, a County of Becker Planning and Zoning staff member provided the Cormorant Board of Supervisors, acting as the Township Board of Adjustment, with a written recommendation dated April 28, 2010, on the variance request. That recommendation stated as follows:

Mr. Hanson has ample to room to propose to relocate back further into the property. We can use the string method and/or mitigation for new proposals (do-over). If he wishes to stay located where he currently is the only thing that can be permitted is the replacement of the exact square footage he has - a 24 by 24 cabin with an 8 by 26 deck - any other proposal to add on to the existing structure would be prohibited per Stat. 398.36. There is no hardship of the property for the Variance requested.

25. At a public hearing held on May 11, 2010, the Cormorant Township Board of Supervisors considered the Hanson application for a variance.

26. The Cormorant Township meeting minutes state that Hanson wished to remove 50 percent of the existing cabin, leaving 12 by 24 feet of the cabin and 8 by 26 feet of the existing deck and construct a new 38 by 28 foot addition to the remaining structure. The minutes reflect that Hanson also wished to build an attached 24 by 34 foot garage. It is DNR's understanding that, at the hearing, Hanson modified his proposal to increase the size of the garage from 24 by 34 feet to 30 by 34 feet

27. The Cormorant Township meeting minutes reflect that it was suggested that Hanson move the entire structure further back into his property "as he has a deep lot." The minutes reflect merely that "being a split level dwelling, that would not be possible." The minutes indicate that Hanson wished to live in the area permanently and the current cabin is not winterized.

28. The Cormorant Township meeting minutes indicate that Hanson asserted that destroying the entire cabin would leave a "large hole" that would need to be filled and could cause erosion problems, and that DNR does not allow alterations on a bank in the shore impact zone.

29. To DNR's knowledge, no topographical changes below the ordinary high water level of Ida Lake, a public water, would be required for the complete removal of the existing

cabin and the filling and grading of any resulting hole. Therefore, DNR authorization would not be required for and DNR statutes and rules would not prevent or in any way hamper Hanson's removal of the existing cabin in its entirety and restoration of the site in a manner protective of Ida Lake.

30. To DNR's knowledge, neither Hanson nor Cormorant Township, through its Board of Adjustment or its Zoning Administrator, ever inquired of DNR as to the ability of Hanson to remove the existing cabin and restore the site or requested DNR authorization to do so.

31. Pursuant to Chapter 8, Section 13 of the Ordinance, land alterations proposed to take place within the shore impact zone are subject to the jurisdiction of Cormorant Township and may be undertaken pursuant to permit from the Cormorant Township Zoning Administrator.

32. To DNR's knowledge, Hanson never applied for a permit from Cormorant Township to remove the existing cabin in its entirety and restore the site. Nor does the record reflect that the Cormorant Township Zoning Administrator denied such a permit to Hanson.

33. By vote of 3 to 0, the Cormorant Township Board of Supervisors approved the variance application as modified to increase the size of the garage.

34. By authorizing the construction of the new house and garage, the variance results in an increase in square footage of nonconforming structures with the 100 foot setback.

35. The Cormorant Township meeting minutes do not reflect that the Cormorant Township Board of Supervisors discussed or any manner reviewed the variance standards set forth in Minn. Stat § 462.357 subd 6 (2)(2008) or in its own Ordinance to establish a basis for the variance.

36. The Cormorant Township meeting minutes do not reflect that the Board of adjustment considered whether the variance request would be in compliance with Chapter 8, Section 11.K of the Ordinance, requiring certification that the individual subsurface sewage treatment system for the proposed construction is in compliance with the Ordinance requirements.

37. To DNR's knowledge the Cormorant Township did not issue any other written findings or a written resolution in connection with the grant of this variance.

38. There is no physical or other impediment that prevents the construction of the proposed structures in compliance with the 100 foot setback required by the Cormorant Township Ordinance.

39. No notification was provided to the Commissioner of DNR or the Commissioner's designated representative of the granting of the variance within the ten days of decision as required by Minnesota Rule and Cormorant Township Ordinance.

40. DNR became aware of the granting of this variance when DNR Hydrologist Robert Merritt was verbally informed of the variance by Becker County Zoning Technician Julene Hodgson on June 11, 2010. Merritt then requested and received copies of the variance decision documents from Hodgson.

COUNT I

41. Paragraphs 1-28 are incorporated herein.

42. The standards for granting a variance set forth in Minn Stat. § 462.375, subd. 6 (2008) and in the Cormorant Township Ordinance were not satisfied. The variance was unjustified because, among other things, the applicant did not demonstrate undue hardship and

Cormorant Township failed to create a any record demonstrating that Hanson met the required standards of statute and its Ordinance.

43. The variance granted by Cormorant Township on May 11, 2010, is in violation of applicable law as it is unsupported by the record and the law and therefore is unreasonable, arbitrary and capricious, and in error of applicable law.

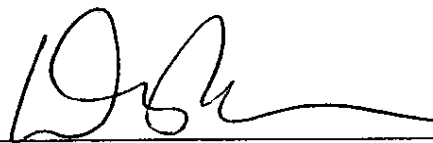
RELIEF

WHEREFORE, Plaintiff Minnesota Department of Natural Resources requests the Court:

1. To declare Defendant Cormorant Township's decision to grant the variance was unreasonable, arbitrary and capricious, and in error of applicable law.
2. To declare that the variance granted by the Defendant Cormorant Township was issued unlawfully and is null and void.
3. To enjoin Defendant Richard Hanson from any construction that will result in violation of the conditions imposed by applicable law.
4. To award Plaintiff Minnesota Department of Natural Resources its costs and disbursements in this matter and such other relief as the Court deems just.

Dated: July 6, 2010

Respectfully submitted,



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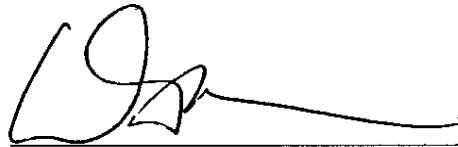
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MINN. STAT. § 549.211

ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2008).

Dated: July 6, 2010



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