

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
MARCH 10, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Lowell Klessig, Scott Soik, John Jazdzewski, Marj Bachhuber, Dennis Meis (Alternate), and William Bernhagen (Alternate). Member Edward Szachnit was excused. Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

David and Susan Ryle, Owners (P14-01)

The David and Susan Ryle, owners, Special Exception request from the Portage County Zoning Ordinance to operate a wholesale bakery as a home occupation, in the A3 Low Density Agricultural Zoning District, Town of Amherst, was opened by Jazdzewski, who read the public hearing notice.

Jazdzewski asked who would represent the petitioner, and it was noted there was no response.

Motion by Bachhuber, second by Klessig, to change the order of hearings and move onto the next hearing. Motion passed by voice vote.

Michael and Annette Mlodzikowski, Owners (P14-02)

The Michael and Annette Mlodzikowski, owners, Special Exception request from the Portage County Zoning Ordinance to operate a motor vehicle repair shop as a home occupation, allow 25 inoperable motor vehicles, and allow a sign greater than six square feet, in the A4 General Agricultural Zoning District, Town of Alban, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated the request is three fold; allow an auto repair shop as a home occupation, allow 25 inoperable motor vehicles on the property, and allow a sign greater than six square feet to advertise the business. Pelky added this will be three separate special exception requests.

Jazdzewski swore in Robert Mlodzikowski and Michael Mlodzikowski and asked them to explain the request. Michael Mlodzikowski stated the following:

- They are hoping to do general repair and maintenance of cars and pickups.
- His son, Robert, is able to gas weld, plasma cut, and fabricate parts.
- Robert has an 18 foot flatbed that can transport vehicles.
- Robert has engine scanners, brake scanners, a torch, and a shop press.
- Robert has painted some of his own vehicles in the past.
- Robert is capable of doing minor body repair work, and repainting vehicles.

Robert stated he is able to do general repair and routine maintenance.

Klessig asked why two requests are being made for operation of an auto maintenance shop and a salvage yard. Robert stated nobody is asking for a salvage yard; it is just as vehicles come and go and before a vehicle is fixed, it may be considered inoperable. Robert added he is a vehicle collector and has particular vehicles he

wants to work on. It may be a while before he is able to actually work on and take what he wants off the vehicles before taking them in to be recycled. This is a way to allow him the time he needs to do what he needs to do, and the place to store the vehicles. Robert stated there would be possibly two or three customer vehicles waiting to be worked on. Robert stated this request is for total vehicles on site; collector vehicles and parts vehicles.

Michael added not every old car they pick up runs; but they may have some parts that are good. Klessig stated this is more of a salvage activity. Pelky stated the ordinance states a landowner can have one unlicensed and/or inoperable motor vehicle. If there is more than that, it is considered an automobile wrecking yard. Pelky added typically if you are doing auto repair, there is usually an extra or few junk vehicles. Pelky told Michael to look at his operation and figure out how many vehicles he would request to be on-site.

Michael read from Wisconsin Statutes 341.266(1)(a)(b)(4) relating to collector cars (a copy was distributed to all BOA members); adding the statute does not state a quantity of vehicles a collector may have on their property. Robert added he provided documentation that he is a collector.

Jazdzewski asked Robert if his intention is to operate a salvage yard, and Robert answered no. However, if he happened to acquire some of the special interest vehicles, he has the right to do that.

Klessig asked if the vehicles being stored would be collector vehicles, and Robert stated they would be parts vehicles or to furnish parts for. Robert stated they would have to fall into that category; they would not be random garbage.

Bachhuber stated they saw a 36'x45' heated area, and asked what is in the rest of the 45' x 90' building. Robert replied the rest of the building is cold storage with parts vehicles or his personal vehicles that are not used until summertime. Robert stated there are some parts stored in that area, and Michael added there are also a few pieces of farm equipment. Bachhuber asked where the parking staging area is for the inoperable automobiles, and Robert stated he assumes they would park them along the building. Michael showed on a diagram where the vehicles would be parked; on the back side of the building. Michael stated Marathon County does not have Comprehensive Planning and he would be permitted to have as many cars as he wanted on the property, as long as they were not within 300 feet of standing water. Michael stated he prefers to keep them on his property in Portage County because last year they had a few incidents of vandalism to an irrigation rig. Robert added threats were made a year ago and now they are being acted on, and the further away you put things, the more damage could result.

Bachhuber stated she did not see a separate spray booth or clean room in the building they are going to use. Robert stated they do not have one at this time. Bachhuber questioned if there was a fan or overspray and fume control to the outside for emissions, and Michael stated he does not have them at this time. Michael stated for commercial use, he may have to have one. Bachhuber asked Michael to describe the properties, as it seems to her from what she has seen and read she does not understand who owns what and what driveway is being used for what. Michael referenced the map distributed with the packet and explained he has an easement through the farm, which he believes is being denied. Michael stated this is the issue that caused the complaints to be generated. Michael added his sister owns the property next door and he believes she is preventing people from entering through this driveway, which is preventing them from performing their farm activities. There was discussion about which driveway has the easement and which driveway is used.

Bachhuber asked where they intend to change oil and antifreeze, and how do they intend to handle it for environment control. Robert stated material has always been bottled, packaged, and recycled. Antifreeze is disposed of at a facility and oil is handled in the same manner. Robert stated he has a collection unit so no oil ever hits the ground. Robert added there is no drain in the building. Michael stated because there is no drain, no oil or antifreeze can get into a drainfield or holding tank. Michael added it would not make sense to dump oil or antifreeze since they can get paid to recycle it properly. Bachhuber asked if they ever change oil outside and Robert and Michael answered no. Bachhuber asked where they wash parts, and Robert stated, for the most part, it is done inside. Bachhuber asked how many unlicensed cars have been on-site during the past year, and Robert stated there could have been as many as 20. Bachhuber asked if there is anything besides cars that Robert is collecting, and Robert answered there have been instances in the past where he may have a friend's car on the property because it may not run. He will take care of taking the car to have it salvaged. Robert added if a friend has a car that won't run and they do not have the means to get it, he will get it for them using his trailer. Bachhuber asked Robert if he has a towing license, and Robert answered no. Bachhuber asked if Robert goes to auctions to get cars, and he responded no. He finds a lot of his cars on the Internet. Bachhuber

asked if they purchase and resell the parts taken out of cars, and Robert answered no. Robert added there may be times when he and someone else can use parts from cars that each other has. Bachhuber asked Robert how many customers he has, and Robert stated anything he sells is solely through word of mouth; he does not advertise. Bachhuber asked what is done with tires that are brought in on vehicles, and Robert stated they are usually recycled in a safe manner. Bachhuber stated there were photos that showed tires piled up in the woods. Robert stated some of those tires have been there a long time and it is hard to move them in the winter. Michael stated a number of those tires were there when they purchased the property.

Soik asked what is the allowable amount of tires a property owner can have, and Mrdutt stated it would fall under solid waste. On agricultural zoned property, they would be allowed 500 square feet. Robert stated the pile of tires they have at this time, if stacked, would be the size of a parked truck, approximately 60 tires. Robert reiterated the majority of the tires out there have been there for years. Any fresh tires received are recycled with vehicles. There being no further questions from BOA members at this time, Michael Mlodzikowski and Robert Mlodzikowski were excused.

Jazdzewski asked if any members of the public wanted to testify on this matter. Matthew Mlodik was sworn in. Mlodik stated his biggest problem with this request is the list submitted stating what the petitioner wants to do. Mlodik stated the list contains performance work such as turbos, superchargers, and nitrous systems will be done; adding the average person driving a car for repairs will not have nitrous or a supercharger on their car. Mlodik lives approximately a quarter-mile away, works nights, has three small kids, and stated there are cars speeding up and down the road, squealing tires. He is not able to sleep because it is a race track in the area. Mlodik stated he has safety concerns and he will not permit his kids to ride their bikes in the area because of the traffic. Mlodik stated this is a nice neighborhood and wants to keep it quiet. Mlodik added he cannot sleep with the windows open in the summer because there are motors revving.

Using the map provided, Mlodik showed Jazdzewski where his property is located in relation to the intersection. Bachhuber asked Mlodik if he can see the Mlodzikowski property from his house, or are the trees in the way. Mlodik stated he can see through the trees. Jazdzewski stated he can probably see the farm, but not the shop, and Mlodik agreed. Bachhuber asked Mlodik what kind of traffic he notices, besides on the road, and asked if there is a lot of traffic going in and out of the property. Mlodik stated it depends on the time of year; there is not a lot now because people do not take their sports cars out in the salt. Klessig asked if these are customers or are they test drives by the mechanic, and Mlodik answered probably both. Mlodik added he can hear them take off and come and go, and he knows where they are coming from.

Jazdzewski asked Mlodik if he has ever contacted Law Enforcement, and Mlodik answered yes. Mlodik stated there was an instance last spring where his wife was mad because there was some kid burning around in the intersection. Mlodik added his father and an uncle also contacted Law Enforcement and they were told they could not do anything about it because they did not have license plates for the vehicles involved. Soik asked if this could be high school students driving on the road, and Mlodik answered yes. Soik stated he understands because he lives down the road from a business, however, it is not just muscle-type vehicles that do this. There being no further questions for Mlodik, he was excused by Jazdzewski.

Jazdzewski asked if any other members of the public wanted to speak on this matter. Jazdzewski swore in Rose Anne Mlodik. Mlodik distributed pictures to BOA and added she lives next door to Michael Mlodzikowski. Mlodik read from a statement and summarized with the following:

- She has the driveway at 9370 County Road A. Mlodik stated absolutely no business or salvage operations are supposed to operate through that driveway.
- Lawyers were retained by all parties in 2013 because of many issues. It was stated by one of the lawyers that the driveway is not intended for a car repair salvage business.
- Mlodik detailed an incident that happened on 2/15/14 where a white pickup drove through her driveway, was stopped by a snowbank on the north property line because it could not proceed, and proceeded to drive across her property through snowbanks. Mlodik stated the vehicle went into Michael Mlodzikowski's driveway, went into a shed and picked up a piece of equipment and left. Mlodik stated this was a business transaction; adding this happens all the time.
- Mlodik stated there has to be some assurance that hazardous materials are handled properly.
- Mlodik stated a car repair business has been there for at least ten years, and Robert Mlodzikowski is very good at what he does; adding he is meticulous, does good work, and has reasonable prices.
- Mlodik stated when they worked in a shed on the property, there were floor sweepings, oil, or whatever falls on the floor, which was swept up and put in the garbage. She does not know if this is allowable.

- Mlodik stated there should be nobody for the business operating through her driveway, adding it is a private driveway. Mlodik stated Mlodzikowski is not being denied access to the driveway.
- Mlodik stated she did not assault anyone trying to make deliveries onto the property.
- Mlodik wants to see a security privacy fence put up because of the close proximity of buildings, traffic, people on foot, and people driving through the lawn and down her sidewalk on the east border of her property.
- Mlodik stated the business needs to install at least an eight foot high fence. Mlodik stated it should be a solid fence; not a wire mesh fence. She wants it to obscure everything on the other side, run along the east and north boundaries, including some type of a gate near the wood stove.
- Mlodik wants some type of gate in the easement opening.
- Mlodik stated once a fence is installed, it needs to be maintained by Mlodzikowski.
- Mlodik stated her house is situated approximately 30 feet from the north boundary line.
- Mlodik stated big rocks were placed to create a boundary line and business patrons, junk vehicles and parts are in full view of her residence and salvage operations are conducted within feet of her residence.
- Mlodik stated she and her mother were sick of looking at the garbage and vehicles everywhere, so decided to put the home up for sale for a period of one year. Mlodik feels when people saw the business and salvage operations they were no longer interested in purchasing the property.
- Mlodik stated she has no privacy.
- Mlodik stated she has contacted various realtors and her property is devalued by living with a junkyard and business 30 feet from her door. Mlodik asked who would want to buy her property, asking if she will be compensated for a depreciated value on her property because of the business operations.
- Mlodik stated she had a theft of items from her property after she overheard a conversation between Robert Mlodzikowski and another kid.
- Mlodik stated patrons come and go because there are no fences to keep them from trespassing.
- Mlodik stated she is afraid someone will tamper with her wood stove near her north property line because people walk and drive right past it.
- Mlodik stated she has a lot of items and equipment outside.
- Mlodik stated she fears for her safety because she is all alone and unknown people wander the property at will because there is nothing to stop them from walking five feet from her door to get back to Mlodzikowski's property.
- Mlodik stated people have driven through her lawn and parked on her property near County Road A.
- Mlodik suggested hours of business be 8:00 am to 5:00 pm, adding these are normal business hours and more than enough time to accomplish repairs. Mlodik checked with other auto businesses in the area.
- Mlodik stated lights have been on in the shed until 2:00 am in the summer. Just recently, lights were on until 12:14 one day and 1:00 another day.
- Mlodik stated evening hours that could be spent outside are ruined by revving engines, loud voices, flashing lights, doors slamming, and privacy is gone.
- Mlodik has a concern with water testing due to increased business traffic and operation. There is a possibility of hazardous spills in the immediate area.
- Mlodik described a situation where a manure spreader was parked 30 feet from her door, and was ordered removed by Ray Schmidt, Portage County Water Quality Specialist.
- Mlodik stated people are driving on the driveway to Mlodzikowski's shed with trailers or being pulled by other vehicles.
- Mlodik stated she had a concern with vehicles that could leak being parked 35 feet from her well. Mlodik wants yearly testing of her well for contaminants from the business, to be done at business expense.
- Mlodik wants the fence put up and maintained at business expense.
- Mlodik asked how many unlicensed vehicles someone is allowed to have on their property.
- Mlodik stated she has safety concerns on County Road A with speed, noise, and increased traffic. There are small children who may not be safe biking or walking on the road.
- Mlodik stated this is salvage; they are not all collector cars.
- Mlodik stated there are parts in barns, sheds, and lying all over.
- Mlodik stated people have driven cars down the sidewalk to get to where they want to be; adding people have even pushed cars down the driveway with a skid steer.
- Mlodik stated there have been parts washed outside.
- Mlodik asked if Mlodzikowski needs to have a license to sell parts.
- Mlodik asked how many cars can be bought and sold in a given year.
- Mlodik stated she is not against Mlodzikowski having a business; however, if it impacts on her, she is going to complain to the Sheriff's Department.

Jazdzewski clarified with Mlodik that she does not have a problem with Mlodzikowski operating a business, as long as it is done respectfully of her property and would meet all guidelines. Jazdzewski asked how they would separate time of day and whether Mlodzikowski is working for somebody or himself. There was discussion about windows that shed light towards her home.

Klessig asked about the land contract, and Mlodik stated that is all done.

Soik asked Mlodik if she was completely opposed to the home based business, and she replied she was never opposed. Mlodik stated she did a lot to help with building a shed for the business. Mlodik added it was suggested to her by a Portage County Deputy that they put up a no trespassing sign to keep people out.

Bachhuber asked Mlodik if she had ever complained to Planning and Zoning about this business, and Mlodik answered yes. Mlodik stated her specific concerns are the hours of operation, vehicles not using her driveway, fencing, and water testing. Mlodik stated if BOA does not impose the specific conditions she is suggesting, they are rewarding the petitioners who have been operating this business for at least ten years in violation of zoning rules; in addition to punishing her deceased mother and herself by subjecting her to further infringements, privacy, distress, possible contaminations, loss of property value in her home, and rendering it unsellable. There being no further questions from BOA members, Mlodik was excused.

Jazdzewski asked if any other members of the public wanted to speak on this matter. Jazdzewski swore in Jay West. West stated he moved to the Town of Alban about eight years ago and he met Robert Mlodzikowski when he needed help fixing his truck. West stated Mlodzikowski helped him as a neighbor; and he believes he has helped out a lot of friends as opposed to running a business. West believes Mlodzikowski is a good, honest, hardworking person. West stated he believes a big part of this is a family vendetta. West added he runs five miles a day up and down that road, six days a week, and he has almost been run over by people, but never by Robert or anyone coming or going from that location. West believes Mlodzikowski should be able to open up his business. There being no further questions from BOA members, Jazdzewski excused West.

Jazdzewski asked if any other members of the public wanted to speak on this matter. Carol Sorge was sworn in by Jazdzewski. Sorge stated she is a neighbor across the road from Mlodzikowski, and added she has no problems with anyone. The only concern she has is the traffic and the revving of engines to test drive vehicles, especially since she gets up for work at 2:30 am. Sorge wished them the best of luck, and added she hopes they make it good because the farmers should after all the hard work they've done. Jazdzewski asked if Sorge if she is opposed to the business and she answered no.

Jazdzewski asked if any other members of the public wanted to speak on this matter. Leonard Mlodik was sworn in by Jazdzewski. Mlodik stated he wants to see the business survive, and added Robert is a good hard working young man. Regarding noise, Mlodik stated he is around a lot and was around a lot on the farm by Rose Anne and his mother. Mlodik stated there are farmers chopping corn and hay and blowing it in silos 50 feet from the house. There is a lot of farm noise. Mlodik admitted there is a family feud going on and he has told Rose Anne Mlodik and Michael Mlodzikowski that he will sit on the fence because he wants a brother and sister to talk to. Mlodik stated it is a dairy farm and there is cow manure and cows walking around, in addition to farm noise. Mlodik stated he has been there at 10:00 pm when Michael Mlodzikowski was blowing silage in the silo and it never used to be a problem. He believes it is the family feud bringing these issues on and some people will do anything to hurt the situation. Mlodik reiterated he wants to see the business do well and it will be good for the community. Jazdzewski wanted to clarify hours of operation for the farm versus the repair shop. Jazdzewski stated the farm operation would be seasonal, and asked Mlodik if he sees a need for a restriction on hours of operation for the repair shop. Mlodik stated cars that are broke don't make much noise, and he does not think revving a regular car would make much noise. Mlodik stated he would allow 7:00 am to 7:00 pm. Bachhuber asked if he agreed there should be some limit set, and Mlodik stated that would be reasonable. There being no further questions from BOA members, Jazdzewski excused Mlodik.

Bachhuber asked Ray Schmidt, Portage County Water Quality Specialist to come forward to testify. Jazdzewski swore in Schmidt. Bachhuber asked Schmidt if he was on the property and ordered a manure spreader to be moved, and Schmidt answered yes. Schmidt explained he was called by Rose Anne Mlodik who said a manure spreader was leaking and parked too close to her well, which Schmidt verified. Schmidt stated if the spreader would have been containing the manure that was in it, that would have been a different case. Schmidt stated he sent Mlodzikowski a letter explaining he had to move the manure spreader far enough away from the well, adding Mlodzikowski took care of that the following day. Bachhuber asked Schmidt if he noticed any evidence

of parts that may be leaking or being washed outside or general contamination. Schmidt replied he did not see anything like that, but he was not looking for it. Schmidt stated he did see a couple of vehicles near the shed that was referenced, but that was it. Bachhuber asked if there are wells in that area that he considers contaminated, and Schmidt replied there are some wells with high nitrates. Schmidt added it would be a stretch to say they were contaminated with anything that would be leaking from tractors or cars or anything like that. Schmidt stated the soil is pretty sandy and the groundwater is pretty shallow, but it would have to be within a certain proximity and direct flow path toward a well. Jazdzewski asked if the well has a special unique well code and what construction record there is; is it a properly installed well. Schmidt stated it looked fine to him. Bachhuber asked how far away from a well the manure spreader was supposed to be, and Schmidt stated it is a different code from the DNR for manure piles or septic systems; he thinks it is 200 feet. Schmidt added a spreader is not normally storage if it is being used as a spreader, but if it is holding manure within the setback of the well, it is required to be water tight.

Bachhuber asked if there is any code that says automobiles have to be so far away from a well, and Schmidt replied not that he is aware of. Schmidt stated the DNR would have that reference.

Soik asked how many wells are monitored in Portage County, and Schmidt answered there is no magic number. Schmidt stated they do test wells regularly for lot splits for new residences in rural areas but they do not do any routine sampling of existing wells. Soik asked if there is anything on record about wells being contaminated by petroleum products, and Schmidt answered there are past samples that show petroleum residues, but there is no current sampling for that.

Klessig asked for information, non-specific to any set of wells, as to how fast liquids from vehicles would move through the kind of soils they are talking about. Schmidt stated acid from batteries moves pretty fast, oil moves pretty slow and is mostly absorbed in the top soil, and in a situation such as at the Mlodzikowski residence with the driveways as packed as they are, any fluids would tend to sit on top. Schmidt explained one of the requirements generally for any surface discharge from dripping off vehicles is to put it out on the ground surface and the sunlight and wind breaks it down. There is a potential for some of it to get in the groundwater. Schmidt stated anti-freeze is water soluble so it would tend to move a little more.

There being no further question from BOA members, Schmidt was excused.

Bachhuber asked Ward to come forward to answer questions. Bachhuber asked if BOA needs to be concerned with the easement. Ward stated they have to ask how the easement relates to the operation of the business. Ward asked if the easement is proposed to be used by customers of the business by the applicant, adding he did not hear that as part of the testimony. He does not see how the easement is relevant as far as the operation of the business goes. Ward added all the testimony heard today should be considered to determine what conditions, if any, should be imposed if they decide to grant permission to operate a business; this is what most of the testimony seems to revolve around. Ward stated he has only heard opposition from the first person to testify, adding everybody else seemed to be okay with a business being operated. The majority of testimony dealt with regulating the business, which may create a better environment than exists now due to there being no regulation at this time. Ward added if they are given permission to operate the business with conditions that must be complied with, it sounds like it will be a much better run business with hopefully fewer complaints by neighbors. Ward stated the family feud is something that needs to be considered in weighing the credibility of witnesses and testimony given; this should be considered in creating conditions.

Bachhuber asked about the noise and the safety of people on the road because of cars being tested. Ward stated even if there was no testimony of cars driving on the road quickly, it would still be an appropriate condition because that is a logical, natural result of operating a business of that nature. Ward stated testimony given stated the problem currently exists, so BOA would be well within its rights to impose conditions of some sort that would impact or lessen the noise in the area to the residents because of the business operating

There being no further questions for Ward, he was excused. Jazdzewski asked if any other members of the public wanted to testify; it was noted there were none.

Jazdzewski called for a short recess at 5:25 pm. Meeting called back to order at 5:29 pm. Bernhagen, alternate, is excused from the meeting; Meis, alternate, takes Bernhagen's place at the table. Jazdzewski noted for the record Meis has been present for all testimony.

Pelky read the following in to the record:

- A letter from Ronald and Sandra Wierzba, surrounding property owners, stating they have no objection to the car repair business; however, they expressed concerns as to how and where the antifreeze, oils, etc. will be disposed. In addition, they expressed concerns regarding cars racing up and down the road.
- An email from Brad Johnson, Wisconsin DNR, stating the site is not required to obtain any stormwater discharge permits. With a small paint booth, he may need a DNR Air permit (contact information listed), and may be considered a very small quantity generator of hazardous waste (contact information listed).
- A petition submitted to the Planning and Zoning Department signed by numerous neighbors supporting the car repair business.

Pelky stated if the land owner is going to operate a paint booth, BOA could consider a condition that they contact Mike Ross, Air Management Engineer with the DNR. Pelky stated the DNR indicated because of the quantity of spray painting being done, they may not need a permit. However, they are not exempt from regulations. Pelky stated he spoke with Joe Knight, Dealer Investigator with the DNR, who stated the landowner is permitted to sell up to five vehicles in a calendar year. If they do more than that, they would need a permit. If they are selling car parts, they would need to obtain a salvage license.

Jazdzewski closed the testimony portion of the hearing, and entered deliberation.

Pelky stated there are three special exception requests, the first being a home occupation for an auto repair shop. Pelky explained if a business is being run out of the home, meaning a detached garage in this case, that is a special exception request. Pelky added the home is one parcel of land, and the actual shop location is on a separate parcel. The home and the business must stay together, so if the landowner sells one or the other, there cannot be a home occupation. The second request is the applicant asking for up to 25 inoperable vehicles; an automobile wrecking yard. Anytime there is more than one inoperable motor vehicle, the Planning and Zoning Department sends a letter telling the landowner to clean it up or petition BOA for an automobile wrecking yard. The third request is for the sign exceeding six square feet; the petitioner is asking for a 12 square foot sign.

Meis asked if the landowner's son were to move and was no longer part of the home, is the business able to continue. Pelky stated Michael Mlodzikowski is involved in the operation and the landowner is permitted to have two outside employees, not a member of the resident family. As long as Michael is involved with the operation of the business somewhat, Planning and Zoning is comfortable with that.

Bachhuber asked if the special exception to run the home occupation, specifically an auto repair shop, runs with the property. Pelky reiterated the conditions stay with the land; it is land related. Bachhuber asked if anybody could run an operation if permission is given, and Pelky stated all conditions set by the BOA would have to be followed. Bachhuber asked if a different business could be run, and Pelky answered no. Mrdutt explained this is why the request is listed as a motor vehicle repair shop as a home occupation.

Rose Anne Mlodik wanted to state there is no vendetta. There has been friction between Mlodzikowski and herself. She is asking that when BOA deliberates, put themselves in her position with vehicles in and out and the hours. Jazdzewski stated all that would be taken into consideration.

Mlodzikowski wanted to address the land contract regarding delivery of wood, and Jazdzewski stated that has nothing to do with this request. Mlodzikowski added he agrees with putting up a fence, but he believes Mlodik will go upstairs and take pictures. Jazdzewski reiterated this has nothing to do with the request.

Jazdzewski stated they will deal first with the home occupation request. Bachhuber wanted to hear about hours of operation, screening, and safety issues on the road.

Klessig stated he feels this type of shop is important to the public interest. If properly regulated, he would encourage this happening. Klessig stated he would not want to hear loud noise in the early hours. Klessig is unsure how they would regulate safety in this situation, and added screening is appropriate in this case.

Jazdzewski stated he feels hours of 7:00 am to 7:00 pm Monday through Friday are appropriate, Saturday hours of 7:00 am to 12:00 pm or 1:00 pm, and no operational hours on Sunday. Jazdzewski stated there is no repair shop on his road and people are squealing tires all the time. He believes the operator of the business would have to impose on friends and clients that it is not a race track. There are laws that govern operation of vehicles on the road; BOA does not.

Klessig stated there needs to be some regulation on lighting because the properties are so close together. Jazdzewski stated if shop lighting is an issue, it can be screened at the window. Jazdzewski stated screening is an issue also.

Soik stated before this moves further, he wants to see all parties get together and come up with a list of conditions they all can live with, and then come back to the BOA to see that people have met in the middle. They can then review everything and continue on from there. Soik is suggesting that it is a reasonable idea. Everyone can come back and show BOA in good faith that they are able to get this done amongst family. Soik stated the County can attach any conditions they need to have to make sure everything is covered. If it is not acceptable to all parties today, BOA will act on it today. Soik feels if it is something all parties can agree on and come back in a month to show they are trying to work together, they can go from there. Jazdzewski stated the parties are shaking their heads no.

Bachhuber stated if this request were to be postponed or tabled, and based on the admission of the property owner that he has been running a business without proper permits, it appears the property owner will find himself in a situation without the permits to continue running the business.

Klessig stated the issues BOA needs to deal with won't change, and BOA cannot deal with the issues of the easement. Klessig stated whatever the parties may decide, BOA would still have to make the same judgments about what is appropriate for a home occupation in this situation. Soik stated it would make BOA's job a lot easier if the parties could agree on certain issues. Klessig stated these decisions should be made irrespective on how each party feels.

Meis agreed there should be a fence, but not a wire fence. Meis stated materials such as oil, antifreeze, etc., should be stored in appropriate containers and disposed of properly.

Bachhuber asked for direction as to where the fence should be placed. Jazdzewski stated the screening is not only for the benefit of the property owner whose house is right in the middle, but is also to screen from the road. Therefore, the screening should go far enough to the east to prevent a view of the storage area. Then it should be placed so it serves both parties as far as wells, sidewalks, furnaces, and driveways. Jazdzewski stated it is BOA's decision as to where the fence should start and stop. Meis stated it should start at the road on the east side because that would prevent them from going on the property as well when they are trying to get between the house and property line. There was discussion regarding placement of the fence. Mlodzikowski asked who has to pay for the fence, and Jazdzewski stated he does since he is the business owner.

The following areas were covered:

- The proposed use is not contrary to the Zoning Ordinance, State Law, or Administrative Code.
- Safe and healthful conditions can be maintained with conditions.
- The use does not affect existing development or future development and roads.
- The surrounding neighborhood will not be adversely affected by the proposed project, based on testimony given.
- There are no alternative locations. The structure is already there.
- There is not a preferred use for this site.
- This project does not impact wetlands.
- It is not necessary for the Army Corps of Engineers to be contacted.
- The proposed project is not located in a floodway or floodplain.
- There is no probability of flooding.
- Topographical features are not affected by this project.
- Drainage features are not affected by this project.
- This site does not have erosion potential.
- Water pollution issues can be prevented and controlled.
- Waste may be generated by this project. This will be dealt with in conditions.
- On-site vegetation is not adversely affected by the project.
- This project is important to the surrounding community.

Jazdzewski discussed screening of the storage yard, and stated fast growing trees or hedges may be a goodwill gesture on the part of the landowner.

Jazdzewski stated there is a letter from the Town of Alban in the packet, and they were supportive of the request.

Mlodik stated there are still vehicles that come through the driveway, and isn't there something they can do on the other side of the easement because people have walked through there. Jazdzewski stated this is something they have to work together on.

Motion by Bachhuber to approve the request for a special exception to operate a motor vehicle repair shop as a home occupation, with the following conditions:

1. You are to obtain a Portage County Zoning Permit.
2. Copies of any State and County permits, licenses, and necessary approvals are to be on file with the Portage County Planning and Zoning Department, prior to issuance of a Zoning Permit.
3. All hazardous waste is to be stored in 150% containment containers and be properly disposed of, according to Portage County, State of Wisconsin and Environmental Protection Agency standards.
4. You are to install a solid fence, 8' in height, setback from the road right-of-way between the two properties, proceeding north, then to the corner of the property, then west to the easement. The easement must not be blocked.
5. Ownership of the home and business parcel is to remain the same.
6. Hours of operation shall be from 7:00am to 5:00pm, Monday through Saturday.
7. All parts removed from vehicles are to be stored inside buildings.
8. Lighting on the building and inside the building shall be controlled to avoid shining into the adjacent property.
9. Vehicles on the site shall have a designated parking area as directed by the Planning and Zoning Department staff.

Jazdzewski stated before he asks for a second, he believes the hours of operation are being cut a little short for normal business hours. Meis stated he would allow hours until 6:00 pm. Soik stated he would allow 7:00 am to 7:00 pm hours, Monday through Friday. Klessig stated he would allow hours until 6:00 pm. Meis stated he believes Saturday could be cut to a half day. Jazdzewski added he agrees a shorter day on Saturday is appropriate.

Bachhuber stated her motion will read the hours of operation will be Monday through Friday, 7:00 am to 6:00 pm, and Saturday 7:00 am to 12:00 pm.

Soik addressed lighting, and stated with this property being a farmstead, he believes there is most likely large floodlights already there. Mlodik stated this is not a problem for her. Bachhuber clarified her motion was lighting on the building or coming from the building is not to shine out.

Motion to approve seconded by Klessig. Motion to approve the motor vehicle repair shop as a home occupation passed unanimously by roll call vote.

Bachhuber stated she understands if they allow an auto repair business, occasionally other cars will be brought in for parts. Bachhuber explained the ordinance and stated every property can have one inoperable and/or unlicensed vehicle. Mrdutt added operable is defined as being able to legally drive down the road. Klessig asked how many vehicles, not owned by the property owner, can be on the property. There was a discussion about site specific conditions for different businesses.

Klessig stated he has a problem with allowing 25 vehicles on the property. He believes this would be the beginning of a small salvage yard, and you do not know what these vehicles will be in the future. Klessig wants a reasonable number to go along with a home occupation to be a mechanic. Bachhuber re-read section 341.266 State Statutes, regarding collectors. Mrdutt explained how the Planning and Zoning Department enforces that statute, even though the Department does not enforce statutes. Mrdutt explained a collector car must have a collector plate. Mrdutt stated the part cars must be associated with the same make of car as the collector car. Mrdutt stated you cannot have miscellaneous vehicles in the backyard and claim the statute is being followed. Soik asked what would be considered a good ratio for collector and number of support cars for the collector car. Mrdutt stated there is no ratio. Soik stated if they do not put a limit on, Mlodzikowski could have a collector car and five years later have, give or take on that year and model, a total of 100 similar like models to support the plated collector car. Soik stated this is something BOA needs to consider, instead of just putting a number out there. Soik believes there should be a ratio per plated collector car. Jazdzewski stated

Mlodzikowski spoke about having parts cars catering to his collection. Jazdzewski took this to mean he should take the parts off that he will need and dispose of the remainder of the car. There is no need to stockpile cars indefinitely. Mrdutt wanted to clarify that to be a collector car, it must have a collector plate and be registered as a collector car. Mrdutt did not know if there was any evidence presented here showing they have a certain amount of collector cars. Bachhuber continued to read the statute which referenced the storage of collector parts in cars on the collector's property. Bachhuber stated they need to decide how many collector cars should be permitted with the collector license plate. Jazdzewski clarified they only need one car with a collector plate, which Mlodzikowski has provided, and he can have cars related to that on the property, within reason. Pelky stated those cars would be exempt from the ordinance if they meet the criteria. Pelky stated they need to look at how many other cars can be on the property relating to the repair shop.

Soik stated the collector issue is not something BOA needs to look at. They need to look at the amount of cars to be allowed for the repair shop. Jazdzewski stated he believe 25 inoperable motor vehicles, not associated with the collecting, is a high number. Jazdzewski stated they need to have a reasonable number. Meis stated 10 vehicles is a good number, and Jazdzewski agreed. Mrdutt suggested ten vehicles towards the automobile wrecking yard; automobile wrecking yard is referenced in the ordinance. Mrdutt stated for reference purposes, in the past BOA has looked at automobile repair shop home occupations and associated cars that accompany that business; this is where the automobile wrecking yard comes into play. Mrdutt stated in the past, BOA has looked at the screened area for the business and also used that when determining the number of vehicles permitted. This number could include parts cars, vehicles dropped off for work, etc. Mrdutt stated BOA could assign numbers to each portion of the business; the automobile wrecking yard and the repair shop. They could then give an area that those vehicles have to be parked. Mrdutt stated from an enforcement standpoint, they can clearly define what is associated with the business and what is associated with the farmstead or the personal collector vehicles. Mrdutt stated there are vehicles that will show up that are licensed and operable. Mrdutt added this is why BOA needs to consider attaching conditions that reference any cars associated with the business, and define an area those vehicles have to be parked and/or stored. Jazdzewski asked if they could say 10 vehicles were permitted on the site that does not include anything related to the collectors. Mrdutt replied it is good to have a condition stating that because it makes enforcement easier.

Jazdzewski asked Mlodzikowski how many vehicles he would have coming to his business on a given day, and Mlodzikowski stated not every vehicle that comes in is operable. Mlodzikowski stated 15 would be a good number. Mlodik asked if there are vehicles on the property solely to take parts off, how are those considered? Jazdzewski state if they relate to his collectors, they are excluded from this number. The numbers they are discussing deal with the business.

Bachhuber stated the only issue not addressed is the safety factor of vehicles on the road. Jazdzewski stated good stewardship of a business should be enough. Meis agreed, adding people need to call the Sheriff's Department repeatedly with complaints.

Ward asked if BOA could direct that any testing of vehicles coming from the shop take a particular direction out of the driveway, maybe to a less populated area that would be more appropriate to drive down, versus the area they are hearing complaints of. Jazdzewski stated he does not believe there is a proper direction for squealing tires. Ward stated it is realistic to think that people working on cars may want to test the performance to see how the repair went. Bachhuber asked if there is a direction in which it would be better to direct testing. Jazdzewski stated it is a rural residential area with a house maybe every quarter mile.

Ward suggested that all testing from the home occupation must be done in accordance with all State of Wisconsin traffic laws. If the owner is testing a vehicle and violates traffic laws and is reported to the Sheriff's Department, that would be a violation of a condition. Meis added approval could be revoked if violations are reported.

Motion to approve the request to have an automobile wrecking yard as part of a home occupation with the following conditions:

1. You are to obtain a Portage County Zoning Permit.
2. Copies of any State and County permits, licenses, and necessary approvals are to be on file with the Portage County Planning and Zoning Department, prior to issuance of a Zoning Permit.
3. There shall be screening as described in the motion to allow a home occupation.
4. The auto repair business and wrecking yard shall be allowed to have 10 vehicles, regardless of condition.

5. The vehicles shall be parked behind screening as described in the motion to allow a home occupation.
6. All testing of vehicles must be in accordance with State of Wisconsin traffic laws.

Motion to approve seconded by Klessig. Motion to approve having an automobile wrecking yard as part of a home occupation passed unanimously by roll call vote.

Bachhuber stated Mlodzikowski runs an automobile repair shop, does not do any advertising, has not needed to do any advertising, and advertising is done by word of mouth. Bachhuber stated because only ten vehicles are allowed on-site, and because Mlodzikowski does not need to advertise, she would deny the petition for a sign identifying his business; adding she believes six square feet is sufficient.

There was discussion that a sign should include direction as to where to enter the property.

Klessig asked Mlodzikowski if he presently has a farm sign, and Mlodzikowski answered no. Klessig feels a sign is appropriate on this property. Klessig stated they would allow a larger farm sign. Jazdzewski stated 12 square feet is reasonable. Mlodzikowski asked if a sign could be on a fence, and Pelky answered yes; adding the fence, as well as the sign, has to be outside the road right-of-way.

There was a brief discussion on the fencing, and how tall it has to be. Jazdzewski stated the fence has to be solid and 8' tall. Mrdutt stated those details will be worked out with the Planning and Zoning Department.

Motion by Bachhuber to approve the request to have a sign greater than six square feet, with the following conditions:

1. You are permitted a two-sided, unlit sign, not to exceed 12 square feet.
2. You are to obtain a Portage County Zoning Permit.

Motion to approve seconded by Klessig.

Klessig asked if they need to require the sign be two-sided, and Jazdzewski stated they do not have to have to make the sign two-sided.

Motion to approve passed unanimously by roll call vote.

Mlodik asked if a sign can be put on the entrance, beyond the easement, to Mlodzikowski's property that says keep out or private, or something like that. It was noted it is their property, and they can do that. Mlodik brought up the issue of wood being delivered, and Jazdzewski stated this is between them and they have to be neighbors and deal with it themselves.

David and Susan Ryle, Owners (P14-01)

Jazdzewski noted there was no one in attendance for this petition.

Motion made by Klessig to hold open Petition P14-01; motion seconded by Soik. Motion to hold open passed by voice vote.

Discussion/Possible Action on Bylaws

Jazdzewski stated he would like to take this item up at the next meeting because it is getting late. Ward asked if anyone on the Board had any comments or thoughts he could take back to his office to work through any problems.

Bachhuber referenced Section One and noted it says nothing about variances. Ward stated he will address this.

Bachhuber referenced Section Three, Membership, and asked for clarification regarding term limits. Ward stated he believes Bachhuber is misinterpreting this section and the way it is implemented in Portage County. Meis stated he has been an alternate on the BOA for six years and only sat on three cases. He does not believe this should count toward the term limit. Ward will clarify this.

Ward asked members to contact him with any changes and he will work on a document to present at the next meeting.

Approval of Minutes

Bachhuber moved to approve the minutes of December 16, 2013, Soik seconded. Jazdzewski asked if there was any discussion on the minutes. There being no discussion, the motion to approve passed by voice vote.

Correspondence/Updates

Next meeting is Monday, March 17, 2014. On-Sites will be prior to the meeting.

Adjournment

Motion to adjourn by Soik, second by Klessig. Meeting adjourned by Jazdzewski at 6:42 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
MARCH 17, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Lowell Klessig, Scott Soik, John Jazdzewski, Ed Szachnit, Marj Bachhuber, Dennis Meis (Alternate), and William Bernhagen (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

Deer Run Valley LLC, Owners, Owen and Marlene Sannes, Agents (P14-03)

The Deer Run Valley LLC, owners, Owen and Marlene Sannes, agents, Special Exception request from the Portage County Zoning Ordinance to operate a Tourist Rooming House, in the A2 Agricultural Transition Zoning District, Town of Lanark, was opened by Jazdzewski, who read the public hearing notice.

Mrdutt stated the property is zoned A2, Agricultural Transition Zoning District, and the petitioners want to have a tourist rooming house. As mentioned in the staff memo, Mrdutt stated the house is in good condition and there is no evidence that it poses any health or safety concerns to the general public. Mrdutt added the septic system has been maintained regularly and is in compliance with the ordinance. Mrdutt stated it appears the property has adequate shoreline buffer, adding they will conduct an on-site in the spring to look at that and address a revegetation plan. Mrdutt stated he is aware the petitioners have been working with Portage County Health and Human Services to obtain all necessary permits. Mrdutt added they have been following all recommendations.

Owen Sannes and Marlene Sannes were sworn in by Jazdzewski. Owen Sannes stated his parents built the house. 20 years ago, the house and property were turned over to the three kids; however, none of the kids wanted the house. Sannes stated they were going to sell the house, but his father wanted them to keep it. Owen Sannes stated they decided they would try to open a tourist rooming house to try to make money for the taxes and upkeep on the property. Marlene Sannes stated there are three siblings involved in Deer Run Valley LLC.

Klessig asked if they will be the managers of the facility, and Marlene Sannes responded it will most likely be the three siblings. Marlene Sannes added they all get along well and live locally.

Soik stated, according to the map, it appears there has been an outlot created along the eastern property line. Mrdutt stated this is what gives that created lot access to Otto Road; this is the public access portion of it. The driveway, or travel portion, is what BOA drove on. Mrdutt stated if push came to shove and different property owners acquired different properties in the future, they have the ability to put in a driveway. Since all the property is under the same ownership, they use the one driveway already there. Soik asked if the township has assigned a fire number to that property if necessary, and Mrdutt answered yes. In addition, the Town of Lanark approved the lot split. Soik asked if there are any issues with setbacks or distances between driveways, and Mrdutt stated since this is a town road, that issue would be enforced by the Town of Lanark. Marlene Sannes showed where the official driveway for the neighboring property to the east is located. Marlene Sannes stated BOA saw what appears to be a driveway on the neighboring property, however, it is a beaten path from where heavy equipment was brought in.

Szachnit asked if any of the parties currently use the house as a residence, and Marlene Sannes stated Owen Sannes' father and a niece currently live in the house.

Bachhuber asked how it will work with Sannes' father living there if they run a tourist rooming house, and Owen Sannes stated his father has no problem living with them if this is approved.

Bachhuber asked if they will have a sign, and Marlene Sannes stated they would like to put a small sign at the road that says "River Ridge." They do not want to advertise and do not want it to look commercial. Anyone who will be renting will do so utilizing "VRBO, Vacation Rental By Owner" so there is no need to advertise. They only want a sign by the road that says "River Ridge" and maybe the address, to help identify the property. Jazdzewski stated this is something they would take care of with Planning and Zoning Department staff.

Jazdzewski asked if this would end up being a multiple family residence, and Marlene Sannes answered no. In addition, they have to follow rules through Portage County Health and Human Services.

Szachnit asked if Deer Run Valley LLC has any other holdings with the siblings, or is it specifically set up for this cabin, and Owen Sannes stated it is specifically for this cabin.

There being no further questions from BOA, Owen Sannes and Marlene Sannes were excused by Jazdzewski.

Jazdzewski asked if there were any members of the public wanting to speak on this matter; it was noted there was none.

Jazdzewski read the following into the record:

- An email from Michael Wenzholz, Wisconsin Department of Natural Resources, stating the DNR has no comment regarding this request.

Bachhuber asked Mrdutt and Pelky if they have seen this property any other time of the year without snow cover, and Mrdutt answered no. Bachhuber asked if they would know of any erosion problems, and Mrdutt answered no. Mrdutt stated his memo recommends a condition be established where staff would work with landowners in the spring to ensure there are no shoreland related issues.

Jazdzewski stated there is a letter in the packet from the Town of Lanark regarding this matter. Jazdzewski closed the testimony portion of the hearing and opened the deliberation phase.

Bachhuber addressed the following:

- Safe and healthful conditions can be maintained.
- There is a letter from the DNR stating they have no concerns regarding the location of the site with respect to floodplains and floodways of rivers or streams.
- There are no problems with the compatibility of the proposed use with existing development and anticipated future development.
- Services provided to the community are important.
- The availability of alternative locations is not applicable; the home is there.
- The use would not substantially harm the public health, safety, and general welfare, and is not contrary to State Law or Administrative Code.
- The use is consistent with surrounding uses and the neighborhood is not injured thereby.
- The use is consistent with this Ordinance and any County or Municipal Plan. The Town of Lanark did not indicate the use is contrary to their Comprehensive Plan.

Jazdzewski stated there are suggested guidelines to follow. Bachhuber stated any signage must comply with the ordinance.

There being no further discussion by BOA, Jazdzewski closed deliberations.

Motion by Soik to approve the special exception request for a tourist rooming house with the following conditions:

1. You are to obtain a Portage County Zoning Permit.

2. You are to set up a zoning inspection in the spring of 2014 to insure that a proper shoreland buffer exists along the Tomorrow River.
3. You are to obtain all necessary permits/licenses from Portage County Health and Human Services to operate a tourist rooming house.

Bachhuber asked if signage will be addressed. Soik stated in speaking with the petitioners, it appears they do not want to have a sign over six square feet. Petitioners will work with Planning and Zoning staff if they wish to have a sign.

Motion to approve seconded by Klessig. Motion to approve passed unanimously by roll call vote.

Marlene Sannes asked if they can go ahead with the rest of the inspections and get their license, and Mrdutt replied they can continue to work with Portage County Health and Human Services.

Discussion/Possible Action on Bylaws

Bylaws with proposed revisions were distributed to members this evening and Ward suggested they take time to review them and discuss any changes. Ward stated the bylaws are not in final form; he has some clean-up work to do and he would like members to take a look at them and give input at the next meeting as to the substance of the bylaws. When members decide what they want as a final version, Ward will then produce a final draft for review with tracked changes.

Discussion amongst Ward and BOA members regarding proposed changes, how they came about, and the procedure for approving revised bylaws.

Klessig asked if a motion should be made to accept the draft and table it for discussion at a future meeting through amendments, and Jazdzewski explained this is a working document that is being modified by Ward. Jazdzewski stated a motion is not needed at this time.

Meis asked Ward to clarify term limits and if years as an alternate would count towards that limit. Ward clarified membership as an alternate would not count towards the term limit; adding he will add this to the membership section of the bylaws.

Jazdzewski asked if it is the consensus of the Board members to have Ward continue to work on the bylaws and discuss the issue further at the next meeting; all members in attendance agreed.

Correspondence/Updates

Next meeting is Monday, April 21, 2014.

Adjournment

Motion to adjourn by Bachhuber, second by Szachnit. Motion to adjourn passed unanimously by voice vote. Meeting adjourned by Jazdzewski at 4:45 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
APRIL 21, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Lowell Klessig, Scott Soik, John Jazdzewski, William Bernhagen (Alternate), and Marj Bachhuber. Members excused are Ed Szachnit and Dennis Meis (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

David and Susan Ryle, Owners (P14-01)

The David and Susan Ryle, owners, Special Exception request from the Portage County Zoning Ordinance to operate a wholesale bakery as a home occupation, in the A3 Low Density Agricultural Zoning District, Town of Amherst, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated the owner wants to operate a bakery out of an existing detached garage. Pelky stated this is a home occupation request.

Jazdzewski swore in David Ryle and asked him to explain his request. Ryle stated he has been trained as a baker and previously owned and operated the Amherst Bakery. Ryle stated the building on the property is ideal for the purpose of a bakery. Ryle wants to supply specifically to farmers markets; this is not for the retail public. Ryle stated there is a good demand for the European breads and danishes he bakes. Ryle stated the building already has electricity and a poured concrete floor and is insulated.

Bachhuber asked Ryle if he will have signage, and Ryle answered no. Bachhuber asked if there will be lighting on the building, and Ryle answered there will be lighting within the building; the only outdoor lighting will be what is already there.

Jazdzewski excused Ryle. Jazdzewski asked if any members of the public wished to speak on this matter, and it was noted there was none.

Jazdzewski read the following into the record:

- An email from Michael Wenholz, Wisconsin Department of Natural Resources (DNR) stating the DNR has no comment regarding this request.

Jazdzewski closed testimony and opened deliberations.

Bachhuber read from the Special Exception Evaluation Form and the following was noted:

- The use is not contrary to the Zoning Ordinance, State Law, or Administrative Code. A Special Exception is required.
- The use is consistent with the current Town and County Land Use Plans. A letter from the Town of Amherst is on file.
- Safe and healthful conditions can be maintained. Jazdzewski stated any health issues will have to be addressed with the Department of Health and Human Services.

- Will the use affect existing or future roads and development? Jazdzewski stated the Town of Amherst requested semis not be allowed to unload at the location. This will be addressed in the motion.
- The surrounding neighborhood will not be adversely affected by the proposed project; there will not be any retail business at the location. Someone will be delivering the baked goods to the market.
- There is no alternative location as the structure to be used already exists.
- Does this site have a more preferred use? There is none at the moment.
- This project does not impact the wetlands, as stated in the email from the DNR.
- The project is not located in a floodway or flood plain.
- Topographical features and drainage features are not affected by this project.
- Will waste be generated by this project? Ryle stated there will not be significant waste generated.
- On-site vegetation will not be adversely affected by this project.
- This project is important to the community.

Motion by Bachhuber to approve the special exception request to operate a bakery as a home occupation with the following conditions:

1. You are to obtain a Portage County Zoning Permit.
2. Any signage would require a Portage County Zoning Permit.
3. All State or Local permits or licenses are to be on file with the Portage County Planning and Zoning Department before work can be started.
4. You, the owner/operator, are to look for alternate methods of delivery of baking products.

Motion to approve seconded by Klessig.

Jazdzewski reiterated there must be unloading at an offsite premise as requested by the Town of Amherst.

Barry Jacowski stated they may want to consider the condition relating to permits being on file before construction begins; adding there may need to be some construction before he can get a license. Bachhuber clarified permits and licenses should be on file before operation.

Motion to approve the special exception request passed unanimously by roll call vote.

Waupaca Holdings LLC, Mike Holmgren-Festive Foods, Owner, Kris Miller, Agent (P14-04)

The Waupaca Holdings LLC, Mike Holmgren-Festive Foods, owner, Kris Miller, agent, Variance request from the Portage County Zoning Ordinance to construct a 3,200 square feet addition to the west side of the building, within the setbacks to County Road D, in the Industrial Zoning District, Town of Belmont, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated the current building was constructed before zoning went into effect; Belmont came under zoning in approximately 2000. Pelky stated he was contacted by Festive Foods to construct an addition. The area they want to add on to already sits 40.8 feet from the right-of-way. The proposed addition is 24 feet and would extend into the setback, thus the need for the variance.

Jazdzewski swore in Mike Holmgren and Kris Miller and asked them to explain the request. Miller stated they are looking at office space to the west of the building. They tried to purchase property to expand to the north, however were unable. Building to the south is not possible because they have a spiral freezer in between, and there would be no way to connect the new office space with current office space. They need both office spaces to be together. Holmgren stated the building was not constructed to have offices and it appears previous owners added on many times over the years. There is a need for washrooms in the office area and proper offices for staff.

Klessig asked why not construct on the gravel area located to the south of the building, and Holmgren stated they cannot because there is a spiral freezer. There is a power distribution box and spiral freezer which cannot be relocated because it is heated from underneath.

Jazdzewski stated they could build to the south, but there would not be access. Holmgren stated the buildings would not be connected. There would have to be a separate hallway going around all areas of the building; and that would be very unproductive and challenging. Holmgren added this is also a parking area.

Using the map distributed with the packets, Holmgren showed the different areas of the plant and why they feel they are unable to expand any direction other than to the west.

(Unable to decipher as there were two conversations going on at one time)

Jazdzewski stated it was noted in the packet that the loading dock to the north will be closed, and Holmgren stated that is correct; adding they have three loading docks to the south and east. Jazdzewski asked if all the parking located in the front of the building will be closed. Miller stated they will be eliminating the loading dock, flagpoles, and parking spaces located in front of the building. Miller added the Portage County Highway Department is happy with this arrangement. Holmgren stated they want to improve the façade and look of the building.

Klessig asked if all the property owned in the holdings is suitable for construction activity and if any of it is located in wetlands. It was noted there are no wetlands. Klessig clarified by asking if they can do whatever they want on their block of land, and Holmgren answered yes.

Bachhuber asked about signage, and Miller stated there is currently a sign on the building. They plan on putting a new sign up that is more attractive. There is exterior lighting and motion lights; they want to make sure the area is safe. Holmgren added they have a very high audit scores and an extremely nice safety record. Holmgren added they will not have any signage; just exterior lighting for safety.

There being no further questions from BOA members, Holmgren and Miller were excused. Jazdzewski asked if there were any members of the public wanting to speak on this matter. Barry Jacowski, County Board Supervisor from District 23, stated this is a great facility and good place for people who live in the area to work. Jacowski stated he had questions from a few constituents relating to garbage blowing off of the property and flagpoles located in the right-of-way and ditch and the way they are lit. Jazdzewski stated the flagpoles are going to be removed. Holmgren stated there have not been lights shining on the flagpoles since they took over the business and reiterated the flagpoles will be relocated. Jacowski asked if the proposed addition will go into the road setback or the property setback. Jazdzewski stated it would be in the property setback, but not the road right-of way. Jacowski stated his concerns were if the road had to be maintained and if it would affect the building.

Jazdzewski asked if anyone else wanted to speak on this matter. David Walkowicz, Belmont Town Chairman, stated he believes the biggest safety hazard was semis and loading dock issues. He feels the plan of what they want to do with the exterior of the building is a good plan and he has heard no complaints from people in the Township; adding this is the Town of Belmont's biggest industry. Jazdzewski stated there is a letter on file from the Town of Belmont approving the request. .

Jacowski stated the property owner to the north did complain about hair nets being blown onto their property, and asked the owners to please speak with their workers. Holmgren stated he does not believe that would have been recently because they have a new program in place, however, he will make sure this does not happen.

Soik asked if flags are being flown at night, and stated if the American flag is being flown at night it must be properly lit.

Pelky stated the owners have been working with the Land Conservation Division on stormwater, and added this will be an in-house requirement before a permit is issued. Pelky added they are currently working on an application for a sanitary permit for the septic. This will also need to be issued before a zoning permit is issued.

There being no further comments from the public, Jazdzewski closed the testimony portion of the hearing and entered into deliberations. Bachhuber reviewed the variance standards and the following was noted:

- The proposal is not contrary to State Law or Administrative Code.
- The proposal is permitted in this zoning district.
- Are there alternatives to the variance request? Bachhuber stated a letter from Staff stated BOA is tasked with determining what size of an addition could be allowed and if the variance criteria can be met and if the variance is warranted.
- The variance will not be detrimental to nearby property owners. The only issue discussed was lighting and the lighting issue will be improved as will safety because of lighting.

- The spirit of the ordinance can be maintained.
- Substantial justice will be done by granting the variance. The Town of Belmont has testified this is a major employer and they have been a good neighbor.
- This request is not contrary to the public interest.
- There are unique property limitations. Klessig stated this is a great effort and a community success; however, the building is already located in the setback and he has issues with adding onto this structure. Holmgren stated they have grown from approximately 30 employees to over 100 employees. Holmgren explained they need more cubicle areas for employees, in addition to conference rooms. Holmgren stated it will be difficult for different employee departments to work together if they have separate working areas. Holmgren added they cannot park in the back of the building; this is where they had safety issues when he purchased the company five years ago. Holmgren showed on a map where employees had to park and move around the semi's to get into the building, and there was the risk of injuries. Holmgren stated the original construction of the building was not to today's standards. Holmgren stated he believes the addition as proposed is the only solution.
- Jacowski stated it is much easier for Holmgren to put office space up front into the setback. If they were to put the office space elsewhere and they need to expand, this could limit future expansion.

Jazdzewski again closed the testimony portion of the hearing. Bachhuber asked for discussion on the size of the building and Jazdzewski stated he believes they are not overbuilding; he believes they are making efficient use of the building. Soik stated he likes the fact that they will be relocating the flagpoles from the road right-of-way. Soik also believes this is beneficial for the Highway Department. Jazdzewski stated he believes moving the parking from the front area will improve traffic safety. Soik stated these are both benefits to the County Road. Jazdzewski asked if there are any planned exits with the expansion, or will the west side be only structural? Holmgren stated there will be an entrance and exit on the front of the building, facing the road; explaining there will be a proper walkway and green area where the four parking stalls are located now. Holmgren stated they will have one to two vendors visiting a day. Jazdzewski asked if they will be putting picnic tables for the employees in the green area, and Holmgren answered they have tables in a picnic area by the blue building. Miller stated 95% of the employees will not use the front entrance.

Bachhuber asked if they need a 3,200 foot expansion, and Jazdzewski stated this is what is in the variance request and added he believes this is what they need.

Motion by Bachhuber to approve the variance request as submitted with the following conditions:

1. You are to obtain a Portage County Zoning Permit.
2. A Stormwater Management Plan must be approved by the Portage County Land Conservation Division.
3. A Portage County Sanitary Permit must be issued before issuance of a Portage County Zoning Permit.
4. All exterior lighting is to be situated so there is no interference with traffic on County Highway D or adjacent properties.
5. There is to be no parking in front of the building.
6. The existing flagpoles are to be removed or relocated to a place outside of the road right-of-way as approved by the Portage County Planning and Zoning Department.
7. The loading dock located on the north side of the building will be removed.

Soik stated the motion states no parking in front of the building, and added it appears they will have four spots facing the building towards the north. Bachhuber stated she is agreeable to stating there is to be no parking within the road right-of-way of County Road D.

Motion to approve seconded by Bernhagen.

Klessig stated he is hesitant to vote for an addition to a non-conforming structure; he has philosophical issues with this.

Motion to approve passed unanimously by roll call vote.

ANR Pipeline Company, Owner, Lawrence Huber, Agent (P14-05)

The ANR Pipeline Company, owner, Lawrence Huber, agent Special Exception request from the Portage County Zoning Ordinance to place a sign that exceeds six square feet, in the A4 General Agricultural Zoning District, Town of Dewey, was opened by Jazdzewski, who read the public hearing notice.

Jazdzewski swore in Larry Huber and asked him to explain the request. Huber stated ANR built a compressor station on Sunset Drive. Huber added the compressor station sits back a bit on the property and is out of site. Huber stated they have a corporate standard for signs, but they want it to be showy enough to get the attention of the bit of delivery traffic they will have. They do not plan on cutting down many trees because they want to keep the site itself buffered when the compressor runs. Huber stated because of this, they want to go with a larger sign so it can be as visible as possible. The sign will not be lit because most deliveries are made during the day.

Jazdzewski asked if traffic predominantly comes from Casimir Road, and Huber answered yes; adding there are no road restrictions in place. Jazdzewski asked if this not an advertising sign, and Huber answered correct. Huber stated he feels they are a member of the community and they work with the Town people. Huber understands there was some hesitation at the Town level to allow a sign this big. Huber stated they are proud of their reputation and want to be known, but they want the plant itself to be out of sight. Huber added they need some sort of recognition in the area.

Bachhuber asked how much traffic they get and if the reason for the sign is to attract customers. Huber replied they are not open to the public and the sign is to show semis where they are located in addition to helping with name recognition.

Klessig asked if the sign will be made of wood, and Huber answered they are aluminum faced with some wood components; the main portion that will be showing is aluminum.

Jazdzewski asked about lighting, and Huber responded they have no intentions of lighting the sign as they only take deliveries during the day. There being no further question from BOA, Jazdzewski excused Huber.

Jazdzewski asked if any members of the public wanted to speak on this matter. Maurice King, Town of Dewey Chairman, stated there was some discussion back and forth at the Town level regarding the sign. King stated as noted in their meeting minutes, there was discussion as to whether this sign would be a distraction to people traveling. It was discussed if a large sign that is easily readable is more of a distraction to travelers than a smaller sign that is harder to see. King stated people were worried this would set precedent for allowing large signs, but another Town Board Member noted there are actually some larger signs in the Town. King stated it was good to go through this process to make sure the sign is justified. Jazdzewski stated BOA does not set or determine by precedence; each case stands on its own merits. Jazdzewski stated there is a letter from the Town of Dewey on file, and it is appreciated.

Pelky stated the letter included in the packet has been updated. The Town of Dewey originally took a neutral stance at their first meeting. On April 16, 2014, the Town of Dewey voted to approve the request.

Jazdzewski read the following in to the record:

- Excerpt of Minutes from the Town of Dewey Board Meeting held on April 16, 2014, stating the Town of Dewey Board voted to approve the request, 2-0, with 1 abstention.

Jazdzewski asked if any other members of the public wanted to speak on this matter. There being none, Jazdzewski closed the testimony portion of the hearing and moved into deliberation. Bachhuber read from the special exception evaluation form and the following was noted:

- The proposed use is not contrary to the Zoning Ordinance, State Law, or Administrative Code.
- Safe and healthful conditions can be maintained.
- The use will not affect existing or future roads and development.
- The surrounding neighborhood will not be adversely affected by the proposed project. This is a rural area and it is easier to see a large sign.
- There are no alternative sites better suited for this project. This does not apply.
- Is there a more preferred use? This does not apply in this request.
- This project does not impact wetlands.
- This project is not located in a flood plain.
- Topographical features not affected by this project.
- There will not be waste generated by this project.
- On-site vegetation is not affected by this project.
- This project is a symbol of pride to the company.

Jazdzewski closed deliberations.

Motion by Bernhagen to approve the special exception request as submitted, with the following conditions:

1. You must obtain a Portage County Zoning Permit.
2. Sign location must meet all setbacks from the Portage County Zoning Ordinance.
3. The sign may be illuminated in the future, however, flashing or intermittent lighting is prohibited. All lighting must point away from the road.

Motion to approve seconded by Soik. Motion to approve passed unanimously by roll call vote.

Thomas and Samantha Enright, Owners (P14-06)

The Thomas and Samantha Enright, owners, Special Exception request from the Portage County Zoning Ordinance to allow agricultural activity in the RL Rural Limited Zoning District, Town of Amherst, was opened by Jazdzewski, who read the public hearing notice.

Jazdzewski swore in Thomas and Samantha Enright and asked them to explain the request. Thomas Enright stated they have 6.58 acres in Amherst and they want to use the land for a small-scale organic farm. Thomas Enright stated they plan to sell their produce and meat at farmers markets.

Klessig stated the Enrights discussed animals by number and asked what if they cannot make money on certain animals and another animal is selling well? What would they do if approved to do these by the numbers and they could not change? Klessig suggested they not use individual numbers of animals as opposed to pounds of livestock; adding this deals with density of animals and amount of manure. Klessig does not want to lock them into doing chickens versus turkeys versus pigs; Thomas Enright agreed.

Soik stated his only concern was the generated waste amount.

Bachhuber asked if they have spoken with any of the neighbors, and Thomas Enright stated he spoke with the property owners across the street and they both gave their blessings.

Jazdzewski read the petition request stating it is a plan for up to 150 chickens/turkeys on a farm at one time, 12 pigs maximum at one time, and rabbits. Jazdzewski stated having been in agriculture, he converts everything to animal units. Jazdzewski stated the petition does not specifically request BOA specify a number of units. Pelky stated this can be worked out with the Land Conservation Division. Pelky added Rural Limited is a newer zoning district and this is the first request of this type, and new agricultural activity needs BOA approval through a special exception public hearing. Pelky stated BOA can look at certain animal units or animal units proposed must meet runoff manure management through the Land Conservation Division. Jazdzewski agrees a Manure Management Plan would take care of this. Pelky stated this is a bigger issue with the river in close proximity. Jazdzewski stated the Enright's plan is very well thought out, but he doesn't want them to limit themselves.

Bachhuber stated the Town of Amherst Plan Commission stated this plan is consistent with the current Town Land Use Plan and the Town Plan Commission recommended conditions with their approval. Bachhuber added the Town of Amherst Board recommended approval with those conditions. Mrdutt stated the easiest way for the Planning and Zoning Department to manage a property like this with animal units is with a Manure Management Plan. Mrdutt explained the statutes reference a certain amount of chickens equaling an animal unit. Mrdutt stated this is how the Planning and Zoning Department would look at this issue; how they will treat the manure issue on the property. Mrdutt stated this will be addressed with the Land Conservation Department and will also help limit the amount of animals they can have.

Jazdzewski stated the Town of Amherst has specified animals per year; however, there is the ability to rotate certain animals such as chickens. Thomas Enright stated during their meeting, he was under the impression that they could have a certain number at one time. Thomas Enright added he spoke with Dan O'Connell, Portage County Land Conservation Division, in regards to stacking manure and they have decided they will do that in their barn to avoid runoff issues. Thomas Enright stated the Department of Transportation owns property around the majority of the perimeter of their home. Thomas Enright added there is a riparian buffer between their property and the river. Pelky stated staff could work with the owner on this issue.

Bachhuber stated the property consists of two parcels of land. Jazdzewski stated that is because one parcel is across the road. Pelky explained why it is two parcels. There being no further questions from BOA, Jazdzewski excused Thomas and Samantha Enright and closed the testimony portion of the hearing.

Jazdzewski stated BOA needs to address the fact the Town of Amherst requested no bovine be permitted; Jazdzewski added he believes this is a reasonable request. Jazdzewski stated the Waste Management Plan needs to be address because he does not want to limit the Enrights to a certain number of chickens; adding they could probably get two or three cycles of chickens during the summer. Jazdzewski believes this is a good plan and conditions should be established regarding waste management and no bovines being allowed.

Klessig stated he would not vote for any limitations on animals except for the one for bovine. As a farmer, he believes it makes no sense to limit the number of chickens or pigs, etc.

Bachhuber asked about notifications of surrounding property owners, and Pelky stated property owners within 300 feet of the property are notified.

Jazdzewski stated according to the Town of Amherst Comprehensive Plan Future Land Use Map, this request is within the planned uses.

Soik asked if there is any issue with having 75 rabbits, and how quickly they breed. Thomas Enright stated their rabbits are handled every day and if they got out, they don't go very far. In addition, there are turkey vultures hovering in the area.

Bachhuber read from the special exception evaluation form and the following was noted:

- The proposed use is not contrary to the Zoning Ordinance, State Law, or Administrative Code.
- Safe and healthful conditions can be maintained. The Enrights have assured BOA they can maintain these conditions.
- The use will not affect existing or future roads and development. There will not be any future roads or developments in the area.
- The surrounding neighborhood will not be adversely affected by the proposed project. Jazdzewski believes the Waste Management Plan will address this issue. The only issue may be odor.
- There are no alternative sites better suited for this project.
- This project is not located in a flood plain.
- Topographical features and drainage features will be addressed by the Planning and Zoning Staff.
- Erosion potential will be addressed by the Planning and Zoning Staff.
- Water pollution issues will be addressed by the Planning and Zoning Staff.
- The issue of waste generated will be address by the Land Conservation Division.
- On-site vegetation is not affected by this project.
- This project puts food on the table and gives people an opportunity to return to the land through sustainable agriculture.

Jazdzewski reiterated he believes this is a very well thought out plan.

Motion by Klessig to approve the special exception request as submitted with the following conditions:

1. You are to obtain a Portage County Zoning Permit prior to operation.
2. A Manure Waste Management Plan must be approved by the Portage County Land Conservation Division.
3. No bovines are to be kept on the property.

Motion to approve seconded by Soik. Motion to approve passed unanimously by roll call vote.

Jacowski asked Jazdzewski to explain the 30 day appeal process, which Jazdzewski explained.

Jazdzewski called for a five minute recess at 5:40. Meeting called back to order at 5:45.

Discussion/Possible Action on Bylaws

Motion by Bachhuber, second by Klessig, to postpone discussion on the bylaws until the next meeting. Motion passed by voice vote.

Approval of Minutes from March 10, 2014 Meeting

Bachhuber moved to approve the minutes of March 10, 2014, Klessig seconded. Jazdzewski asked if there was any discussion on the minutes. There being no discussion, the motion to approve passed by voice vote.

Correspondence/Updates

Next meeting is Monday, May 19, 2014.

Adjournment

Motion to adjourn by Klessig, second by Bernhagen. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 5:50 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
MAY 19, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:01 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included William Bernhagen (Alternate), Scott Soik, John Jazdzewski, Ed Szachnit, and Marj Bachhuber. Also present included Lowell Klessig and Dennis Meis (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

Thomas A. Garski, Owner (P14-07)

The Thomas A. Garski, owner, Variance request from the Portage County Wellhead Protection Ordinance to create a lot under 2 acres, Town of Sharon, was opened by Jazdzewski, who read the public hearing notice.

Mrdutt stated the property Garski wants to subdivide is in Zone C of the Wellhead Protection Ordinance and that zone indicates a two acre lot minimum, and Garski wants to create a one acre parcel. This would require a variance from the Wellhead Protection Ordinance. Mrdutt reiterated they are strictly dealing with the Wellhead Protection Ordinance. Jazdzewski clarified they are solely working on making a lot split under two acres.

Jazdzewski swore in Thomas Garski and asked him to explain his request. Garski stated he has a disabled son and they are the only two that live at the residence. Garski purchased this property in 2001 when it was a total mess with vehicles, tires, bottles of oil and bottles of antifreeze. Since then has done a lot of work to clean up the property. Garski stated he has a home built on the northwest portion of the parcel. Garski stated he likes his property to look nice, but he is unable to leave his son alone while he cuts 500 yards of grass, so he has to take his son with him while he does this. Garski stated he would like to get rid of part of his property. Garski stated he recently purchased a new vehicle to accommodate his son. Garski added this vehicle was very expensive and he was not given any help from anyone, so he thought it would be nice to be able to sell some of his property to help pay for the vehicle.

Bachhuber asked where the septic system is located on the property. Garski stated when he purchased the property, he abandoned the old septic and put a new one in. Garski stated he was told a well was drilled on the property in 1996 that neighbors thought should be abandoned. Garski informed the Department of Natural Resources (DNR) that he used the well to water his fruit trees, so the DNR stated he did not have to shut the well down in that case. Garski stated he built his home in 2003 and he has also been watering the fruit trees ever since then; adding the well is up to code. Garski stated he recently received a letter from Ray Schmidt, Water Quality Specialist, asking for water samples for a lot split. Garski added he will be happy to provide samples. There being no further questions from BOA for Garski, he was excused by Jazdzewski.

Jazdzewski asked if there were any other members of the public wanting to testify on this matter. Ron Hensler, Town of Sharon Plan Commission Chair, was sworn in by Jazdzewski. Hensler stated he is Chairman of the Town of Sharon Plan Commission. Hensler asked Mrdutt if the decision BOA is to make pertains to the two lots totaling 3.18 acres or just to the one acre lot. Mrdutt replied it would only be for the one acre lot because the way the proposal is presented is to create a 1.09 acre lot and the other lot would be over two acres. Mrdutt stated that would still comply with current zoning. Mrdutt stated this property is also going through a rezoning; however, BOA tonight is only concentrating on the creation of a lot less than two acres.

Hensler stated at the November 1, 2013 meeting with Mr. Garski and his son, they discussed that the area is in Wellhead Protection Zone C which has a two acre lot minimum, and it also shows to be in the surface groundwater overlay district. Hensler stated they also asked Garski for information on the topography of the lots

to see which way the water ran, which showed there is a depression on the east end of the property. Hensler stated their assumption is that Lake Jacqueline Lane as well as County Road J would be barriers in the watershed for surface water. Hensler stated he spoke with Nancy Turyk from University of Wisconsin Stevens Point that does a lot of lake district planning for Portage County and surrounding counties. Hensler stated Turyk does not consider roads as barriers because you can put a culvert under the road, which would change the dynamics of surface water. Hensler stated with that in mind, there could be a potential for surface water issues if Lake Jacqueline Lane ever gets redone. Hensler believes it will be redone because it hits County Road J at a funny angle. Hensler stated Schmidt indicated this area is far enough from Stevens Point that it wouldn't matter if this lot were developed or not. The Town of Sharon Plan Commission did not consider very thoroughly that it should be considered if that lot would have any effect locally. Hensler stated he has been thinking about this property and the depression as well as the effect of a septic system and every time a system is flushed how water goes into the ground. Hensler stated it is unknown exactly what the level of water is in the well; however, Garski indicated it was 15 feet below the top of the well. In addition, they do not know the level of the lake relative to the existing topography and well top and whatever the benchmark was. Hensler asked if the water flows from the lake towards the south southwest as many people suppose it does, or is there a little ridge in the groundwater so that groundwater could indeed be going towards the lake. Hensler stated this is the question they do not have an answer to. Hensler stated according to their December 3, 2013 minutes, they did raise a lot of questions and he believes it is their fault for not getting answers to all questions before moving the issue on.

Szachnit asked if he knows which way the other creeks in the area flow, and Hensler replied he believes they go to the west primarily, away from the lake.

Bachhuber asked Hensler to clarify the minutes from December 3, 2013 relating to the elevation of the lake not being provided in the survey and asked if he has any idea of the elevation of the lake? Bachhuber also asked what the likelihood is that Jacqueline Lake Lane will be widened. Hensler stated a few years ago during a fire, the fire department mentioned if there was a fire truck on the road, nobody else would be able to go by. Hensler added the road is narrow and there are a number of residences as you go down the road; adding this is a 3-rod road that dead ends. Hensler stated the school bus is able to jockey around in that area. Bachhuber asked Hensler if the center of Jacqueline Lake Lane is higher than the property being referenced, and Hensler replied yes. There being no further questions for Hensler from BOA, he was excused by Jazdzewski.

Jazdzewski asked if any other members of the public wanted to speak on this matter. Patrick Wanserski, Town of Sharon Chairman, was sworn in by Jazdzewski. Wanserski stated the Town of Sharon Board heard this request and added two supervisors approved the request. Wanserski stated he had issues with this request relating to the wellhead protection and has concerns if more special exceptions will be given by BOA in the future. Wanserski stated the road will have to be enlarged and gave an example of the road being very narrow when the snow plow driver puts the plow down and it covers the entire road. Wanserski stated the road width is a concern. Wanserski added another factor is quality of the lot. Wanserski stated someone purchasing the property may not be happy because when they redo the road, it will not be able to go to the lake; the town is going to have to go into the new lot. In addition, the new owners may not like dealing with the noise from the pallet factory, in addition to dealing with a lot smaller than one acre because of possible road improvements. Wanserski stated this all affects the quality of that lot. Wanserski added the fire chief sent a letter stating they need to look at the road situation before adding more development in the area.

Soik asked Mrdutt to elaborate on the road situation, because from what he sees on the aerial, it does not appear the road is built in the center of the 3-rod right-of-way. Soik added from what he can see on the map, relating to the property they are discussing, it appears there is more than adequate room to expand that road without going into the 1.09 acres on the frontage. Mrdutt would agree the travel portion of the road, from the aerial standpoint, appears to not be centered in the right-of-way; however, he knows when connecting roads they try to get them as perpendicular as possible for safety. They do not like angles where roads connect, and he understands trying to get that intersection a little safer. Mrdutt added the road does not appear to be center, but he knows it is a 3-rod, smaller than it should be, road. Mrdutt added the Planning and Zoning Department knows it is a Town concern. Soik asked about the lot layout presented, in the shape of a bowtie, and is the 1.09 acres excluded of the 3-rod right-of-way; Mrdutt answered correct.

Szachnit stated it appears the entrance to Jacqueline Lake Lane is perpendicular to County Road J, and asked if there is a problem with the angle after that. Wanserski stated width is of the essence, and this is a public boat launch. There could be issues with multiple boats attempting to use the launch and there is no turnoff lane. Szachnit asked if the short distance shown on the map near the boat launch may not be adequate enough to support two vehicles passing, and Wanserski stated exactly. Szachnit asked if the road is to be widened, would additional property have to be taken from other property owners. Wanserski replied to his knowledge, the road

has never been surveyed, so they voted at their last meeting to start doing surveying so they know exactly what they are dealing with. Szachnit stated according to the map, it looks as though there is adequate space to expand the road. Wanserski stated this is a great baseline, but they will not come to any conclusions about building a road without a completed survey. Wanserski stated as a Town Board, they did not all agree on the Garski decision; however, they all agreed on the necessity of a road survey.

Bachhuber stated the other properties in the area appear larger than the property in question, and Wanserski stated he does not believe there are many parcels along the lake that are greater than two acres. Wanserski added people may have doubled up to get to two acre lots by buying the lots next to them. Mrdutt stated it is staff's understanding the road is 66 feet until you get to the corner by the Hintz Subdivision. Mrdutt added there are surveys coming down, but once you get to the corner near the Hintz Subdivision the exact road width is unknown. Mrdutt stated there are survey markers established by points in the aerial photo. Mrdutt added there are also markers in the proposed lot split survey.

Bachhuber asked how the property is zoned as of today, and Mrdutt replied the property is zoned A3 Low Density Agricultural and A4 General Agricultural. Jazdzewski reminded BOA they are not dealing with zoning; they are dealing with the lot split. There being no further questions from BOA for Wanserski, he was excused.

Garski stated the Town of Sharon should have dealt with the road issues when the land was originally subdivided. Jazdzewski stated they cannot deal with hindsight; they are dealing with Garski's petition.

Jazdzewski asked if there were any other members of the public wanting to speak on this matter. Steve Falk was sworn in by Jazdzewski. Falk stated he is a neighbor who lives across the road on County Road J, and his daughter lives on Jacqueline Lake Lane. Falk stated he comes from Southeastern Wisconsin where they are putting huge homes with a well and septic on small lots. Falk believes if this lot can mechanically satisfy the needs of water, even with capping the well and drilling another one to satisfy the offset, he does not see a reason why a residence could not be built there. Jazdzewski asked Falk if he is speaking on behalf of his daughter, and Falk answered yes, adding his daughter could not be here today. Falk stated this road is a cul de sac and is a cottage-type road. It is not a freeway or through-fare. Jazdzewski stated they still have to maintain the ability for emergency vehicles. Bachhuber asked Falk if his concern is that a very large home with many family members would be on this one lot, and Falk answered he hoped it would not be a large home. Falk reiterated if mechanically possible and if water and road issues can be solved, he believes it should be allowed. There being no further questions from BOA, Falk was excused.

Jazdzewski read the following into the record:

- A letter dated 5/14/14 from surrounding property owners, Diane Hintz, Dennis Hintz, Matt Hintz, and Nicole Hintz, stating they have no objection to the request.

Jazdzewski asked if any other members of the public wanted to speak on this matter. Jazdzewski called Ray Schmidt, Portage County Water Quality Specialist, to testify. Jazdzewski asked Schmidt if he had any other information pertaining to this lot that he wished to add, and Schmidt answered no.

Bachhuber stated Garski testified he received a letter from Schmidt asking for water samples. Pelky stated this letter was for water samples for the Certified Survey Map. Jazdzewski asked if Garski has to provide water quality results from the existing well or from the well on the proposed lot, and Schmidt answered this is just to get a feel for what the groundwater is like in the area. There being no further questions for Schmidt, he was excused.

Jazdzewski asked if any other members of the public wanted to speak on this matter. Don Rusch was sworn in by Jazdzewski. Rusch stated he is on the Town of Sharon Plan Commission and he originally made the motion to approve this request. Rusch stated he had afterthoughts about this property; stating it will be sitting directly across from the boat landing driveway. As he envisions where a house could potentially be placed on this one acre lot, he wondered how many problems there would be with lights shining on the house as boats are being launched in the early morning hours. Rusch stated fisherman get out early and this could become a problem. Jazdzewski stated on the map there are two parcels; the narrow strip which is the boat launch and another parcel for the Town of Sharon. Jazdzewski stated the boat launch strip realistically points more towards the intersection than the proposed lot. Rusch stated if this intersection is corrected and moved, that would likely get adjusted. Jazdzewski stated the boat landing approach may move also. Rusch stated generally you wouldn't think about a problem with putting a home there, but then you think about the intersection and widening the road, and the impact of the boat landing changing. There could be many issues down the road that cause headaches. There being no further questions from BOA, Rusch was excused.

Garski stated a home on the proposed lot would have to be placed further to the west on the lot because of the setbacks.

Jazdzewski asked if any other members of the public wanted to speak on this matter. There being none, Jazdzewski closed testimony and opened deliberations.

Bachhuber asked the zoning and minimum lot size of this property today. Mrdutt stated the property is currently zoned A3 Low Density Agricultural and A4 General Agricultural, and the minimum lot sizes are 5 acres and 2 acres respectively. Bachhuber asked why this property has two zoning designations and Mrdutt answered that is the way the zoning line cuts through the property; that is the way it was mapped when the Town of Sharon decided where the zoning lines would be.

Wanserski asked if ground and surface water and watershed had something to do with the zoning of this parcel, and Mrdutt stated the Town of Sharon has a two zoning overlay district in that area. There is a surface overland flow into the lake and then they have groundwater inflow. The groundwater inflow portion has a ten acre requirement. The surface inflow has a five acre requirement. The elevation survey that was done determined that the property as it stands flows away from the lake. Through the rezoning process, which BOA is not concerned with, Garski is looking to rezone the property to a residential zoning and possibly taking it out of the groundwater inflow so it would not have the five acre requirement. Jazdzewski reiterated BOA's concern is not to deal with zoning; it is only to deal with the possibility of creating a lot less than two acres in an area that would be conducive to it. Mrdutt explained what Garski wants to do. Mrdutt explained this is a two-tier approach and Jazdzewski stated it seems like they are putting the cart ahead of the horse. Mrdutt stated staff's position is once the Town of Sharon acts on something, the Department can move forward with it. It just happens this meeting was prior to the Planning and Zoning Committee meeting. Jazdzewski stated it should be understood that irrelevant of BOA's decision, if they were to go forward with it and then the rezoning request was to fail, it would not matter because Garski would not be able to subdivide the property.

Mrdutt briefly discussed his memo and stated he feels the bullet points covered are important for BOA to discuss. Mrdutt stated BOA has the ability in the Ordinance to discuss increased setbacks. Bachhuber asked if they are to take into consideration the intersection will be changed and can they ask now for increased setbacks on the property. Mrdutt stated it is agreed they should discuss it. Jazdzewski stated until a permit is issued for a building or other structure, setbacks are moot. Soik cautioned BOA on speaking about issues that may come up in the future. Soik stated future means future and he does not want to see something get put on a back burner for the sake of future use.

Mrdutt explained the issue of future road changes and establishing conditions and setbacks based on future use, and Ward stated conditions are not normally imposed as part of a variance. Ward added the issue before BOA is whether that lot can be split into a one acre lot. Ward stated when BOA starts getting into conditions he thinks they are mixing things up; this is more of a zoning issue than a BOA issue. Jazdzewski stated they have no idea where a new proposed road may actually occur. Jazdzewski stated it should be noted it is a concern if it was to be developed, but only at that time. Soik stated it would be different if they were presented with a building envelope, however, at this time he would not entertain talking about it. Soik stated they need to concentrate on if BOA is able to split the lot with what they have in front of them; future plans and projects should not be a concern for BOA.

Bachhuber stated criteria for a variance states BOA is required to look at existing and anticipated development and they need to take into consideration the testimony of Town Board and Plan Commission members. Soik stated they do not know at this time if the Town of Sharon will have to take land away from this lot. Soik added they have a 66' right-of-way at this time, excluding any other land the Town of Sharon would take from that lot. Bachhuber stated they do not have a survey on this road, and Soik stated there is a survey for this particular parcel; there may not be a survey of the road. Mrdutt stated it is the lots further down the road that do not have surveys; but they do have one for the parcel in question.

Jazdzewski referenced the variance criteria and the following was noted:

- Is the proposed use contrary to State Law or Administrative Code? Jazdzewski believes it is not.
- Is the proposal permitted in this Zoning District? Jazdzewski states not at this time, but that is not what BOA's decision is today. They are basing their decision on the Wellhead Protection Ordinance.
- Are there any alternatives to this variance request? This has to be proven, yes or no.
- Would the variance be detrimental to nearby property owners? Jazdzewski stated one surrounding property owner spoke on behalf of himself and his daughter and another sent in a letter; neither was opposed to the

request. Bachhuber asked BOA to consider testimony received relating to fire trucks and their inability at this point for two cars to pass each other on that road. Bachhuber believes this is a safety issue, and believes the word detrimental means safety. Jazdzewski stated as far as the property is concerned, based on information provided to him, it does not interfere or in any way increase the hazard.

- Can the spirit of the Ordinance be maintained? Jazdzewski stated he is going to take this to refer to the spirit of the Wellhead Protection Ordinance and based on testimony provided by Schmidt, it will not have a negative impact on the Wellhead Zone C.
- Will substantial justice be done by granting this variance? Szachnit stated yes. Bachhuber stated no. Bachhuber stated this cannot be a self-imposed problem. If you are granting a variance, State Law specifies it cannot be a self-imposed problem. Jazdzewski asked her to explain. Bachhuber stated at this time they have a lot of 3.18 acres. They cannot say that right now with the lot size that they cannot do anything with it. They have already put up a new home on it. They have put a septic system and well on the property. Bachhuber stated they cannot meet the hardship criteria. Bachhuber read aloud the hardship criteria and stated she does not believe they meet the hardship criteria. Ward stated a good example of a self-imposed hardship is if you divide your parcel or you don't want a 40 acre parcel of property. You sell off the front 20 acres and keep the back 20 acres, and all of a sudden you don't have a road to your back 20 acres. You would need a variance because you did that to yourself. Ward stated in this case, he is not quite clear on the self-imposed variance; it seems more ambiguous. Ward asked what the exact need was for a lot split in this case, and Mrdutt stated it is his understanding they want to create a stand-alone, buildable, sellable lot. Mrdutt stated this is also the reason for the rezoning request. Soik asked about the lot being buildable, and Mrdutt stated any lot created would have to meet the minimal setbacks and be considered a buildable lot. Mrdutt stated the hardship rule should be directed at the Wellhead Protection Ordinance as well. Bachhuber stated Garski testified the reason he wanted to have a lot to sell was to help pay for the handicap van. Bachhuber state that, in and of itself, it not a reason for a variance to be granted. Jazdzewski stated the answer to this question would be no.
- Determine if all the following variance criteria are met:
 - Is this request contrary to public interest? No. Bachhuber believes it is contrary because there is a boat landing. Jazdzewski asked how it affects the boat landing. Bachhuber believe it will affect the safety of the road with the public use of the boat landing because there will be another driveway. Soik does not see that.
 - What are the unique property limitations and are these limitations adequate to satisfy the requirements of a variance? Jazdzewski stated the unique limitations are the fact there is not enough property to create a two acre lot.
 - Does this request meet the unnecessary hardship test? Jazdzewski stated technically they would have to say no because they own the property and have a house. It is only if they want to sell a lot that it is a hardship. Jazdzewski stated this has a lot to do with property rights and laws and regulations.

Motion by Soik to approve the request for a variance as submitted, with the following condition:

1. A Stormwater Management Plan must be obtained with a Portage County Zoning Permit when the lot is developed.

Motion to approve seconded by Bernhagen. Jazdzewski asked if there was any discussion on the motion.

Bachhuber stated BOA is required to find all of the following conditions. Exceptional circumstances apply to the use that do not generally apply to other landowners. Bachhuber asked if BOA can really say that there are exceptional circumstances that apply to this particular situation that do not apply to anybody else that has a 5 acre lot or 3 acre lot. Jazdzewski wanted to make sure members are focusing on the Wellhead Protection Ordinance. Jazdzewski stated there is a proposed rezoning in the works which is irrelevant. The petition before BOA is because of the Wellhead Protection Ordinance that they cannot create a parcel less than two acres. Jazdzewski stated they need to address if the zoning were to allow a parcel of less than two acres, would they approve the variance to allow it based on the Wellhead Protection Ordinance. Bachhuber stated if another neighbor came along with a three acre property in the groundwater protection district, would they say yes to any lot split if they could create a one acre lot. Bachhuber stated it has to apply to other landowners. Bachhuber read from the variance criteria relating to exceptional circumstances and stated most other property owners along Jacqueline Lake Lane have bigger lots and some are in the wellhead protection area. Soik stated most of the other lots are smaller than Garski's. Jazdzewski addressed this issue and stated Garski has 3.18 acres and the spirit of the ordinance is to maintain the two acre minimum for the existing residence. The only way they can create a lot is to take what is left after two acres, which is what Garski did. If someone were to have 15 acres and ask to create a one acre parcel, he would say no because they are able to create a two acre parcel. If they

wanted to do multiple lot splits, he would say no. This situation is a property owner that only has 3.18 acres, and they can either create a smaller lot split or they can't; BOA needs to vote up or down. The only other option would be to make 1.5 acre lots out of both of the lots. Garski's wish is to maintain the two acre minimum for the main parcel.

Soik reminded the chair there is a motion and a second. Jazdzewski stated since there is no further discussion on the motion, he will call a vote. Motion to approve the request as presented passed 4-1 with Bernhagen, Soik, Szachnit, and Jazdzewski voting aye; Bachhuber voting nay.

Jazdzewski informed the petitioner that if anyone wishes to challenge the decision of BOA, they have 30 days after the filing of the decision.

Soik was excused from the meeting and Jazdzewski called for a five minute break at 5:13 pm.

Meeting called back to order at 5:18 pm. Klessig takes a seat at the table.

Discussion/Possible Action on Bylaws

Motion by Klessig to approve the last narration of the bylaws received from Ward and deal with any bylaws on the basis of that motion and approval. Jazdzewski clarified any changes would be dealt with as amendments to the now-standing bylaws. Motion to approve seconded by Bachhuber.

Meis addressed the issue previously brought up relating to term limits and if years as an alternate would count towards the limit and he thought Ward was going to add a sentence under section 3 Membership. Ward stated language was added similar from the County Ordinances and incorporated that into the BOA Bylaws. Ward thinks the language in the County Ordinance is sufficiently clear enough. Ward stated it is his opinion that the time as an alternate does not count towards the ten year term limit.

Ward clarified he drafted language and will add it to the end of the first paragraph in section 3 Membership. This language will read: "Alternate Board of Adjustment members are not subject to the ten year time limitation."

Motion by Klessig to amend the main motion to add language into the bylaws as stated by Ward. Motion to amend seconded by Bernhagen. Motion to amend passed 5-0 by voice vote.

Motion to approve the proposed bylaws, as amended, passed 5-0 by voice vote.

Approval of Minutes from March 10, 2014 Meeting

Bachhuber moved to approve the minutes of March 17, 2014, Klessig seconded. Jazdzewski asked if there was any discussion on the minutes. There being no discussion, the motion to approve passed 5-0 by voice vote.

Correspondence/Updates

Ward stated he has accepted a position with Jefferson County and put in his resignation with Portage County.

Next meeting is Monday, June 16, 2014.

Adjournment

Motion to adjourn by Szachnit, second by Klessig. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 5:33 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
JUNE 16, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included William Bernhagen (Alternate), Scott Soik, John Jazdzewski, and Marj Bachhuber. Members excused included Lowell Klessig, Edward Szachnit, and Dennis Meis (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department. Others present included J. Blair Ward, Portage County Deputy Corporation Counsel.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time. Jazdzewski stated as a point of information, because there are only four voting members in attendance, any action on a motion which passes by majority will require a 3-1 decision. Any 2-2 decision would be a tie, therefore negating the motion.

PUBLIC HEARINGS

Chris and Denise Anderson, Owners (P14-08)

The Chris and Denise Anderson, owners, Special Exception request from the provisions of the Portage County Zoning Ordinance to create two non-farm residences as the result of a farm consolidation, in the A1 Exclusive Agricultural Zoning District, Town of Almond, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated this is a special exception request to split off two existing homes from the property. One home is an old farm house. The second was built as a home for farm help. Pelky stated the Town of Almond approved the request at the town level, and staff supports the request. Pelky added the creation of these two lots does not take up any farmland, and the rest of the land is mostly open and wooded land.

Jazdzewski swore in Chris Anderson and asked him to explain the request. Anderson stated they bought the property five or six years ago. They have been renting out the property but they have been having problems with their renter. They want to separate the two houses from the 50 acre parcel so they can either sell them or do what they need to do because they are tired of the renting issues. Anderson stated they want to put the larger home with the 6.2 acres and the smaller home with the 2.8 acres.

Soik asked Anderson if they plan to sell both of the properties, and Anderson replied yes. Soik asked if Anderson owns the property to the east, and Anderson answered yes.

Bachhuber asked Anderson if they have ever lived in either of the homes since they bought the property, and Anderson answered no. Bachhuber asked if these will be separate parcels away from the farm, and Anderson answered yes.

Jazdzewski asked Anderson if they either actively farm the agriculture parcels or lease them out, and Anderson replied they farm the property.

There being no further questions from BOA for Anderson, he was excused by Jazdzewski. Jazdzewski asked if there were any other members of the public wanting to speak on this matter. It was noted there were none. Jazdzewski noted there was no other correspondence received. Jazdzewski closed testimony and opened deliberations.

Bachhuber stated by allowing this and the way the ordinance is written, they allow farm residences for people who work on farms. Bachhuber stated she understands why this is happening, but by doing this, this may open up the possibility that many other people in A1 zoning will request to sell off their farm residences. Bachhuber asked if the Planning and Zoning Committee has considered this possibility, and Mrdutt stated this is something

they should look at and possibly be more defined. Pelky stated the A1 Zoning District allows the owner or son or daughter to build on the property.

Jazdzewski believes this is a very good point, but in this case, this falls more into farm consolidation. Anderson bought the property and the residential structures were there, even though they did not live in them. Jazdzewski added it is evident the neighboring land is agricultural, so someone purchasing the home should not be surprised about farming going on in the area. Jazdzewski originally had a concern that the 6.2 acre lot could be rezoned, but he believes the Town of Almond's minimum acreage for a lot is five or ten acres. Pelky added they are pretty strict in the Town of Almond and this would require a rezoning.

Jazdzewski stated this is good point, but they have to debate on what the law is today. Soik stated he appreciates the fact Anderson is up front and honest about wanting to sell the parcels after they are split.

Bachhuber asked if this request is approved and this is a separate parcel, is Anderson able to build a second residence on the parcel for hired help. Mrdutt stated property in A1 Zoning is permitted to have a residence on it.

Special Exception criteria form was referenced and the following was noted:

- The proposed use is not contrary to the Zoning Ordinance, State Law, or Administrative Code.
- Safe and healthful conditions can be maintained.
- This is an existing use, and the possibility of future development may affect roads in the future; however, it was noted this is a County road.
- The surrounding neighborhood will not be adversely affected by the proposed project. These are existing residences, so there should be no effect.
- Alternate site issue is not applicable.
- More preferred use issue is not applicable.
- Flood plain issue is not applicable.
- Topographical features, drainage issues, and erosion potential are not affected by this project.
- Waste will not be generated by this project.
- On-site vegetation is not adversely affected by this project.
- This project is not relevant to the community; it is a farm consolidation.
- This use is consistent with the current Town and County Land Use Plans. The Town of Almond supports this request.

Motion by Soik to approve the request as submitted, with the following condition:

1. A Certified Survey Map must be submitted to the Planning and Zoning Department for signature.

Motion to approve seconded by Bernhagen. Motion to approve passed unanimously by roll call vote.

Kevin Konopacky KCO LLC, Owner, Mark Sommers, Agent (P14-09)

The Kevin Konopacky KCO LLC, owner, Mark Sommers, agent, Special Exception request from the provisions of the Portage County Zoning Ordinance to expand a preexisting commercial building over 3,000 square feet, in the C1 Neighborhood Commercial Zoning District, Town of Plover, was opened by Jazdzewski, who read the public hearing notice.

Mrdutt stated this property is zoned C1, Neighborhood Commercial, and any use that takes up floor space over 3,000 square feet would require BOA approval. The current building they are operating out of is well over that already, and this is because this was established prior to the Town of Plover coming under Portage County Zoning jurisdiction in 1987. Mrdutt stated the petitioner is looking to put an addition on to make the building more user friendly for the business.

Jazdzewski swore in Kevin Konopacky and Mark Somers and asked them to explain the request. Konopacky stated he needs more room to better run his business. They are very busy this time of year and they have a lot of motors coming in from farmers in the County. Motors are dropped off and are very valuable. The motors sit outside and they are trying to prevent thefts and vandalism. In addition, they need more room inside to be able to move things around and store customer equipment as it is coming in or going out.

Jazdzewski stated he believes this is a security and convenience issue; sometimes a motor has to be put aside so another can be worked on. Konopacky stated they get more than just motors in and the building can get pretty packed inside.

Bachhuber referenced the driveway on the side of the building, and asked if there would be any problem meeting setbacks to the driveway if they were to add on to the building. Mrdutt stated there are no setbacks to driveways.

There being no further questions from BOA, Jazdzewski excused Konopacky and Somers. Jazdzewski asked if there were any other members of the public wanting to testify. It was noted there were no members of the public wanting to testify.

Jazdzewski read the following into the record:

- A letter from the Town of Plover dated 6/9/14 expressing the Town of Plover's approval, and including an excerpt from the minutes of 6/4/14.

Jazdzewski closed testimony and opened deliberations.

The Special Exception criteria form was referenced and the following was noted:

- The proposed use is not contrary to the Zoning Ordinance, State Law, or Administrative Code. The existing building was there prior to the Town of Plover coming under Portage County Zoning.
- Safe and healthful conditions can be maintained.
- The use will not affect existing or future roads and development.
- The surrounding neighborhood will not be adversely affected by the proposed project.
- Alternate site issue is not applicable. This is an existing business.
- More preferred use issue is not applicable.
- Flood plain issue is not applicable.
- Topographical features are not affected by this project. Drainage issues and erosion potential will be addressed with a Stormwater Management Plan.
- The only waste generated will be during the building process.
- On-site vegetation is not adversely affected by this project.
- This project is important to the Town of Plover.
- This use is consistent with the current Town and County Land Use Plans. The Town of Plover supports this request.

Motion by Bachhuber to approve the request as submitted, with the following conditions:

1. A Portage County Zoning Permit is to be obtained.
2. A Stormwater Management Plan must be submitted and approved by the Land Conservation Division.
3. Approvals by the Department of Safety and Professional Services are to be on file with the Portage County Planning and Zoning Department.

Motion to approve seconded by Soik. Motion to approve passed unanimously by roll call vote.

Genetic Futures LLC, Owner, Country Wireless, Agent (P14-10)

The Genetic Futures LLC, owner, Country Wireless, agent, Special Exception request from the provisions of the Portage County Wireless Telecommunication Facility Ordinance to erect a 199 foot tall guyed tower, in the A1 Exclusive Agricultural Zoning District, Town of Carson, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated the request is for a 199' guyed tower, which requires special exception approval through BOA. Pelky stated evidence needs to be supplied by the applicant as to why a guyed tower is needed versus what the ordinance requires, which is a self-support. Pelky added there is a letter in the file from the Town of Carson that needs to be read into the record.

Jazdzewski swore in Jeremy Carolfi and asked him to explain the request. Carolfi stated he wants to put up a 199' guyed communication tower; adding it is not a telecommunication tower. Carolfi stated there is a difference between a communication tower and a telecommunication tower. Carolfi stated this is for high-speed internet access in the area and is the first step in coming into Portage County where they've had a demand for service. Carolfi distributed copies of the State Statutes he believes relates to this request, as well as a rental estimate to

collocate on another existing structure. Carolfi stated the area highlighted is the Legislative definition of telecommunications, which he believes is what the County Ordinance was written for. Carolfi stated there usually is no code for his industry because it is a relatively new industry.

Bachhuber asked Carolfi if his understanding is this tower is a communication tower versus a telecommunication tower, and Carolfi answered yes. Carolfi stated it has nothing to do with telephones. Jazdzewski asked if he is not denying this is a tower, and Carolfi stated it is a tower, but does not meet the State's definition of telecommunications.

Bernhagen asked if there is an exact location where the tower will be located, and Carolfi stated it is in the packet; there are GPS coordinates included. Bernhagen added at the time of the Town of Carson meeting, the exact location was not known. Carolfi stated they did know. The exact location, via GPS coordinates, was in the packet. Bernhagen asked if the Town of Carson denied the request, and Carolfi answered yes; based on the fact the Planning and Zoning Department stated the packet was incomplete.

Jazdzewski asked Carolfi if he had additional information to present before BOA asked questions, and Carolfi stated the information he handed out today has collocate versus guyed versus monopole cost comparison information that Planning and Zoning was requesting.

Jazdzewski explained to Ward that Carolfi distributed information from the Wisconsin Legislation addressing what Carolfi believes to be telecommunication towers versus communication towers. Jazdzewski stated the misunderstanding could be that the Portage County Zoning Ordinance designates a telecommunications tower as a tower that is taller than 45', no matter what type of tower it is.

Ward stated BOA was given definitions by the applicant of a section of Wisconsin Law, Chapter 196. Ward stated Chapter 196 deals with regulating public utilities, and Chapter 196.016, after definitions, lists a section with a heading "Relationship to Certain Federal Telecommunications Law." Ward stated it continues and says, "Except as provided in Section 196.50(2)(j)(2)(3) nothing in this chapter is intended to either reduce or expand the scope and application of the Federal Telecommunications Act of 1996, including the jurisdiction and authority granted to the Commission thereunder, and the Commission may take any action that the Commission is authorized to take under that Federal Act." Ward stated this is relevant because we are interpreting the Federal Telecommunication Law because State Statutes which apply to us are referenced in the Federal Telecommunication Law. This is how State Statute defines Telecommunications. Ward believes what is being referenced right now deals specifically with the regulation of public utilities, and since we are not dealing with the regulation of public utilities, this chapter does not apply. Ward stated BOA needs to focus on State Statutes regulating towers and focus on Federal Law as it relates to Wisconsin Law and regulating towers. Ward summarized his opinion stating the definition does not apply.

Jazdzewski stated the fact that the County Ordinance is called Telecommunications Tower, really is irrelevant because it is a Tower Ordinance. Ward stated it is relevant because they need to look at how telecommunication is defined in State Statutes. That is what controls State Law, and State Statutes cross reference Federal Law in defining Telecommunication. Federal Law defines telecommunication as any type of transfer of signals over radio waves. Ward added this is the biggest, most comprehensive definition of communication that there can be; it covers everything. The Public Service Commission chose to limit its definition of telecommunication for public utility purposes. Jazdzewski asked if a television station, radio station, and cellular tower are all communications, and Ward answered they are according to Federal Law and Wisconsin Law, which is incorporated with the definition of Federal Law.

Bachhuber wanted to clarify that Carolfi stated they are not servicing any telephone lines but this is not applicable. Ward stated it is not applicable in this context. If they were looking at regulation of public utilities, it would be. They are regulating a height and location of a tower in this case.

Bachhuber stated when they were at the on-site, Carolfi explained why he wanted a guyed wire tower. Bachhuber asked Carolfi to explain this again. Carolfi stated the reason behind the guyed tower versus a monopole or lattice type tower is exclusively cost. Carolfi stated the guyed structure is roughly \$6,000 as opposed to \$20,000 for a monopole or \$50,000 for a lattice style tower. Carolfi stated these costs do not include excavation or concrete costs. Carolfi stated even skipping making a profit, he could never maintain the tower with the revenue generated from the tower; this is strictly a cost measure. Carolfi stated based on a tower with 150 customers at an average of \$43 a month, and adding electricity costs and payments to the landowner, it would take quite a while before they made any money. Carolfi stated they are a small carrier compared to other carriers and they cannot afford the costs to build a tower.

Bachhuber asked Carolfi why he cannot co-locate on another tower, and Carolfi responded they could co-locate if the rent was within the right price range. Again, this is a cost factor. Carolfi stated they would need seven radios required to make the tower work, and they are \$150 each. Carolfi stated this is not relevant; this gives an idea of co-location costs from other companies. Carolfi stated if there was a tower in the location they want to be, the costs could be different. The nearest tower to the requested location is a Canadian National tower, but they do not co-locate. Soik asked if there is something in the ordinance requiring towers to co-locate, and Mrdutt stated the railroad towers are exempt from the ordinance. Carolfi stated if there were towers in the area, they would be more than willing to co-locate if the price was reasonable.

Pelky asked what the price point would be on a tower if they could co-locate, and Carolfi stated it would have to be reasonable. Seven radios at \$150 each is over \$1,000 and that is unreasonable to Carolfi. Carolfi explained what reasonable costs would be based on high-density areas.

Soik asked Carolfi what number of customers he anticipates for a hook up, and Carolfi stated he has had three dozen people call his office saying they want service in this area. Carolfi stated this does not mean all those customers could be hit by this tower. They would maybe have to use a silo or a small repeater in an area to increase coverage. Carolfi added they prefer to use silos, but there are none in the area.

Soik asked if he has any letters from potential customers, and Carolfi stated all he has are phone calls that go to an internal monitoring system. Carolfi added there is a lot of competition so they do not make this knowledge public.

Jazdzewski asked if he approached Junction City to utilize their water tower, and Carolfi stated the water tower is too small and is an older style tower. Based on the style of the water tower, there are many problems with transmitting.

Pelky stated BOA needs to look at if the guyed tower is allowed. Pelky stated nothing is indicated, and there is information lacking. If BOA approves the guyed tower, staff will still require the documentation as it is required in the ordinance. The applicant did not submit all required information, such as the leased area and exact tower location.

There being no further questions from BOA, Carolfi was excused by Jazdzewski. Jazdzewski asked if there were any other members of the public wanting to testify, and it was noted there were none.

Jazdzewski read the following into the record:

1. A letter from the Town of Carson dated June 12, 2014, stating at their meeting on June 10, 2014, the Town of Carson Board voted unanimously to recommend to BOA that they deny the request for the Special Exception (reasons for denial listed in letter).

Jazdzewski closed testimony and opened deliberations.

Jazdzewski stated a self-supporting lattice tower is supposed to fall in on top of itself and there is an engineered collapse crumple zone that is required to be leased and fenced in. Mrdutt stated that is correct. The height of the tower has to be represented in the leased area. Jazdzewski stated in the case of a guyed tower, it would be assumed for a 200' tower, a 400' leased area would be required. Mrdutt added he believes guyed towers have the ability to have midway collapse points. Jazdzewski stated this area would need to be spelled out in a lease agreement, which is part of the survey and application.

Jazdzewski stated the Federal Aviation Administration (FAA) standard is for lighting at 200 feet; adding this request is for a 199 foot tower. Jazdzewski stated during the on-site, Carolfi commented the proposed site of the tower was the highest point on the farm. Carolfi stated it was height above terrain. Jazdzewski stated it is relevant to activities around. 199' on a hill would appear higher than 199' in the valley, but he understands it is 199'. Jazdzewski stated lighting is an issue he is concerned with. Jazdzewski stated he has seen other towers that are not as elaborate as cell towers that are still self-supporting lattice towers, which are cheaper lattice-type towers.

Soik stated he appreciates the Town of Carson's recommendation to deny, and asked staff if requested information is something that can be taken care of prior to a permit being issued. Pelky stated there are other standards in the ordinance that must be followed. Soik asked if the suggested requirements were met, and aside from being a guyed wire tower, would they be moving in the right direction. Mrdutt stated they would,

however, staff does not support the guyed tower. Soik stated for a long time, guyed wire towers were the norm, and asked what changed and why. Pelky stated when the ordinance was written, Portage County decided to go to the self-support towers for aesthetics and safety issues. The ordinance was written and adopted by the County Board. Pelky stated sufficient evidence must be demonstrated by the applicant to BOA why a guyed tower is needed. Pelky stated a lot in the staff memo relates to the Town of Carson letter. Pelky added even though the petitioner does not have the pocketbooks of ATT or Verizon, or any cell provider, the ordinance still applies. Pelky stated even if BOA approves the request, the petitioner will still have to provide all the necessary documentation before the tower is allowed. Soik stated this is a very remote area and as it relates to aesthetics, he would like to have more information as to why guyed wires have gone to a thing of the past.

Bernhagen stated until they get a packet that looks better and is approved by the Town of Carson Board, he would recommend BOA not act on this request. Jazdzewski stated if BOA says they would approve the request if all requirements are done, the request is actually approved without everything being addressed. Jazdzewski added saying something "is too expensive" is not a legitimate reason why BOA would approve or deny a tower because of the cost; the ordinance must be addressed.

Bachhuber stated she has problems with the request as it is contrary to the Zoning Ordinance and State Law. In addition, staff does not support the request and BOA cannot create law, nor can they say they do not like the law. Bachhuber stated the County Board made a decision that they did not want guyed towers, so based on that, she would move to deny the petition.

Motion by Bachhuber to deny the special exception request as presented. Motion to deny seconded by Bernhagen, adding he feels they need more documentation.

Jazdzewski asked for further discussion, and Soik stated he would like to see BOA postpone the request, based on the fact he would like more clarification from the Planning and Zoning Committee on the wording of the ordinance, other than they're afraid a bird might fly into the wire. Soik reiterated he would like to see this petition postponed other than denied at this time. Bachhuber called the question.

Motion to deny the special exception request as presented passed 3-1 with Bernhagen, Bachhuber, and Jazdzewski voting aye, Soik voting nay.

Jazdzewski stated the Portage County Ordinance says no guyed towers, and BOA cannot legislate from the Board floor. The ordinance must be addressed as it stands.

Carolfi asked the Board who he can direct people to who are in the middle of nowhere, and Soik suggested he direct them to the Portage County Planning and Zoning Committee. Soik suggested they go to a meeting and ask those questions of that Committee.

Discussion/Possible Action on Bylaws

Jazdzewski stated this item is on the agenda in case there were any last minute changes to the bylaws. Ward stated he has submitted the final version of the bylaws with the changes tracked and changes accepted.

Stewart stated she will present copies to the Board at the next meeting.

At this time, the Committee Members thanked Ward for his contributions and assistance to BOA.

Approval of Minutes from April 21, 2014 and May 19, 2014 Meetings

Bachhuber referenced page two of the minutes, relating to the wording of a motion and clarification of the motion. Bachhuber wanted to make sure the minutes properly reflect her clarification and asked if she should have amended her motion. Stewart stated her clarification of the motion was properly reflected in the Decision. The minutes are a summary of the meeting; stating what was discussed. The decision, reviewed and approved by all BOA members, properly listed all conditions to be followed.

Bachhuber referenced page four of the minutes, relating to the wording of a motion. Again, Bachhuber wanted to make sure the minutes and decision properly reflect what was said and the wishes of the Committee.

Bachhuber moved to approve the minutes of April 21, 2014, Soik seconded. The motion to approve passed 4-0 by voice vote.

Bachhuber moved to approve the minutes of May 19, 2014, Bernhagen seconded. The motion to approve passed 4-0 by voice vote.

Correspondence/Updates

Next meeting is Monday, July 28, 2014.

Adjournment

Motion to adjourn by Bernhagen, second by Soik. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 5:22 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
JULY 28, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:11 pm in Conference Rooms 1 & 2, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Ed Szachnit, Marj Bachhuber, and William Bernhagen (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Election of Officers

Jazdzewski turned the meeting over to Mrdutt who called for nominations for Chairman.

Motion by Bachhuber to nominate Jazdzewski as Chairman; motion seconded by Szachnit. Mrdutt called for nominations three times. There being no further nominations for Chairman, Mrdutt asked for a motion to close nominations. Motion by Soik to close nominations and have Jazdzewski as Chairman, motion seconded by Meis. Motion for Jazdzewski as Chairman passed 5-0 by roll call vote.

Jazdzewski called for nominations for Vice-Chairman.

Motion by Soik to nominate Szachnit as Vice-Chairman; motion seconded by Meis. Jazdzewski called for nominations three times. There being no further nominations for Vice-Chairman, Jazdzewski asked for a motion to close nominations. Motion by Bachhuber to close nominations and have Szachnit as Vice-Chairman; motion seconded by Szachnit. Motion for Szachnit as Vice-Chairman passed 5-0 by roll call vote.

Jazdzewski called for nominations for Secretary.

Motion by Szachnit to nominate Bachhuber as Secretary; motion seconded by Meis. Jazdzewski called for nominations three times. There being no further nominations for Secretary, Jazdzewski asked for a motion to close nominations. Motion by Meis to close nominations and have Bachhuber as Secretary, motion seconded by Soik. Motion for Bachhuber as Secretary passed 5-0 by roll call vote.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time.

RECONSIDERATION

Thomas Waisbrot, Owner (Appeal A99-19)

Appeal No. A99-19 Thomas Waisbrot, owner of Lot 3 CSM #4022-14-78 lying north of Old Hwy 18 Road and west of Custer Road, being part of the NE ¼ of the NE ¼ of Section 5, T23N, R9E, located in the Town of Stockton, wherein a Special Exception from the provisions of the Portage County Zoning Ordinance is requested to construct a 24 foot by 24 foot detached garage exceeding 2,000 square feet total accessory building space in the R1 Rural & Urban Fringe Residence Zoning District. ***NO PUBLIC INPUT WILL BE TAKEN AT THIS REQUEST. IF THE REQUEST FOR RECONSIDERATION IS APPROVED, PUBLIC INPUT AND ACTION WILL BE TAKEN AT THE NEXT BOARD OF ADJUSTMENT MEETING. ALL SURROUNDING PROPERTY OWNERS WILL BE NOTIFIED.***

Mrdutt stated one of the sheds located on the property was damaged by snow load over this past winter and has collapsed. In 1999, Waisbrot appeared before BOA to exceed, at that time, 2,000 square feet accessory building space. One of the conditions stated that any existing sheds on-site could not be reconstructed if anything happens; they must be removed. Waisbrot wants to reconstruct and rebuild a shed and move it to a better location on the site. To be able to do so, this condition would have to be changed, and he would have to request to exceed the new standard which is 2,800 square feet. Mrdutt stated the approach BOA needs to take

is to open this back up and reconsider it next month to adjust the condition from 1999 and act on the formal request.

Bachhuber asked if Waisbrot is going to move the building, and Mrdutt stated he wants to reconstruct the shed. Mrdutt added it will be moved to a better location. Bachhuber stated this is not a reconsideration; it is a new construction. Mrdutt stated it is a new construction but it is replacing an older shed. Bachhuber stated Waisbrot was told it needed to be torn down if something happened. Mrdutt stated the petitioner is asking for a reconsideration because of the circumstance Waisbrot has with insurance.

Bachhuber asked if there is a legal opinion from Corporation Counsel that says this can be a reconsideration, or is there a time limit. Bachhuber stated the minutes from 1999 read the petitioner said these sheds have to be torn down soon anyway because they are not in good condition. Bachhuber stated now the petitioner wants BOA to reconsider so that he can build a new building to exceed the amount of square footage in a new location. Bachhuber asked if Weisbrot has already constructed the new shed, and Mrdutt answered no. Bachhuber asked if Weisbrot has done any work on any of the sheds since 1999, and Mrdutt replied this is why they are asking for reconsideration; so this issue can be discussed. Mrdutt added he knows one of the sheds has been torn down. He believes grading has been done around the sight for the new one. Bachhuber asked why they are asking for reconsideration after this amount of time has passed, and has Corporation Counsel stated this is a reconsideration or is this a new petition? Jazdzewski stated it is a reconsideration because the language said if the buildings were torn down or removed, they could not be reconstructed. That was one of the conditions of the original approval. Because the building fell down and was still used as storage, the petitioner wants to see if he can basically replace, in order to get his insurance money and to have more storage. Jazdzewski stated deliberation is not on whether he can or cannot, it is only on the reconsideration based on condition number two which said the buildings could not be reconstructed. The motion would have to be pertaining whether BOA will or will not reconsider the decision. They should not be discussing the details. Bachhuber asked if there will be any testimony from the petitioner, and Jazdzewski answered no.

Soik asked if the detached garage that was requested in 1999 been built, and Mrdutt answered yes. Soik stated at the time, BOA attached several conditions, in order to get the garage approved. Soik stated now the petitioner is looking to remove a condition so he can replace something BOA originally said he could not. Jazdzewski stated another option, if BOA decides not to reconsider, would be for the petitioner to file another petition for a special exception or variance. Soik stated unintended consequences of conditions being applied is one of the reasons he is not in favor of adding numerous conditions.

Motion by Soik to approve the reconsideration request, and have this request placed on the next agenda. Motion to approve seconded by Meis. Motion to approve passed 4-1 by roll call vote with Bachhuber voting nay.

PUBLIC HEARINGS

Thomas and Pamela Jensen, Owners (P14-11)

The Thomas and Pamela Jensen, owners, Variance request from the provisions of the Portage County Zoning Ordinance to construct a residential addition within road setbacks, in the A4 General Agricultural Zoning District, Town of Hull, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated the petitioner would like to construct a 10'x25' screen porch on the west side of the home, and due to the close proximity of the road right-of-way, the petitioner will need a variance approval to allow the screen porch.

Jazdzewski swore in Thomas Jensen and asked him to explain his request. Jensen stated he has lived in the area since 1972 and the home has always been as close to the road as it is today. Jensen stated he and his wife bought two acres on Birch Point Road a year ago and Birch Point is a granite packed surface. There is another residence past the one they purchased. There is another residence at a dead end, but Jensen believes that residence is lot livable. Jensen understands the road is close, so he had Pelky find the pipes in the ground to locate exactly how close the house was to the right-of-way. Jensen stated John Holdridge from the Town of Hull visited the site with Pete Kaminski who has been plowing that roadway for at least eight years. Jensen stated Kaminski told him when he is plowing that area he slows down and there have been no problems. Jensen stated he is unable to put anything on the south side of the house because that would go right into the roadway. He is unable to put anything on the east side of the house because of an attached garage. Jensen stated he is unable to put anything on the north side of the house because that is where the septic system is located. Jensen stated this is his reasoning for applying for a variance to add onto the west side, adding the addition will not extend any closer to the road right-of-way than the existing house.

Jensen stated approximately four weeks ago, Holdridge and Kaminski visited the property and informed him they were going to be resurfacing some roads in the Town of Hull. Jensen asked if they would consider looking at this issue and possibly consider moving the road surface over to more center of the land that the Town of Hull has jurisdiction over. Jensen stated the road was resurfaced last week and he believes they finished today. Jensen realizes this does not change the right-of-way; however it changes the yard so that rather than four-and-a-half feet of yard before getting to the road, now there is approximately 20 feet. Jensen stated there is a rubber roof on the west side of the house that extends over part of the house that is approximately nine feet long. He intends to put metal on that roof to extend over and cover the porch.

Szachnit asked if the west side of the house is considered the front of the house, and Jensen stated there is an entrance next to the garage.

Soik asked if roof lines are going to be re-drawn, and Jensen stated the bottom of the upper level of the house drops to approximately eight inches and then extends. Jensen stated the new roof will not be the same pitch. Soik asked if Jensen will make the roof the same pitch as the drawing indicates, and Jensen answered he does not. His plan is to make the roof flat from the porch to the section that goes to the roof. Soik stated it looks like at one point in time, the eight foot section looked to be added onto the house or was at one time a covered porch that was closed in. Soik asked Jensen if he could shed any light on that, and Jensen stated he can only give information on what has gone on inside the home. Jensen detailed how many rooms there were in the house and what the flooring was like and how they changed the inside. Soik stated he is concerned that someday the porch will be converted into enclosed living space in the home. Jensen stated that will not happen. Soik asked staff if there is anything from the Town of Hull stating their position, and it was noted there is a letter included in the packet.

Jazdzewski asked Jensen if this will be an unheated screened porch, and Jensen replied there will not be any glass. There will be flooring and screens only. Jazdzewski stated if this is going to be put on the house and by the road, this is the safest spot because it is against traffic flow. Jensen stated the road surface was moved and now it curves to the south and when going past the house, it is in the center of the roadway. The distance between the two right-of-ways on the south and north side is the same as it goes past the house. Szachnit stated it appears the road is located better.

Szachnit stated if this request is approved, there should be a condition attached stating the porch is never to be enclosed.

There being no further questions for Jensen, he was excused by Jazdzewski.

Jazdzewski asked if there were any other members of the public wanting to speak on this matter. Paul Woyak was sworn in by Jazdzewski. Woyak stated he and his wife bought land across the roadway from Jensen approximately ten years ago. Woyak stated they are planning on building their home within the next two months. Woyak stated his home will be situated further south from the roadway, but his intentions are eventually to build an unattached garage. Woyak stated his concern is where the roadway was going to end up. Woyak realizes now that BOA has no decision as to where the roadway is placed. Woyak stated he was told the roadway was going to move 30' from where it existed, and he thought this meeting involved discussion on moving the road as well. Woyak has been out in the area and sees the roadway has been moved. Woyak stated his only issue is if the road is now set or will they encroach more. Jazdzewski stated that is between the landowners and the Town of Hull. BOA has no control over the Town or County transportation divisions. Jazdzewski stated it appears the road was surveyed and the road is where it should have originally been. Woyak stated he bought this property based on where the roadway was and how the land looked, and is worried about encroaching more on the south side of the road in the future. Soik asked staff if the adjustment was to the road surface, not the road right-of-way itself, and stated it is his understanding the road can lie anywhere within the right-of-way. Mrdutt stated this is correct.

Woyak stated another concern is the road is not centered the length of the roadway. Jazdzewski stated it appears they only did one part of the roadway for safety. Woyak is concerned about them centering the road, and stated he realizes BOA does not make these decisions. There being no further questions for Woyak, he was excused by Jazdzewski.

Jazdzewski asked if there were any other members of the public wanting to speak on this matter. There being none, Jazdzewski closed testimony and opened deliberations.

Variance criteria were discussed and the following was noted:

- It is the consensus that granting the variance would not be contrary to public interest, State Law, or Administrative Code, and the spirit of the Ordinance would be observed and substantial justice done.
- The use is permitted in the district.
- Exceptional circumstances apply to the use that does not generally apply to other landowners. This is a preexisting condition.
- The hardship is not caused by any person having interest in the property.

Motion by Bachhuber to approve the request for a variance as presented, with the following conditions:

1. You are to obtain a Portage County Zoning Permit.
2. The enclosed screen porch is to remain just that; it is not to become a four-season room in the future.

Motion to approve seconded by Szachnit.

Meis asked if meeting the setback to the septic needs to be a condition, and Jazdzewski stated no; they are not encroaching on the septic.

Motion to approve passed unanimously by roll call vote.

William and Mary Hetzel, Owners/Nick and Jenny Bianco, Agents (P14-13)

The William and Mary Hetzel, owners, Nick and Jenny Bianco, agents, Special Exception request from the provisions of the Portage County Zoning Ordinance to board up to 15 horses in the A2 Agricultural Transition Zoning District, Town of Sharon, was opened by Jazdzewski who read the public hearing notice.

Pelky stated in 2008 BOA approved this property to be used as a horse rescue. Pelky stated the new buyer wants to board up to 15 horses, but due to the fact they are boarding horses for commercial purposes, it is treated as a different request.

Jazdzewski swore in Jenny Bianco and asked her to explain the request. Bianco stated she was a volunteer at the horse rescue with the previous owners for seven or eight years. Bianco stated there is the potential to restore the property back to agricultural and boarding horses and this is what she intends to do. Bianco stated she cannot afford to continue the rescue work because a lot of that comes out of her own pocket; however, she sees a potential to bring in income for her family. Bianco stated she has been working with Dan O'Connell regarding manure management issues. In addition, Bianco has spoken with Jay Mar and other farmers co-ops regarding restoration and pricing in the area.

Szachnit stated Hetzel is listed as the owners and asked Bianco if she has purchased the property. Bianco stated they moved in last Friday. Bianco stated she knew this was a long process and regardless of whether they closed on the property, she needed to know if this request was going to be approved.

Bachhuber stated the petition request states to rewrite land use, and Pelky explained that was the wording of the petitioner; that is not necessarily the proper wording of the request.

Bachhuber asked Bianco if she is requesting to use manure as fertilizer, and Bianco answered yes. Bianco explained when there were 35 horses, there was too much manure to dispose of on that property; adding when there is a significant drop in the number of horses, the manure will be manageable. Bianco stated in speaking with O'Connell and Jay Mar and discussing restoration of the property, the most expensive part of that is fertilizer. Bianco stated it makes sense to use what she will have on the land naturally instead of manufactured fertilizer.

Bachhuber stated she did not see any stalls on the property and asked if anyone has seen them. Pelky stated they did not go inside to look. Bachhuber asked Bianco if the horses will be boarded inside, and Bianco replied some will be inside and some will be outside. Bianco stated there are 11 stalls inside; however, she prefers to board horses outside.

Szachnit stated he noticed an indoor arena next to the barn and asked Bianco if she was going to hold any type of events. Bianco replied that is just for people who own horses. Her stable will be very low key, back to family, back to community. Bianco added she does not have the facilities or capabilities to do what a large horse boarding facility would do. Bianco stated she will have rules that there are to be no racing events practiced in

that arena because it is not big enough and she does not believe it is good for the horses. Bianco stated she is a certified equestrian massage therapist so she knows what is good and bad for the animals' bodies.

There being no further questions from BOA, Bianco was excused. Jazdzewski asked if any other members of the public wanted to address this matter. A gentleman from the audience, Brian, expressed a concern about an increase in traffic. Bianco stated she anticipates no increase in traffic and explained the numbers of vehicles she believes will be in the area because of the boarding. Brian asked about possible building or renovations, and Bianco stated she will be reconstructing the corrals; adding the fencing is in major need of repair.

There being no other members of the public wanting to speak on this matter, Jazdzewski closed testimony and opened deliberations.

Jazdzewski stated one item recommended by staff is a manure management plan; and Mrdutt stated that issue will be addressed with the Land Conservation Division.

Special Exception criteria were discussed and the following was noted:

- Granting the special exception would not be contrary to public interest, State Law, or Administrative Code, and the spirit of the Ordinance would be observed and substantial justice done. Jazdzewski stated this is just a new way of stating what is already occurring on the property. Bachhuber noted it may improve the property.
- The use is permitted in the district.
- Conditions can be attached.
- Increased setbacks are not an issue.
- Landscaping and planting screens are not an issue. There is already a lane established for the safety of both people and animals.
- No hours of operation need to be set.
- There is no need for deed restrictions.

Bachhuber stated they should look at the decision from 2008 and see if it is appropriate to include any of those conditions. Bachhuber stated 35 horses were approved at that time and asked if they need to establish a maximum number of horses. Jazdzewski stated Bianco is only asking for 15 horses. Bianco stated she will have a maximum of 15 horses; she has seen the damage done to the land with more horses.

Bachhuber stated another condition from 2008 was that all vet supplies must be kept in a locked closet. Bianco stated in the past there were vet supplies on site. Bianco does not foresee any vet supplies. If there were, she would keep them in a locked refrigerator. Bachhuber asked Bianco if she would be administering medicine and Bianco replied no. Bachhuber asked Bianco if it would be okay with her if they put a condition relating to storage of medical supplies, and Bianco answered yes.

Bachhuber stated there was a condition stating contact must be made with Sam Solberg, Commercial Building Inspector. Jazdzewski stated if the riding stable was open for public use, it would have to meet commercial standards. Bachhuber reiterated a condition to contact Dan O'Connell, Land Conservation Division, stating a manure management plan would be established.

Bachhuber asked if they needed to put a condition in stating there are to be no public events, and Jazdzewski stated it is not necessary because this is not a permitted use; Bianco is not requesting or intending to have public events.

Bianco asked if having neighbors over for campfires and things like that is okay, and Jazdzewski answered yes.

Jazdzewski stated a condition regarding the medical supplies should be worded as restricted access, not necessarily a locked cabinet.

Szachnit asked if the rescue started in 2008, and Pelky stated the approval was granted in 2008.

Motion by Bachhuber to approve the special exception request as presented with the following conditions:

1. You are to contact Dan O'Connell, Portage County Land Conservation Division, regarding a manure management plan.
2. You are to contact Shirley Simonis, Portage County Clerk, regarding a Commercial Animal Establishment Permit.

3. You are to obtain a Portage County Zoning Permit.
4. No more than 15 horses are to be boarded at any one time.
5. All medical supplies for horses shall be kept in a restricted area.

Motion to approve seconded by Szachnit. Motion to approve passed unanimously by roll call vote.

Approval of Minutes from June 16, 2014 Meeting

Soik moved to approve the minutes of June 16, 2014, Jazdzewski seconded. The motion to approve passed 5-0 by voice vote.

Correspondence/Updates

Next meeting is Monday, August 18, 2014

Mrdutt stated information will be presented at a future meeting regarding a previous BOA petition and possibly operating contrary to established conditions.

Discussion regarding holding a joint meeting with the Planning and Zoning Committee to discuss mutual issues and concerns. This item is to be put on a future agenda.

Discussion relating to wording of conditions in motions.

Discussion relating to letters received from Townships.

Adjournment

Motion to adjourn by Meis, second by Bachhuber. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 5:32 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
AUGUST 18, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Ed Szachnit, Marj Bachhuber, and William Bernhagen (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department. Others present included Deputy Corporation Counsel David Hickethier.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

Thomas D. Waisbrot, Owner (P14-12)

The Thomas D. Waisbrot, owner, Special Exception request from the provisions of the Portage County Zoning Ordinance to exceed the 2,800 square feet maximum accessory building space, and to rescind condition #2 from Board of Adjustment Decision A99-19 which states, "The three existing sheds on the site cannot be reconstructed, if anything happens to them, they must be removed," in the R1 Rural & Urban Fringe Residence Zoning District, Town of Stockton, was opened by Jazdzewski, who read the public hearing notice.

Mrdutt stated this is a five acre parcel that is zoned R1. The uniqueness to this is the previous decision from 1999 which stated existing sheds on the site cannot be reconstructed. Mrdutt stated one shed was damaged over the winter and has since been removed. The petitioner would like to rebuild a 24'x48' shed. Mrdutt stated BOA needs to handle this as two requests; the first being discussion on removing condition #2 from the 1999 decision, and the second being to discuss the petition to exceed 2,800 square feet accessory building space with the 24'x48' planned detached garage.

Jazdzewski swore in Thomas Waisbrot and asked him to explain his request. Waisbrot explained he is a disabled veteran with medical problems and would like the building closer to his house. Waisbrot stated he plans to take the rest of the buildings down. Waisbrot stated he spoke with some of the neighbors and they had no problems with the garage being moved. Waisbrot added this would make the property a bit neater as he would be able to put items in the garage and get them out of the weather.

Meis asked if the two buildings located down below would be removed, as well as the barn, and Waisbrot answered the barn and the bigger of the two buildings will be removed. The smaller building is where his pump is located and the structure is cover from the wind and weather. Waisbrot stated he does not use the barn for anything, adding it is more of a hindrance to him. Waisbrot stated someone will be tearing the two buildings down at no charge, and reclaim the lumber.

Szachnit asked Waisbrot if he is storing the materials for the new building in the garage that will be torn down, and Waisbrot replied there is nothing in the barn that will be torn down. Waisbrot stated the barn can come down as soon as the electrical service is removed from the barn; maybe as early as this week. Szachnit asked which structures will be remaining and Waisbrot replied he will have the smaller shed where the water pump is located, the garage, and the new building. Waisbrot added there is a temporary shed he was using to store items in and he is hoping to keep it, if permitted. Szachnit asked the size of the small shed and Waisbrot answered 10'x16'.

Waisbrot stated the barn that will be torn down is 2,500 square feet. Waisbrot added the barn is not insured the same way as the other buildings; the bank wants him to build a new building with the same square footage, however, he wants to build a smaller garage.

Bachhuber asked if the barn that will be torn down is empty, and Waisbrot reiterated it is empty. Bachhuber stated the minutes from 1999 mentioned Waisbrot wanted to leave the other buildings up for a while, but would eventually take them down because they would become a safety hazard. Bachhuber asked Waisbrot if he had no intention of taking them down until one fell down. Waisbrot stated he does not understand where the condition came from that stated he had to take the structures down. Waisbrot stated at the time, he told someone the one was a safety hazard and needed to come down; adding this is the one he took down. Waisbrot stated the barn and pump house are good structures, but he does not use them. Bachhuber asked Waisbrot his timetable for taking down these buildings, and Waisbrot explained he has someone that can take the barn down as soon as this week, but the electrical service has to be removed first.

Bachhuber asked Waisbrot if he would mind a condition that the buildings have to come down before construction on the new building can begin, and Waisbrot replied he does not want that. Waisbrot added he has been waiting for four months already and the insurance company has only given him 180 days to put up another building or he loses another \$7,000 they are willing to give him. Mrdutt stated BOA needs to focus on the petition at hand, which is strictly removing a condition and allowing the petitioner to build a 24'x48' structure. Discussion of buildings currently there, and if they stay or go, does not have a place in this petition. Mrdutt stated as of now, the barn is up, and the petition is to exceed 2,800 square feet accessory building space. Mrdutt stated BOA should not be the one to determine if a building has merit or should stay or go. BOA is acting on exceeding the 2,800 square foot accessory building space maximum. Jazdzewski stated BOA needs to approach this as the buildings are currently there; if the buildings were not there, the petition would not be necessary.

Soik stated the minutes from 1999 read Waisbrot stated he may tear down the barn within a few years. Soik stated he believes this means he may or may not tear down the barn. Waisbrot stated he was originally going to try to sell the barn for the lumber.

Jazdzewski asked about the temporary borrowed building, which could be deemed in violation, and stated this will need to be addressed with Planning and Zoning staff.

There being no further questions from BOA, Jazdzewski excused Waisbrot. Jazdzewski asked if there is any other correspondence pertaining to this petition, and it was noted there was none. It was noted there was no other members of the public in attendance to speak on this matter. Jazdzewski closed testimony and opened deliberations.

Jazdzewski stated BOA voted at the last meeting to reconsider the action taken in 1999 which was petition A99-19, specifically requesting to rescind condition #2. Jazdzewski stated BOA needs to act on that request first, and if approved, BOA can then act on the special exception request to exceed 2,800 square feet accessory building space.

Bachhuber asked Hickethier his opinion on the legality of this action. Bachhuber asked Hickethier if this is the proper legal action to take to reconsider a motion from 1999; or if this is new construction, shouldn't there be a petition for new construction. Hickethier stated it sounds like this is a two part request. Part one seems to go to the current BOA taking action on a BOA with different composition. Hickethier does not see a problem with that; it is BOA with the same duties and powers, not individual members sitting on the Committee at a certain time. Hickethier stated BOA reconsidering a decision of this body from previous years can be compared to a Circuit Court Order that can be brought back before a different judge to reconsider a different aspect of a decision. Hickethier stated he finds no problem with the current BOA and its members taking action on previous BOA decisions.

Hickethier stated in terms of whether this is more appropriate as a petition or a motion for reconsideration, he believes based on the existing condition, if it were simply to be another petition for construction, they would have to address that previous decision in some fashion anyway. From his perspective, he would deem it appropriate to be a reconsideration of the previous decision which placed the #2 limitation. Hickethier stated he is satisfied and agrees with Mrdutt's assessment that BOA needs to first address the condition from A99-19, and then move on to the special exception request.

Waisbrot stated he does not understand how the condition regarding the three buildings not being rebuilt got in the decision from 1999. Waisbrot stated they did talk about the barn and the fact he may or may not take the barn down. Soik stated it was put in the motion in 1999 that the three existing sheds on the site cannot be reconstructed; and he would take that as if they fall down, they cannot be put back up because he has already exceeded the maximum square footage. Soik added it did not say anything about maintaining those structures.

Waisbrot stated this is why he is confused; they only talked about the barn not being rebuilt. Waisbrot stated he also told BOA at that time that he may take it down himself. Jazdzewski stated this BOA is going off the minutes from the meeting in 1999, and the minutes state the conditions were hinged on approval of the request.

Szachnit stated when the previous BOA moved to approve the original request, Waisbrot could have contested it at that time.

There being no further discussion, Jazdzewski closed deliberations and asked for a motion to either rescind or not rescind condition #2 from BOA Decision A99-19.

Motion by Soik to rescind condition #2 from BOA Decision A99-19. Motion seconded by Szachnit. Motion to rescind condition #2 from BOA Decision A99-19 passed unanimously by roll call vote.

Jazdzewski stated since condition #2 has been rescinded, the action on the floor at this time, pending further discussion, is to approve, deny, or postpone the request to exceed 2,800 square foot maximum accessory building space. Jazdzewski reminded BOA the request is for a specific building that is 24'x48'.

Szachnit stated he would make a motion, with the condition that the other structures, such as the barn and the other building, are coming down, because that would keep them within the 2,800 square feet. Jazdzewski stated they are moving for a petition to exceed 2,800 square feet accessory building space because the building is there now. Szachnit asked why they cannot place a stipulation on the approval that the buildings are going to come down, and Jazdzewski stated it is not necessary. Mrdutt stated he believes it is wrong for BOA to force someone to remove buildings, because they are not in violation. Szachnit stated Waisbrot is going to take them down. Mrdutt stated that should be up to Waisbrot when he chooses to do so, if at all. Jazdzewski stated the issue of the extra building will need to be addressed by Planning and Zoning staff, and Mrdutt stated they will work with Waisbrot to get a permit if need be. They will also address if the structure is temporary or permanent. Mrdutt added that structure is not part of this petition.

Motion by Szachnit to approve the request as submitted to exceed 2,800 square feet accessory building space, with the following condition:

1. You are to obtain a Portage County Zoning Permit.

Motion to approve seconded by Soik. Motion to approve passed unanimously by roll call vote.

Approval of Minutes from July 28, 2014 Meeting

Bachhuber moved to approve the minutes of July 28, 2014, Szachnit seconded.

Jazdzewski wanted to clarify a statement he made at the last meeting. On page 3, paragraph 4, it reads "... this is the safest spot because it is against traffic flow..." Jazdzewski stated he meant to say that is the safest spot because it is with traffic flow. If a car is going to hit the porch, it has to hit the house first. Jazdzewski wanted to make sure his comments were understood. Stewart stated she would note this in the minutes for this meeting.

Soik stated in the minutes on page 3, paragraph 3, last sentence, he asked if there was anything from the Town of Hull stating their position, and it was noted there a letter included in the packet. Soik stated the letter in the packet was not from the Town itself. The letter was from the Town Chairman, and added that is not the same. Soik wanted it noted in the minutes for this meeting that it was a letter from the Town Chairman, not the Town. Szachnit asked if Holdridge was speaking on behalf of the Town, and Jazdzewski stated the Town Chair was speaking on behalf of himself. Stewart stated she would note this in the minutes for this meeting.

Motion to approve the minutes of July 28, 2014 passed unanimously by roll call vote.

Correspondence/Updates

Next meeting is Monday, September 15, 2014

Mrdutt introduced David Hickethier, Deputy Corporation Counsel, who will be working with BOA.

There was discussion on the recent passing of former BOA member, Lowell Klessig.

Discussion of Portage County Zoning Ordinances

There was discussion regarding a joint meeting with the Planning and Zoning Committee to suggest zoning ordinance amendments. Mrdutt explained the appropriate ways to address issues with ordinances and how ordinances are changed.

There was discussion regarding after-the-fact approvals and the need for penalties. Mrdutt explained double and triple fees can be assessed for these violations and added these fees will be addressed in the ordinance. There was also discussion regarding seeking legal action and fines. Mrdutt stated this is a lengthy process.

Bachhuber stated another reason for needing to meet with the Planning and Zoning Committee is to help all committee members understand their roles. Mrdutt stated Director Schuler has put together an annual report explaining the role of each section of the Planning and Zoning Department as well as the role of the Department as a whole. In addition, there is a section explaining the role of BOA. This report has been presented to the Planning and Zoning Committee. Mrdutt will get copies for BOA members.

Adjournment

Motion to adjourn by Bachhuber, second by Szachnit. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 4:50 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
October 20, 2014

Call to Order

Vice-Chairman Szachnit called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Pledge Allegiance to the Flag

Soik led the Pledge.

Roll Call

Stewart called the roll. Members present included Scott Soik, Edward Szachnit, Dennis Meis, and William Bernhagen (Alternate). Members excused were John Jazdzewski and Marj Bachhuber. Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department. Others present included David Hicketier, Portage County Deputy Corporation Counsel.

Board of Adjustment Procedures

Szachnit explained the meeting was properly advertised by a class 2 notice in the local newspaper. Testimony and questions should be addressed during the public hearing portion of the meeting. Anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

Alan Gorzlaneyk, Owner (P14-14)

The Alan Gorzlaneyk, owner, Special Exception request from the provisions of the Portage County Zoning Ordinance to expand the Industrial Wood Chip Operation located north across Johnson Avenue to this property, in the Industrial Zoning District, Town of Plover, was opened by Szachnit, who read the public hearing notice.

Mrdutt stated this property was originally zoned Exclusive Agricultural. Mrdutt stated Gorzlaneyk worked with Staff and the Town of Plover to get the property rezoned to Industrial. Mrdutt stated the Town of Plover's Comprehensive Plan cites that this corridor along Highway 54 is designated for industrial use. The appropriate steps were a rezoning of the property and then to get BOA approval for the industrial wood chip operation. Mrdutt stated Gorzlaneyk owns the property north across the road, and added anytime you bring an industrial use onto a property, the Ordinance states BOA has to approve the use. This is in association with the operation across the road. Mrdutt referenced an aerial photo included in the packet and pointed out a lot of the other uses in the area are heavy industrial or intensive agricultural.

Szachnit swore in Alan Gorzlaneyk and asked him to explain his request. Gorzlaneyk stated the business provides colored landscape mulch to an approximately 250 mile radius. Gorzlaneyk stated they bring in raw material such as pallets and containers, chip them, remove the metal, color them, and then bag and move them to market. Gorzlaneyk stressed everything they do is based on recycling. Gorzlaneyk stated as they are chipping, they remove the metal content which is then brought to a metal scrap dealer.

Gorzlaneyk stated they have a very good rapport with neighbors, adding he is not aware of any complaints. Gorzlaneyk stated they try to help neighbors out with specific items or product if there is a need. Gorzlaneyk stated they do this on a huge volume and they have three industrial grinders; at any one point, they are using two of them. Gorzlaneyk stated they are currently in their off-season so they are working on maintenance of equipment, putting up inventory for spring, and recycling cardboard. Gorzlaneyk added they help keep a tremendous amount out of the landfills, and any material they cannot do anything with is compacted and removed by another private company. Gorzlaneyk reiterated they keep the area clean and they have not had complaints from neighbors.

Gorzlaneyk stated he is aware they need to handle water runoff so there are swales built around the 20 acre parcel, in addition to berms which are now covered over in grass. Gorzlaneyk stated they maintain the roads themselves with their own end loaders. Gorzlaneyk stated he believes they help a lot of different companies keep a lot of things out of landfills. Gorzlaneyk stated there is a tremendous market for the mulch. Gorzlaneyk stated they are now moving into the inventory phase and have been fixing equipment trying to prepare for the next season.

Gorzlaneyk stated they move many truckloads out of their facility, but some do come to the facility to pick up. Gorzlaneyk stated that is the exception to the rule; they are not creating any additional traffic on Johnson

Avenue. Gorzlancyk stated they have their own fleet; they transport in all the raw material, process it all, and transport it out. Gorzlancyk stated the entire operation, start to finish, is handled by their employees. Gorzlancyk stated anytime there is a recycling operation, it may not be top notch from an aesthetic standpoint, but they try to keep it in as good an order as they can. Gorzlancyk added they do not have cardboard and other debris flying around the surrounding area. Any cardboard on the property is bundled and taken to the mills in Wisconsin Rapids.

Meis asked if there will be any additional lighting installed and Gorzlancyk replied there is no work done in this area after dark, so he does not anticipate putting in any additional lighting unless required to do so. Gorzlancyk added the equipment has lighting they can use when chipping after dark.

Meis asked if property lines on the map are accurate and Pelky replied the lines are a representation; this is not a survey map. Meis stated it appears some of Gorzlancyk's equipment is on neighboring property. Gorzlancyk stated some of the roads may appear to be; however, they are utilized by the neighbors during harvest season. Gorzlancyk stated they maintain the roads and try to keep them fairly level. Gorzlancyk reiterated they have a very good working relationship with neighbors and they try to help each other out when they are able.

Szachnit asked when the busy time is for the business and Gorzlancyk replied busy time starts at the first warm weather in spring, and continues through mid-August, depending on the weather. Gorzlancyk stated during the off-season they work on animal bedding for livestock, horses, and cattle; they have a facility in the back of the property.

There being no further questions for Gorzlancyk from BOA, he was excused. Mrdutt stated there is a letter in the packet from the Town of Plover supporting the request. Szachnit noted there were no members of the public wanting to speak on this matter. Szachnit closed testimony and read the Special Exception standards.

There being no discussion, motion by Meis to approve the Special Exception request as submitted with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. Submit a Stormwater Plan to be reviewed and approved by the Planning and Zoning Department prior to issuance of the Zoning Permit.

Motion to approve seconded by Soik. Motion to approve passed 4-0 by roll call vote.

Consolidated Water Power Company, Owner, Paradise Solutions Inc., Agent, (P14-15)

The Consolidated Water Power Company, owner, Paradise Solutions Inc., agent, Special Exception and Variance request from the provisions of the Portage County Wireless Telecommunication Facility Ordinance to erect a self-support tower to control dam operations in the Floodplain and Shoreland area, in the Industrial Zoning District, Town of Eau Pleine, was opened by Szachnit, who read the public hearing notice.

Mrdutt stated this property is in the Industrial zoned area, and added this is both a Special Exception and Variance. The Special Exception is for the tower, and the Variance is because the tower would be located in the floodplain and shoreland. Mrdutt stated this is in the flood fringe, not the floodway. Mrdutt stated they will have the ability to raise the base of the tower out of the flood fringe, adding they will need roughly 3 to 3 ½ feet of fill to bring the elevation up. Mrdutt stated they will require a survey be done to determine specific elevations and make sure the tower is located out of the flood fringe area.

Szachnit swore in Justin Busa and Thomas Witt, Resources Manager, Consolidated Water Power Company, and asked them to explain the request. Busa stated they are looking to put up a wireless communications tower to shoot back to the Kraft Mill in Wisconsin Rapids. This is the last piece of the puzzle for the dam network that Consolidated Power owns. Witt explained when talking about the network, the network is their communication network, and they are looking to upgrade from their existing system to a wireless system. Witt stated this has two advantages; it gives an added sense of redundancy with the current system, and the response rate will be much quicker for them to pick up on communications with their systems and alarms to operate the dam structures.

Bernhagen asked if there will be any co-locators on the tower, and Busa replied no; this tower is only for New Page. Being a hydro plant utility company, they cannot co-locate with anyone else for security reasons.

Meis asked if they will have a fence around the tower, and Busa answered yes. Meis asked if they will have any additional lighting for the facility, and Busa replied they have none planned for the tower or on the ground.

Szachnit stated it was noted this is going to be a redundant system and asked if they will still maintain their current land line. Witt replied they will as long as they can effectively maintain the system. Szachnit asked about the reliability of a wireless system, and if it has any interference from weather. Busa replied weather does not affect the tower. Busa stated two years ago he did the first link from the Whiting Dam to the Kraft Mill which is about 18 miles, line-of-sight. Busa stated that one is at 99.2%, adding the reliability is there.

There being no further questions from BOA, Szachnit excused Busa and Witt.

Mrdutt stated they will work with Busa and Witt to determine the best place to meet setbacks, first and foremost from the road.

Szachnit read the following into the record:

- A letter from Matthew Dykstra, Deputy Director, Portage County Emergency Management, requesting BOA consider the installation of this necessary piece of equipment.
- A letter from Jeff Reabe, Reabe Spraying Service, expressing support for the tower location. Reabe recommended all towers be painted orange and white per FAA recommendations and shared information on a wrongful death settlement awarded to a pilot due to a tower not having the recommended orange and white paint.
- An email from Michael Wenzholz, WI-Department of Natural Resources, stating if BOA determines the variance criteria are met, they should assure the proposed structure meets the 100-foot ordinary high water mark setback required by the Shoreland Ordinance.

Szachnit noted there were no members of the public wanting to speak on this matter. Szachnit closed testimony and opened deliberations.

Meis asked if there are requirements relating to painting the tower or if there is a height requirement, and Mrdutt stated at 200 feet, the Federal Aviation Administration (FAA) requires lighting. Mrdutt added there is nothing in the ordinance relating to painting of the tower.

Soik referenced the letter from Dykstra and stated they must operate under guidelines of water levels. Soik stated the standards have not changed, and asked how this new tower will actually help surrounding areas from a flood such as in 2009-2010. Witt stated the last event was in the fall of 2010 when they asked and received permission to raise the upper limit for that fall time period to accommodate holding more water back to prevent more flooding further down river in Portage County. Witt stated a month or two prior to that, they had a lightning strike that took the plant down temporarily. Witt stated it took them about half an hour to restore their operations automatically. With all systems, a failure will freeze everything where it's at until they can get either the power back manually or automatically. Witt stated it is very rare they go outside their licensed limits, and this is the point he is trying to make. Witt stated when this occurs; they have to file a formal report with the Commission.

Szachnit asked about the reliability of the current land line, and Busa stated they have a lot of issues in spring and fall due to the rain and wet ground. Busa stated this is usually when they run into issues with the AT&T line, and they have to deal with two big companies to get it fixed. Busa added this is why they want to put up this tower at this time, because of the issues they deal with relating to rain and weather. Witt stated the nature of where the dam is located is the most remote location of their five projects. Witt stated the dam is remote and not located next to a mill, so they are not able to rely on the mill personnel to help them out. Witt stated they have no operator at the Dubay Dam 24/7 and added it could take 35-40 minutes to get somebody to drive up there and get control of the situation. Witt stated the time lag is much greater at Dubay than it is in Stevens Point, Whiting, Biron, and Wisconsin Rapids. Szachnit asked if having this wireless system would give them the capability to remotely control what is happening at the dam before sending someone up there, and Witt responded if the system is active. Witt added they would be operating the dam that way, as they are today, off the landline. Witt stated there will be redundancy until they can validate the system works and the line-of-site distance is adequate to talk to the tower in Stevens Point or in Whiting and pass on that information to Wisconsin Rapids, or until the landline is no longer supported.

There being no further questions for Witt and Busa from BOA, they were excused. Dennis Hess, Town of Eau Pleine Chairman, was sworn in by Szachnit. Hess stated this plan was approved by the Town of Eau Pleine Plan Commission and Town Board. Hess stated he is in favor of what they are doing; adding he was heavily involved with the 2009-2010 flood situation. Hess stated he is in support of anything that can be done to

improve the dam communications. Hess stated during construction, roads in and out of the site are the number one concern for the Town. Hess added his only concern is who would pay for any road damage. Mrdutt stated this is something that would be addressed by the Town of Eau Pleine because it is located on a Town road. There being no further comments, Hess was excused. Szachnit noted there were no members of the public wanting to speak on this matter. Szachnit closed testimony.

Szachnit asked for a motion to approve, deny, or postpone the request. Motion by Bernhagen to approve the request for a Special Exception as submitted, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. Submit Engineer stamped tower designs that include a plan that shows the tower has a midway collapse point, prior to the issuance of a Zoning Permit.
3. Provide floodplain elevations of the tower location prior to issuance of a zoning permit.
4. Provide a screening plan to visually obstruct the tower base. This plan will need to be approved by the Planning and Zoning Department before a Zoning Permit can be issued.

Motion to approve seconded by Meis.

Soik asked for discussion on the condition relating to screening, asking if it is necessary due to the location.

Motion by Bernhagen to amend the motion to remove condition number four relating to screening, Motion to amend seconded by Meis. Motion to amend passed 4-0 by roll call vote.

Motion to approve the main motion as amended passed 4-0 by roll call vote.

Motion by Soik to approve the request for a variance as submitted, with no conditions. Motion to approve seconded by Meis. Motion to approve the variance passed 4-0 by roll call vote.

RECONSIDERATION

Michael and Annette Mlodzikowski, Owners (Petition No. P14-02)

The request to reconsider condition number six from part one of the following petition, which states, "Hours of operation shall be from 7:00am to 6:00pm, Monday through Friday, and 7:00am to 12:00pm, Saturday," was opened by Szachnit, who read the public hearing notice.

Petition No. P14-02 Michael and Annette Mlodzikowski, owners of property lying north of County Road A and approximately 2,300 feet east of County Road I, being part of Government Lot 9, Section 5, T25N, R10E, Parcels 002-25-1005:09.01 and 002-25-1005:09.03, located in the Town of Alban, wherein a Special Exception from the Portage County Zoning Ordinance is requested to operate a motor vehicle repair shop as a home occupation, allow 25 inoperable motor vehicles, and allow a sign greater than six square feet, in the A4 General Agricultural Zoning District. *No public input will be taken at this request. If the request for reconsideration is approved, public input and action will be taken at the next Board of Adjustment meeting. All surrounding property owners will be notified.*

Mrdutt stated this petition was originally approved in March, 2014 and explained the original request. Mrdutt stated the problem that has arisen is the petitioner is operating outside of the approved hours of operation. Standard enforcement procedures were explained to BOA. Mrdutt stated it has become obvious to the Department they are operating either past the nighttime hours or accepting vehicles on Saturday afternoons or Sundays. Mrdutt stated enforcement can either start with letters followed by possible involvement by Corporation Counsel, or because this was previously before BOA, they can bring it back before BOA for reconsideration. BOA has the opportunity to either strengthen or better define the hours of operation. This is the avenue Mrdutt would like BOA to take. Mrdutt stated the previous condition did not specify the ability for people to drop off a vehicle on Sunday to be worked on the following week, or is that considered part of the business. Mrdutt stated some people only have the opportunity to drop a vehicle off on the weekend. This is something BOA needs to address.

Mrdutt stated he has received over 60 emails with approximately 200 photos from the neighbor showing what she believes are violations of the operating hours. Szachnit asked if the emails were received from one party, and Mrdutt replied yes; they are from Rose Anne Mlodik. Mrdutt stated the photos are time stamped. Mrdutt stated he spoke with the owners of the business who stated at one time he had friends coming to work on their own cars, using his tools; however, Mlodzikowski stated he was not doing the work. Mrdutt told Mlodzikowski

they were still actively using his business. Mrdutt stated this issue was straightened out throughout the summer. Mrdutt informed Mlodzikowski that because his is a business that had to go through BOA, he is held to a higher standard with conditions established. This is a Special Exception, not an everyday use. Mrdutt added once Mlodzikowski was aware that his friends using his business would be considered as the business operating, the activity stopped. Mrdutt stated he continued to receive photos showing people dropping vehicles off on Saturday afternoons and Sundays.

Mrdutt stated one thing they have to deal with is this is taking place on an active farm, and the landowners could be fixing a tractor after hours. Mrdutt stated there has to be a line between their personal equipment and working on someone else's vehicle. Mrdutt stated if Mlodzikowski feels he needs to operate with different hours, BOA will need to reconsider and sort that out.

Szachnit stated it sounds easy to identify if they are working on a tractor for farm use or a car. Mrdutt stated those are hard to enforce because they are not able to be on-site at all hours. Szachnit stated in order to know what is really going on inside, they would need pictures. Mrdutt stressed this could be trespassing and he does not condone that activity.

Mrdutt stated in standard enforcement, one of the opportunities is for BOA to reconsider and strengthen what they believe are parts of the operation and hours of operation.

Soik stated they have seen what is going on and have somewhat of an idea of the situation. Soik asked if bringing the owners in for a hearing will change anything in the way they live their lives in the next six to eight months. Soik does not believe bringing them in and putting stronger language in for hours of operation is going to change anything out there. Soik believes if you fix one issue, other issues will come up. Soik stated this appears to be a family/neighbor dispute and added people making unfounded complaints should be cited criminally because they are taking away valuable resources from others in the County. Soik believes this is the only way they will get any resolution in this situation. Soik asked if any of this has been done. Mrdutt stated he cannot speak for the Sheriff's Department, but he knows they have been heavily involved with these parties regarding the easement and other civil matters. Mrdutt stated they have not contacted the Sheriff's Department to go out and document incidents as it is the role of the Planning and Zoning Department staff to enforce BOA conditions. Mrdutt stated BOA has the ability to have the owners stick with the original conditions and Planning and Zoning Staff will enforce them. Soik asked if BOA has the ability to revoke the entire approval if it is found that they are not operating within compliance of the conditions, and Mrdutt stated through reconsideration, he believes they can. Hickethier agreed, adding if the request for reconsideration is approved today and put on for public hearing, that is one of the possibilities. Soik stated if BOA is going to reconsider this matter, he would like to have as an option that the entire approval can be revoked.

Hickethier stated if this is brought forward and some conditions are provided further clarity or specificity, down the road that makes it easier for staff to enforce and for his office to bring any action.

Meis stated the hours of operation are stated clearly, and believes the owner will look for any reason to be at the business. Meis added he believes allowing cars to be dropped off on weekends may create further problems. Meis stated the owner was given 60 hours per week, which he feels is more than fair and a good compromise. Meis believes we should wait a few more months to see how enforcement works and if the owners abide by the conditions, and then BOA can hold a hearing to possibly revoke the approval.

Szachnit stated in this instance, the only options are to rescind what has been approved already, or reinforce the conditions.

Pelky stated BOA would conduct an on-site of the property shortly before the meeting to see how it is different from the first time they were there. Pelky added the sister of the owner is not against the operation; she wants the conditions followed.

Pelky discussed a conversation he had today with the owner's sister regarding the number of vehicles permitted on the property. Pelky stated BOA could have everything on the table to either revoke or amend; adding if BOA does not reconsider, the applicant could file a new petition to expand his operation.

There was discussion regarding the number and types of vehicles permitted at the business.

Soik stated the vehicle situation is unknown at this time. Soik stated if BOA is going to call the owners back in for a hearing, he wants to know how many and what vehicles are out there. Soik stated as a courtesy to the

business owner, staff should ask him to show which vehicles are there for the business, and which vehicles are for personal use. Mrdutt stated they would need to differentiate between what is for the business and what is private. Soik stated if the photos are date stamped and show violations, he is okay with those being used to call the business owner in for a hearing. Soik added he feels BOA should not review unsupported, non-validated complaints.

Meis stated the date and time stamp on a camera can be set to any time someone wants, and asked how we know the date and time stamps are valid. Soik stated it's not necessarily proof, but it does give a reasonable assumption. Meis asked staff how they verify complaints like this. Pelky stated they contact the owner and discuss the complaint. Mrdutt added they also verify complaints with Town Supervisors.

Hickethier stated BOA will either move to approve the reconsideration and hold the public hearing where the issue can be looked at, or they can move to deny the motion for reconsideration. In addition, the matter can be brought back at a later time, and Planning and Zoning staff can take further enforcement actions.

Szachnit stated he feels if this is reconsidered, they should address all the points brought up. Mrdutt stated if this matter is not reconsidered, it will go to enforcement. Mrdutt added he would like things clarified in case this matter does get heard before a judge. He would like to make sure he is on solid ground when dealing with this. Hickethier gave an example by stating the owners could argue to a judge that dropping off a vehicle is not violating hours of operation because this is done at every dealership around town, and that they are not in there actively working on other people's vehicles. Mrdutt stated he would be opposing that saying if the general public is on the property, they consider that commercial activity. Mrdutt added at this time, they are leaving it up to someone's opinion, where he would like to be more black and white with the conditions.

Soik asked how to make condition number six more black and white, and Mrdutt replied they should have the discussion about what the operation entails; does it include drop off and pick up? Mrdutt stated having that meeting will go a long way in showing they have taken the steps to attempt to get compliance, along with creating a record of the efforts put in by County staff.

Motion by Soik to approve the request to reconsider condition number six only, unless Planning and Zoning staff can verify prior to the next meeting that there are more vehicles out there. Soik stated his concern is the number of vehicles that are permitted to be on-site versus vehicles not permitted.

Stewart stated the motion to reconsider should be approved or denied; there should not be conditions set on this reconsideration. Soik withdrew his motion prior to a second.

Hickethier stated BOA could table this reconsideration until the next meeting if it is posted exactly the same, allowing an opportunity to go out to the property and check on the violations. Mrdutt stated if BOA moves to reconsider, that reconsideration could be to open up the entire petition and discuss all conditions; Hickethier agreed. Mrdutt stated all concerns would be addressed. Stewart pointed out this hearing was specifically noticed and published as a reconsideration for condition number six only; therefore, they cannot consider other conditions at the next meeting. Mrdutt asked if more information is brought to light, can the entire approval be rescinded, and Hickethier replied the decision today is to either approve or deny the reconsideration request that addresses condition number six. Szachnit asked if they went to check on the hours of operation and noticed other violations, can they be brought up, and Hickethier answered one option would be to table this and have it re-noticed. Hickethier stated they could also deny this request and bring another request for reconsideration with all conditions; adding that would be the cleaner way to go. Hickethier stated if they table the matter, they are just postponing the same notice. Hickethier stated if they wish to look at all possible conditions, the cleanest way to go is to deny this motion for reconsideration because it is narrow. Mrdutt added they did not know about the other automobiles until a phone call was received today. Pelky stated the vehicle violations could be handled through the violation process. Pelky stated this complaint has been building for months and months, and the vehicle violation was just brought up today. Mrdutt stated they could move forward on the hours of operation issue, and everything else could be dealt with under standard enforcement. Pelky stated they can handle the number of junked vehicles complaint, and added if BOA will deal with the hours of operation not having specific and clear language, that would help out tremendously.

Motion by Bernhagen to approve the reconsideration request; seconded by Meis. Motion to approve the reconsideration request passed 3-1 by roll call vote, with Szachnit voting nay.

Approval of Minutes from August 18, 2014 Meeting

Soik moved to approve the minutes of August 18, 2014, Bernhagen seconded. Motion to approve passed 4-0 by voice vote.

Correspondence/Updates

Next meeting is Monday, November 17, 2014

There was a brief discussion relating to BOA decisions and documents submitted.

Adjournment

Motion to adjourn by Soik, second by Meis. Motion to adjourn passed by voice vote. Meeting adjourned by Szachnit at 5:32 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
November 17, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Edward Szachnit, Marj Bachhuber, and William Bernhagen (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department. Others present included David Hickethier, Portage County Deputy Corporation Counsel.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the function of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

RECONSIDERATION

John and Mary Jo Adams, Owners (Appeal A01-33)

The John and Mary Jo Adams, owners, request to reconsider condition #7 from Board of Adjustment Decision A01-33, dated 8/23/01, which states, "A deed restriction must be filed prohibiting any further additions/construction" was opened by Jazdzewski, who read the reconsideration request.

"Original request: Appeal No. A01-33 John & Mary Jo Adams, owners of property lying east of Jacqueline Lake Lane South and on the west side of Lake Jacqueline being part of the NW¼ of the SW¼ of Section 4, and the NE¼ of the SE¼ of Section 5, T25N, R9E located in the Town of Sharon, wherein a variance from the provisions of the Portage County Zoning Ordinance and Shoreland Zoning Ordinance is requested to construct an eight foot by eighteen foot residential addition within highway and water setbacks in the R2 Single Family Zoning District, Parcel #032-25-0905-13.24. No public input will be taken at this meeting. The Board of Adjustment will be deliberating whether or not to consider the request. If the request for reconsideration is granted, it will be scheduled for public input, discussion, and official action at the next Board of Adjustment meeting. All surrounding property owners will be notified."

Pelky stated Adams is looking to sell the property early next year. The BOA decision from 2001 lists a condition that a deed restriction be placed on the property prohibiting any further construction or development. Adams would like this condition removed. Pelky stated his recollection of the hearing in 2001 was that as a condition of approval for the variance, BOA at the time put a condition that no further variances were allowed. Pelky stated in doing research on this issue, if BOA grants a variance, they cannot restrict an applicant or land owner from applying again; they cannot take that right away. Pelky stated Adams wants the deed restriction removed so he can sell the property to his son. Pelky stated the reconsideration request is for BOA to vote to see if this matter should be heard at the next meeting.

Jazdzewski asked if Corporation Counsel has given an opinion, and Pelky replied yes; adding Corporation Counsel agreed this request should go through BOA. Pelky stated Adams provided a letter which was included in the packet.

Jazdzewski stated he is looking for a motion to either reconsider or not reconsider. If the reconsideration is approved, this matter would be placed on the December BOA agenda.

Szachnit asked if Corporation Counsel was consulted only regarding the reconsideration request, or was the legality of the request discussed. Pelky stated the discussion centered on if it was legal for BOA to reconsider the deed restriction, or did it even need to go through BOA. Pelky stated this is a violation; they cannot put a condition on to restrict a landowner from applying to put something on the home. They have the right to request

a variance. Mrdutt added the Shoreland Zoning Ordinance has changed drastically since this request was before BOA.

Bachhuber asked if it is proper for BOA to ask about information not included in the packet. Bachhuber would like to know what the minutes said in 2001 because none of the current members were there. Bachhuber added she wants to know what the justification was in 2001 for putting on that restriction. Pelky stated at that time, BOA felt to give the variance they wanted to restrict the landowner from asking for or getting approval on anything in the future. Pelky stated their duty is to look at a request brought before BOA, and if the applicant demonstrates merit that it should be approved, that takes care of that case. If the applicant wants to submit another application to the BOA to try to build something else that may need approval, they cannot prohibit the applicant from asking; which is what BOA did in 2001. BOA members could feel a request may be out of line, but they cannot restrict a property owner, or any future property owner, from coming back in front of BOA and asking for a subsequent request. Pelky stated if a landowner wants to come back and be denied by BOA, they have that right; BOA cannot put a condition on that says they cannot make future requests.

Meis asked how the Shoreland Zoning Ordinance changes would affect this property, and Mrdutt stated the new Ordinance allows vertical expansion and other expansions onto non-conforming uses that were not allowed in the past. Mrdutt stated this is a major change. Mrdutt added other remodeling practices are now allowed, as long as the structure is more than 35 feet back from the shoreline.

Jazdzewski stated these questions would be pertinent to the validity of the request, if they decide to reconsider. Bachhuber stated she believes this has a bearing on if they should reconsider it at all. Bachhuber stated there is a statement in the letter dated October 14th in which the property owner says the condition is not necessary or enforceable under State Law. Bachhuber asked if this is true, and Soik stated he believes this is what was just explained. Bachhuber asked if this restriction is null and void anyway because it is not enforceable, and Mrdutt replied correct. Mrdutt added every time someone wants to buy the property, that record is on the deed and all it is doing is creating a lot of confusion at the title companies and banks; adding he believes this has something to do with why they want the restriction removed.

Jazdzewski asked for a motion from the floor to reconsider or not reconsider. Motion by Soik to reconsider condition #7 from BOA decision on Appeal A01-33, seconded by Szachnit. Motion to reconsider passed 5-0 by voice vote. This item will be placed on the next agenda.

PUBLIC HEARING

Michael and Annette Mlodzikowski, Owners (Petition P14-02)

The Reconsideration of condition #6 from part one of the following petition, which states, "Hours of operation shall be from 7:00am to 6:00pm, Monday through Friday, and 7:00am to 12:00pm, Saturday," was opened by Jazdzewski who read the public hearing notice. Petition No. P14-02 Michael and Annette Mlodzikowski, owners of property lying north of County Road A and approximately 2,300 feet east of County Road I, being part of Government Lot 9, Section 5, T25N, R10E, Parcels 002-25-1005:09.01 and 002-25-1005:09.03, located in the Town of Alban, wherein a Special Exception from the Portage County Zoning Ordinance is requested to operate a motor vehicle repair shop as a home occupation, in the A4 General Agricultural Zoning District.

Jazdzewski stated at the last regular BOA meeting, BOA approved the request to reconsider condition #6 from part one of Decision P14-02. Jazdzewski explained how the request for reconsideration works; there will be testimony as to whether condition #6 is to remain the way it was, be tweaked, or be removed.

Mrdutt stated staff asked for the reconsideration because there has been evidence submitted that the condition is not being met. Mrdutt stated that generally staff would take care of this through general enforcement. Mrdutt stated when they rely on BOA conditions for enforcement efforts, if there is a point where the condition is not as clear as it could be or if there is a question as to the intent of BOA, that is where they would ask BOA reconsider to either solidify the condition and have more discussion so going forward, it is easily enforced. Mrdutt stated they can do a better job at enforcement with stronger language on this condition.

Mrdutt stated BOA has been presented with a great deal of photo evidence and emails, letters from Town Officials, and other interested parties. Mrdutt stated some of this evidence shows vehicles coming and going after hours, and believes this needs to be discussed by BOA to specify how they feel an operation like this can be run. Mrdutt stated BOA needs to clarify if a vehicle is dropped off after hours, is this considered part of the business. Mrdutt stated he believes the hours of operation need to be clarified and discussed as they relate to

vehicles and parts being dropped off; adding this will aid in enforcement. Mrdutt stated this is the reason staff asked for the reconsideration.

Jazdzewski reminded BOA and the public the reconsideration is specifically for condition #6 which pertains to the hours of operation. Jazdzewski reiterated all kinds of questions can apply, but the only thing BOA is acting on is condition #6.

Hickethier clarified for the record that this is strictly a reconsideration of this specific condition. Hickethier stated his opinion is that unless and until this BOA takes further action and modifies, revokes, changes, or upholds it as is, condition #6 still exists as is.

Bachhuber asked the petitioners/owners to come forward to answer questions. Robert Mlodzikowski and Michael Mlodzikowski were sworn in by Jazdzewski.

Bachhuber stated when the petitioners were before BOA in March 2014, BOA seemed to have a clear understanding of the business and there were no objections from anyone at the time or within the 30 days after the BOA decision was filed. Bachhuber asked Robert and Michael if they agree with that statement, and both answered yes. Bachhuber stated the problem as identified by staff is they are operating outside of the approved hours of operation. Bachhuber stated BOA members have had opportunity to view pictures and emails submitted which may lead them to believe this is the case. Bachhuber stated the Town of Alban and majority of neighbors are supportive of the business as demonstrated by letters received. Bachhuber stated it is on the petitioner to provide proof, and if they are asked to change the hours of operation, make them more flexible, or expand them, it depends upon what they are doing so BOA knows what hours are necessary.

Bachhuber referenced the original decision from March and stated most of these items can be enforced by staff. Bachhuber addressed condition #10 which states failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval. Bachhuber referenced previous testimony and asked the following questions:

- Are you doing general repair and maintenance of cars or pickups? Response by Michael and Robert – Yes.
- Are you doing gas welding? Response by Robert – Yes.
- Plasma cut? Response by Robert – Yes.
- Fabricating of parts? Response by Robert – Sometimes, if required, yes.
- Are you transporting vehicles on that 18 foot flatbed or by any other means? Response by Robert – With the trailer, yes.
- How do inoperable vehicles get to your shop? Response by Robert – Most times by the trailer.
- You pick them up? Response by Robert – Yes, in most instances.
- Do you have the proper permits to do that? Response by Robert - I didn't know there was a permit to put a vehicle on a trailer and haul it. Bachhuber stated she believes a permit is needed.
- Are you doing minor body work and repainting of vehicles? Response by Robert – Seldom, but yes. Michael responded – On Robert's own cars.
- The repainting and body work is just on your own cars? Response by Michael – To this point. Response by Michael – Yes, to this point.
- Do you intend to do that? Response by Robert – Yes, possibly at some point. Response by Robert – If there is a demand.
- Are you selling car or truck parts to customers for off-site use? Response by Robert – The only parts I would sell would be anything that pertains to Michael's or my vehicles. I don't have a stock of parts that are inventoried or labeled or anything like that. I don't do anything like that.
- Do you buy inoperable vehicles from auction? Response from Robert – No. I buy things I see on Craig's List or something like that. I don't have a license to go to auto auctions or anything like that.
- Does anybody come in and just sell you their cars? Response from Robert – They don't approach me. If it's something that's my particular flavor that I'm interested in.
- Do you take the cars apart and use them for parts on other cars? Response from Robert – Yes, my collector cars though.
- Only on your collector cars? Response from Robert – Yes. I don't go and buy a vehicle to take this part off to put on that one and then resell it to the guy, because there is so much liability involved in recycling a part when you're on a small scale. (Discussion on parts he gets to fix vehicles).
- If I just wanted to come to your shop, I can buy a part for my car? Response by Robert – I can get you the part but it would be a new part or a certified junkyard part. It's not going to be something I have laying on the shelf, unless it pertains to the collector vehicles that I have, because I've got parts like that.
- Are you selling more than five vehicles in a calendar year? Response by Robert – No.

- Describe your operation before or after the designated hours. I've looked at pictures and staff says you're operating outside of the hours that we set, which were 7 to 6 Monday through Friday, 7 to noon Saturday. Response by Michael – When numerous conversations, probably more with Chris, he said that you could work on your own vehicles at any time. And I forbid him from ever working on anybody else's vehicle after those curfew hours. Just because somebody that lives next door takes pictures of lights on in a shed, she was taking pictures of my son-in-law with lights on in the shed Saturday building a deer stand. Now if that constitutes operating after hours.
- I just want to know, those were the hours and you agreed that those were the hours that we set. Response by Michael – Right. Nobody, nobody has ever deviated. Response from Robert – I have never deviated, and most of any kind of clientele that I have would say, yes, I've made it abundantly clear that if I can't finish this tonight, you got to come get it tomorrow morning. That's just how it is. But because I don't have just one of my own vehicles, I have multiple vehicles, they need maintenance as well. So, it's like if the trailer needs maintenance or my truck needs maintenance or one of my cars needs maintenance, that's what is usually going on. And I know there were some pictures in the packet that were of my own personal Thunderbird with a collector plate that was sitting outside the shop door for two weeks; it spun a bearing. When I got the engine back, I wanted to put the puzzle back together before I forgot where everything went. But it seemed like, yea I was working after hours, but I was working on my own vehicle. If there is stuff that is sitting on the hoist or sitting taken apart that is another customer's vehicle, it sits. That's just the way it is. And I've made that clear to anybody that I've done work for. Response by Michael – That has been made abundantly clear.

Jazdzewski stated they do also operate a farm and he is sure they share the shed with the equipment.

Bachhuber asked:

- Do you do the repair of your farm equipment in the very same area in which you repair other people's cars? Response by Robert – Yes, now we do, because we had the other shop but we haven't heated that in two or three years. So that is basically just cold storage. All the tools, equipment, everything has been moved into the other facility that is updated and a lot more user friendly to get the job done efficiently. Robert explained they worked on the exhaust manifold for the tractor, and they did work late at night with the lights on because they were trying to fix farm machinery. Robert explained it is more than just a separate entity.

Soik stated it has been six to eight months since this was before BOA, and asked Robert and Michael if BOA got condition #6 wrong for them. Michael stated the hours set were not what they requested, and added the Town of Alban Board had approved hours of 7am-10pm, Monday through Saturday; he is unsure of the hours they set for Sunday. Michael stated he believes the reason BOA set the hours they did was because there were statements made by his sister that she hopes BOA does what is in the best interest of she and her mother. Michael wanted it noted their mother was deceased for four months when those statements were made. Soik asked Michael if he believes BOA got the hours of operation wrong, and Michael replied yes, according to the original request. Soik asked Robert and Michael, from what they have seen in the last six to eight months while they've been operating their business, are these hours wrong for what they're doing. Robert responded that based on how the hours are, they seem unacceptable because most other people work during those set hours. Robert added there is now a discrepancy when a vehicle is left by their fire number in the driveway, it appears to some he is working on it. Robert stated there is too much gray area involved. Soik asked if these hours of operation are too restrictive, and Robert and Michael both responded yes.

Jazdzewski stated it appears to him one of the biggest concerns is cars being dropped off and picked up during non-operational hours; adding this is a general business practice. Jazdzewski stated this is a conflict due to the proximity of another residence; however, BOA is not here to deal with personal/social conflicts. They are dealing with the structuring of conditions. Jazdzewski asked if they can get the work done on customer's cars within those hours, and Robert replied sometimes it is difficult. Robert added in some instances the part you may need is not in stock somewhere; it is half a day away. Michael described an instance where they had to order a gas tank three times for someone, because three times the wrong tank was ordered, which meant the truck was sitting for an entire day. Jazdzewski stated it is not a question of the truck sitting there; they are restricted as to the operational hours. Robert stated the places he deals with for parts can affect the time he has to work on vehicles.

Bachhuber stated in looking at the photographs, it appears the same people keep showing up, and asked if these are friends using the shop for their vehicles. Robert stated there was an instance where one individual had a vehicle that was supposed to have the rear end rebuilt and transmission flushed. Robert stated this person would sometimes borrow a vehicle. Robert stated they still followed guidelines set by BOA. Robert stated this friend would sometimes hang around and give a hand, because it was his vehicle; sometimes people

take an interest. Bachhuber asked Robert if he allows friends to bring their vehicles in and work on them, and Robert answered no. Michael stated this is not allowed, due to insurance rules; it is a liability.

Szachnit asked if the same liability applies if someone comes in to the shop to assist them, and Robert added that in most instances, there is not anyone assisting him. If there was, it would be for something like bleeding brakes or something like that. Szachnit stated in some of the photos it appears there is one person that seems to come around quite often, and Robert and Michael explained he is a neighbor boy that they have restored a vehicle for and they are currently working on another one for him.

There being no further questions from BOA, Robert and Michael were excused by Jazdzewski. Jazdzewski asked if there were any members of the public wanting to speak on this matter; it was noted there were no members of the public wanting to speak.

Jazdzewski read the following into the record:

- An email from Rose Ann Mlodik with concerns regarding:
 - Placement of a business sign located on a fence
 - Number of vehicles not in operating order allowed on property
 - Ability of someone from the general public to work on their own vehicle during business hours
 - Pick up/delivery of parts outside of normal hours of operation
 - Pick up/delivery of vehicles outside of normal hours of operation

Jazdzewski again asked if any members of the public wanted to speak on this matter; there were none.

Jazdzewski stated staff must enforce the conditions set by BOA, and asked what they believe the proper wording would be for condition number six. Mrdutt stated he believes what is unclear when it comes to enforcement is what BOA thinks of the pickup/drop off situation. Mrdutt asked if a vehicle dropped off on Sunday afternoon to be worked on during the week constitutes being part of the business hours. Mrdutt believes this should be more clearly articulated and is one of the issues why staff felt this needed to be brought before BOA again.

Mrdutt asked if parts being delivered or dropped off on a Saturday afternoon is considered part of the business, even if a vehicle is not being worked on. Mrdutt stated it is unclear how staff would enforce issues like these because they were not discussed at the meeting. When dealing with enforcement, the first thing they look at are conditions. If conditions are not clear, they then look to the minutes for clarification on what was discussed. Mrdutt stated the discussion never took place on vehicles and parts being dropped off after hours of operation, and whether it was associated with, but not part of, the operation. Mrdutt stated this is why it is unclear on how to enforce this condition. Mrdutt suggested BOA have a discussion to clarify what is part of the operation and what are the things associated with the operation that are not held to the hours of operation.

Soik stated that is unclear and they are here to discuss condition #6 only. Soik stated some of the issues being brought up need to be clarified. Soik added he is unsure if all the issues being brought up can be covered under condition #6. Mrdutt stated he does not expect BOA to go through every conceivable scenario, but there was enough gray area when looking through the previous minutes that this needs to be addressed and clarified. Mrdutt stated drop-offs were not discussed and it appears this is a big issue when someone is dropping off vehicles on Sundays to be worked on during the week.

Soik stated from a business owner's perspective, he would never want to turn away any kind of work. If he was able to have a business where someone could drop off their product at his business for him to work on, it would be great; however, he is unable to do this because of the type of business he has. Soik stated he would not consider dropping off a vehicle part of the business operation; however, he would consider picking up a vehicle part of the business operation. Soik stated he does not think everything staff is looking at can be addressed under condition #6. Soik stated he is looking at an extension of hours to try and get some of these issues taken care of. Soik added he believes language should be adding stating drop-off is not considered a part of the business hours, but picking up is.

Hickethier stated it could be as simple as saying vehicle drop-off and parts delivery are not limited to these hours of operation. Hickethier added this has been the topic of conversation and it seems commonly understood that the business is not being operated during vehicle drop-off.

Michael stated in the Town of Alban, there is no employment in Rosholt, and everybody that is a local drives to Point, Waupaca, Wausau, Mosinee, and other towns to work. If those people get off work at 5:00 pm it is hard

to get there or get back within the 6:00 pm parameter. Michael stated the hours as set by BOA restrict people and limit those that can come to him because if they live 15 or 20 miles away, there are other things they may have to do. Michael stated it puts his location at a disadvantage.

Jazdzewski closed testimony and opened deliberations.

Bachhuber stated she likes Hickethier's suggestion because she believes there is a difference between someone dropping off their car for repair and going out and getting and hauling the cars to the operation on the weekend. Bachhuber stated if they are using the flatbed to go and get a vehicle on a weekend, that could be considered part of the operation and would be considered operating their business. Bachhuber believes these two things need to be separated somehow, and stated giving more hours of operation would be more difficult to define and for staff to enforce. Bachhuber stated they should say what the hours are and use the wording Hickethier suggested about dropping off and picking up of vehicles. Hickethier stated something along the lines of vehicle drop-off and parts delivery is not limited to these hours of operation.

Jazdzewski stated Mlodzikowski is not in control of vehicle drop-off and parts delivery. Jazdzewski stated it is difficult as a sole-proprietor in a business to be picking up a vehicle and not be in the shop doing the actual business; it is hard to be both places. Jazdzewski stated it is hard to deny someone that fact that they can go out safely to pick up a car; they need to decide if bringing that car onto the property is operating the business, or if it is just accepting the vehicle. Jazdzewski stated in his opinion they need to perhaps extend the hours on certain days to allow a larger window for that to happen.

Bachhuber stated she dealt with this issue quite a bit when they had an operation near the Town of Amherst; adding she dealt with people from the State Department of Transportation. Bachhuber stated if indeed Mlodzikowski is using his flatbed as a towing service, that must be defined as his business operation and a towing license is needed. Bachhuber stated this is why she asked if that was part of the operation. Bachhuber stated if they are just picking up a car for repair, she does not know how that works; they will have to work that out with the State Department of Transportation as to what they are actually doing. Robert stated that is all he is doing. He does not have his name written on the side of his truck that says for hire. Bachhuber stated if someone gets stuck in a snow storm and calls him, he is then running a towing service, whether it is on his truck or not. Jazdzewski stated he does not believe that is what is being done. Robert stated that is not what he is doing. Michael stated they are talking about a dead car in a parking lot. Robert stated he does not have a wrecker; he cannot winch stuff out. Robert gave an example of getting a vehicle for a friend after it had struck something in the road and having the tire blown out.

Soik stated this is outside the realm of condition #6. Jazdzewski stated this affects the hours of operation if he is bringing it home. Soik stated then they need to take into consideration when Mlodzikowski is doing his bookwork.

Jazdzewski stated in a day and age when it is hard to find people willing to work, it is hard to deny somebody the ability to work when they are willing; however, that is not what BOA's intentions are. BOA wants to allow hours that, for the most part, 98% of people are fine with.

Mrduitt stated BOA should try to focus on how the hours are defined when vehicles are being worked on, and if a vehicle brought in or parts being delivered constitute part of the business. Jazdzewski stated they cannot have too much leeway because people don't want even their own truck and trailer coming in at all hours of the night. Jazdzewski understands there are hardship cases, but this should not happen all the time. Jazdzewski stated in his opinion, they need to tweak the hours and add language that would discount certain operations from those actual operational business hours.

Szachnit stated he sees nothing wrong with the current business hours; adding it appears there are 11 hours on normal days, which is a lot more than most people work. Soik stated they would be surprised how many hours someone can work when they are working for themselves. Soik stated he would look at moving the hours to 7 am to 9 pm Monday through Friday, and 8 am to 5 pm on Saturday, with drop-off and delivery of parts not included in the operation hours. Szachnit stated he does not see a problem with drop-off of parts or cars or even picking up cars; however, when the work is done, they should be picked up during normal business hours. Jazdzewski agreed, stating that is what is normally done when they are dealing with giving a customer a bill.

Meis stated he believes the hours, as previously set, are fair; 60 hours a week is quite a bit of time. Meis stated they need to keep in mind this was a special exception and something that was not normally allowed in this area. Meis added they need to work with the neighbors also, and does not agree with adjusting the hours

because they are not being followed. Jazdzewski asked Meis if he would look to add language allowing for other. Meis stated they should allow for delivery of vehicles. Szachnit stated they should allow this as long as vehicles are not being worked on at the time; adding anything that is peripheral to the business is fine.

Motion by Szachnit to retain the current hours of operation; any type of peripheral activity with this business, such as dropping off of cars, accepting parts being delivered, and requiring a trailer to get a vehicle from somewhere, is fine.

Jazdzewski asked if he could restate the motion to clarify; Szachnit agreed. The hours of operation will continue from 7:00 am to 6:00 pm, Monday through Friday, 7:00 am to 12:00 pm on Saturday. Peripheral or operations such as accepting parts or having vehicles dropped off or trailered in that does not involve active working, would be allowed outside of those hours. Szachnit stated this sums it up. Motion seconded by Meis.

Jazdzewski asked staff if this is something they could enforce, and Mrdutt replied yes.

Motion passed 4-1 by roll call vote, with Soik voting nay.

Jazdzewski stated the 30 days technically does not apply because they did not change the hours of operation; they specified what is enforceable. Jazdzewski informed Robert Mlodzikowski and Michael Mlodzikowski that they will receive a decision clarifying the changes.

Approval of Minutes from October 20, 2014 Meeting

Jazdzewski noted an error in the minutes on page 4, where it states Jazdzewski opened the hearing; this should have read Szachnit. Stewart noted this was her mistake and it will be corrected.

Meis stated he had a question relating to petition P14-15, a cell tower located in the Town of Eau Pleine. Meis stated during the on-site, the petitioner stated the cell tower would not have a collapse point. Szachnit stated the petitioner said there was no collapse point if they were able to situate the tower on that piece of property where it would not fall on the road. Meis asked if staff found out if the tower would not fit, and Mrdutt stated they are still waiting to work with them on that issue. Jazdzewski stated that basically was a condition because of the placement. Mrdutt stated if it does not have a collapse point, which it probably will not, staff would work with them to make sure if it tips over it does not fall on the road. Meis and Jazdzewski both stated the condition states it has to have a midway collapse point. Meis stated this is why he is questioning it. Szachnit stated he remembers them saying that to save money they would like to go with a non-collapsible tower. Meis stated the condition states it has to have one. Szachnit stated depending on where it was situated on the piece of property, if they could situate it in a position where it would not fall anywhere to cause a problem, then they would not have to have a collapsible tower. Jazdzewski stated it would only fall on their property. Mrdutt stated if they can meet the setback, they wouldn't be held to that condition. Mrdutt stated if they do not need it, they cannot force someone to have it. Meis stated that is why he is asking; the condition states they have to have it. Mrdutt stated maybe he is not interpreting his recollection of the discussion accurately. Mrdutt added if they cannot meet the setback, they would have to have a collapse point. Pelky stated this is a requirement if a landowner wants to not have a tower fall like a tree. Pelky added the ordinance allows, through an engineer's stamp, a tower designed with a fall zone that falls in half so they can lease a smaller area. Pelky stated if they have an area where the tower can tip, they do not need to design it to break in half because it will all fall on their property. The intent of the ordinance is to have the tower fall on the leased area or property. Meis stated he fully understands that, but what the condition says is the tower must have a midway collapse point; it does not say if it doesn't fit, it says it has to have it.

Jazdzewski stated that is what the decision that went out said. Mrdutt said it was his thought that it would need that if it cannot meet the fall setback. Meis stated he thinks that is what it should say then, so someone does not come in some day and say that tower does not have a midway collapse point. Meis stated if that is what it is supposed to be, they should make it say that.

Bachhuber asked if that is something that can be clarified with a motion for reconsideration of conditions, and Jazdzewski stated he believes in the discussion, the Telecommunication Facility Ordinance states that. Staff in working with them, says you either have room for a tower to fall on your property or it has to have that. Unfortunately, the way the minutes and the decision were printed out is that it blames the BOA for saying that if that was one of the following conditions, which they have to state and approve. Jazdzewski stated it does not say either/or. Jazdzewski stated it is with well intent that that is in there and he is sure staff will work on that.

Hickethier stated the minutes are what they are; they are not revisiting the topic of what was or was not approved and the conditions associated with that. This is simply as an agenda item for here today; review and approval of the minutes. Hickethier added if there are further questions about that and they would like staff to further look at that and perhaps review the recording, BOA does not have to take action on that. They can put that back to the next meeting if they want to further review some of the recording from that meeting. If they would like more time to review and clarify that with staff that would be an appropriate way to do it.

Jazdzewski stated it is intended to follow the letter of the ordinance. Szachnit added what they are doing here is just reviewing the minutes to see that they agreed with what went on at the last meeting. Jazdzewski stated they specifically said at the on-site that it would be more expensive. Jazdzewski stated he brought up the point at the on-site.

Bachhuber stated Meis has a point because she believes if you okay the minutes, you are saying that that is what was said. Meis stated he has run into this on other cases where the tape recording says one thing and he can play the tape recording but it is not in the minutes that way.

Stewart stated this is what the motion was; adding Bernhagen made the motion and took the conditions from the staff memo. Stewart stated this is not an interpretation of that, this is what the staff memo said; Bernhagen accepted those conditions as listed. Mrdutt stated at the time the staff memo was written, they did not know the type of tower or if they had the ability to move it on the site. Stewart stated this is the motion that was made and approved, whether you hear it in the recording or whether you read the staff memo.

Jazdzewski stated these minutes are not verbatim. Meis stated they did not use all the conditions in the staff memo because the screening condition ended up coming out. Stewart stated that was through a motion to amend. Mrdutt stated the way staff was thinking about it, and in being very familiar with the ordinance, if they need the midway collapse point tower, they will make sure it is required; if it is not needed, they will not require it.

Meis addressed another motion in the minutes relating to Soik making a motion to approve a variance with no conditions; adding he does not understand what that means because they do have conditions. Stewart stated that was a special exception and variance, and there were no conditions put on the variance.

Jazdzewski asked if there is a motion to approve the minutes. Motion by Szachnit, second by Soik to approve the minutes with a correction made on page 4 showing Szachnit opened the hearing. Motion to approve seconded by Soik.

Meis asked what will happen with the discussion relating to the cell tower, and Jazdzewski stated the tower will have to meet the Portage County Telecommunication Facility Ordinance. Mrdutt stated they can look at that condition and ask if it was made in error.

Motion to approve the minutes with the change noted passed 3-1, with Meis voting nay, and Bachhuber abstaining.

Correspondence/Updates

Next meeting is Monday, December 15, 2014

Jazdzewski stated he does not see a need for an on-site for the reconsideration being heard at the next meeting.

Adjournment

Motion to adjourn by Szachnit, second by Bachhuber. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 5:20 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

January 19, 2015
Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
December 15, 2014

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 2, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Edward Szachnit, Marj Bachhuber, and William Bernhagen (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department. Others present included David Hickethier, Portage County Deputy Corporation Counsel.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

John and Mary Jo Adams, Owners (Appeal A01-33)

The John and Mary Jo Adams, owners, Request to Reconsider condition #7 from Board of Adjustment Decision A01-33, dated 8/23/01, which states, "A deed restriction must be filed prohibiting any further additions/construction" was opened by Jazdzewski, who read the reconsideration request.

"Original request: Appeal No. A01-33 John & Mary Jo Adams, owners of property lying east of Jacqueline Lake Lane South and on the west side of Lake Jacqueline being part of the NW¼ of the SW¼ of Section 4, and the NE¼ of the SE¼ of Section 5, T25N, R9E located in the Town of Sharon, wherein a variance from the provisions of the Portage County Zoning Ordinance and Shoreland Zoning Ordinance is requested to construct an eight foot by eighteen foot residential addition within highway and water setbacks in the R2 Single Family Zoning District, Parcel #032-25-0905-13.24."

Jazdzewski stated at the last meeting, BOA moved and voted to reconsider condition #7 of decision A01-33. Jazdzewski stated at this time, BOA will act on that reconsideration by either agreeing to reconsider and remove, or have the decision remain as originally filed. Jazdzewski stated because this is a reconsideration, there is no testimony by the property owner; at this time staff can present any information. Pelky stated they received a few letters in the mail from surrounding property owners. Pelky said the landowner is in Florida and will not be at this meeting. Pelky stated he spoke with Vince Adams, landowners' son, who is potentially purchasing the property 12/31/14.

Jazdzewski read the following into the record:

- An email from Vince Adams to Tracy Pelky indicating he intends to purchase the property at the end of December. They are hoping to keep the cottage in the family; and while they have no immediate plans, they want the freedom to apply for a variance on its own merits as any other property owner would have.
- A letter from Lori and Brad Malec stating they agree the property owner should be able to do an addition to their property.
- A letter from Joan Colla, indicating she does not oppose this action and supports their efforts to lift the deed restriction to their lake cottage property.
- An email to Jeff Schuler, Planning and Zoning Director, from Millie O'Brien, neighbor, indicating she approves of the request.

Jazdzewski stated there is correspondence from the current property owners which was included in the packet.

Bachhuber asked why in a reconsideration there is no testimony allowed. Jazdzewski stated it is not that there is no testimony allowed, it is not necessarily needed. At the last meeting, BOA voted to reconsider, based on information provided. Jazdzewski stated the next step is to post the notice for the next meeting. Bachhuber asked on the information provided – was that in the motion? Bachhuber asked what was in the motion, because the minutes of that meeting were not provided yet. Bachhuber asked what the motion read last month, as she does not recall that it said on the materials provided. Bachhuber asked Jazdzewski if he took that to mean they would not hear from anybody or have any testimony whatsoever. Jazdzewski explained the motion at the last meeting was to reconsider condition #7 of A01-33. The process at this meeting is to take up that reconsideration and take action on it. It is not to reconsider any other part of the petition. At the previous meeting, the minutes would reflect, if they had them, that the reason for the reconsideration had to do with information provided by staff and Corporation Counsel that the verbiage of the deed restriction may not necessarily be correct, and that because they are property owners, they do have the right to request a chance to petition for a variance. Jazdzewski reiterated they are not granting a special exception or variance at this time. They are only acting on the condition that they have to have a deed restriction that would not allow them to do that. This is why there is no testimony; it is a technicality. Jazdzewski asked Hickethier if Jazdzewski is out of line. Hickethier stated it could be permissible, but it is not required. Jazdzewski stated if there was someone that wished to testify, it is permissible. Jazdzewski noted there is nobody present to testify.

Bachhuber stated she would have to make inquiries of staff. Bachhuber wanted to clarify the letter written October 14, 2014 from John Adams to Pelky. Bachhuber stated the letter says “In addition we don’t believe this restriction is necessary or enforceable under State law.” “Any further requests for building permits would be properly scrutinized by your office and the Board of Adjustment to prevent encroachment on the lake.” Bachhuber stated she does not believe there was any evidence presented to show this was not an enforceable deed restriction. Bachhuber stated the letter continues, “The restriction is written in such a way that it applies to us as the current owners but may not apply to future owners.” Bachhuber stated deed restrictions run with the land regardless of who is the owner; adding this person is wrong in that assumption. Bachhuber continued stating the letter reads “As I told you over the phone, I could attend a meeting in November, but we will be in Florida for the winter and will not be available in December. If necessary, we could appear electronically via phone or Skype. If this is not practical, we would appreciate your presentation of our petition.” Bachhuber stated staff needs to provide BOA with information that says the current deed restriction is not enforceable as written. Jazdzewski stated he will go off memory of the minutes from the last meeting; he believes at the last meeting Hickethier did comment on this matter. Mrdutt stated it is staff’s opinion that BOA cannot place a condition that does not allow individuals the right to come back in front of the Board to ask for another variance; you can never take that right away from people. Mrdutt said that is how they interpret this condition. Mrdutt stated everyone always has the ability to ask for further additions or construction. It is up to the Department to determine if that building addition has merit and if it can meet setbacks. Mrdutt said ordinances constantly change; the Shoreland Ordinance just got updated. There are different parameters that were not available 10 years ago. Mrdutt stated staff feels it is unjust for BOA to tell a property owner that they do not have the right to ask.

Bachhuber stated that is the opinion of staff. Mrdutt stated she could ask Corporation Counsel as well. Bachhuber stated that it is the opinion of staff that BOA never has a right to put on a deed restriction that would prevent them from asking for another variance. Bachhuber asked Hickethier if that is true in law. Hickethier responded that is a fair summary. Further, variances apply to land, they run with the land. Hickethier added variances are not to specific property owners and that really is the way this current deed restriction reads. Hickethier stated even if it were read as applying to the property owners, and only the current property owners, that is probably not supported.

Bachhuber stated she called Becky Roberts in Land Use at the University to inquire about this. Bachhuber said Roberts does seminars instructing BOA members what the laws are and how to proceed. Bachhuber explained the situation and told Roberts this is a deed restriction placed on property which none of the current BOA members were a party to. Bachhuber asked her position on this and Roberts said she has never had this before where they just ask for a deed restriction like this to be lifted. Bachhuber said Roberts said it is her opinion that when you place a deed restriction, it should stay there because it was there for a purpose. Bachhuber said just taking it away undoes the idea of a deed restriction. Bachhuber informed BOA they say at seminars that BOA should put deed restrictions where there should not be any further construction. Bachhuber stated this is at odds with what they are teaching at the University. Bachhuber stated she does not know if there is enough information and was advised by Roberts to contact Corporation Counsel.

Bachhuber stated Roberts said they may pursue the line of questioning, and that is why she asked if they could have testimony to find out if there has been a change in law that applies to this. Bachhuber asked if there has been a change in use because at the time this was done in 2001, it was a cottage. It was unheated and was seasonal only. Bachhuber stated Shoreland Zoning has changed, but part of that was they could build upward. Mrdutt stated this is correct. Pelky added they can build outward also. Pelky explained some of the changes to the Shoreland Zoning Ordinance. Pelky stated this property could not meet setbacks in 2001, so they needed a variance because the cottage was too close to the road and water. Pelky stated what has changed is if a landowner wants to take the original footprint and build in that footprint, as long as they are back 35 feet from the water, the Shoreland Zoning Ordinance allows it. Pelky stated this is a change, and that by not removing this restriction would prohibit any request by any landowner in the future. Pelky stated that BOA put this requirement, and that things have changed, which is why Staff is supporting the request. Pelky added it is not affecting anything at this time. If someone has to come back for a variance, BOA will be able to look at it on a case by case basis and see if what the applicant is bringing before BOA has merit and meets variance criteria.

Bachhuber stated if you look at the decision from 2001, you will see condition #2 and the restriction put on stating no upper level addition will be allowed. Bachhuber said the petitioner has not asked to have that restriction to be lifted. Hickethier stated someone could come back in the future and request that be lifted. Jazdzewski stated that would be another reconsideration. Hickethier stated that would be a separate petition at that time. Hickethier stated regarding condition #2, that is a substantial change in circumstances which would allow somebody to come back to BOA. Hickethier added as the deed restriction reads, it prohibits the ability to come back.

Jazdzewski stated as the bylaws allow, all property owners and tax payers have rights to appeal to BOA. Jazdzewski stated because there was a motion to reconsider condition #7, at this time he will ask for a motion to maintain, to remove, or any other form of.

Motion by Soik to remove condition #7 from Petition A01-33; motion seconded by Meis.

Szachnit asked staff to explain Shoreland Zoning Ordinance changes, and how they relate to this request. Mrdutt stated the Shoreland Zoning Ordinance has changed substantially; in some places it is more restrictive, and in some places it is less restrictive. The Shoreland Zoning Ordinance now allows, if you are at least 35 feet from the Ordinary High Water Mark (OHWM), for greater development capabilities. However, there is more emphasis on mitigation and vegetation establishment. Szachnit stated they used to go by 100' from the OHWM. Mrdutt stated the setback is still the same, but there are more allowances within that setback to do remodeling projects, to expand certain ways, or to redevelop within the existing footprint. Mrdutt stated it is on a case by case basis; there are many different scenarios. Szachnit stated it sounds like BOA cannot enforce this anymore, and asked if there has there been that much of a difference that they cannot enforce it now. Mrdutt responded yes; there are things the petitioner can do on the property now that they could not do ten years ago. Mrdutt stated the deed restriction that was placed by that BOA does not allow them to even ask. Jazdzewski stated his understanding is that they are only giving the petitioner the right to petition Planning and Zoning and BOA for a different variance or special exception. Mrdutt stated they are not planning to come in for zoning permits tomorrow to build; they would still have to go through the same checks and balances. Jazdzewski stated they will still have to approach the Register of Deeds Office to remove the deed restriction; that is not the responsibility of the Planning and Zoning Department. Jazdzewski added this just gives them the right to file a petition. It does not mean the petition has to be accepted, denied or anything else; it just gives them the right to exercise that privilege.

Bachhuber stated because this is a unique situation where they were asked to remove a deed restriction, and none of the current members were on BOA at that time, that is why she pursued the investigation that she did. Bachhuber believes this is very unique and when she noticed that condition #2 was not asked to be removed, she thought there should be some discussion about this. Bachhuber understands where they are coming from; it does seem according to the letter received from one of the surrounding property owners that they are already planning to come in for a variance for another addition. Mrdutt stated he and Pelky talked about that and the way the notice went out, it made mention of the previous petition or appeal at that time which mentioned the proposal was for an addition. Mrdutt stated this has already occurred, and to their knowledge they do not have anything planned. Mrdutt stated he and Pelky believe the neighbor was referencing the previous appeal.

Mrdutt stated BOA should also think about how when conditions are placed, they have to be good thoughtful conditions that should not inhibit someone's right to come back in front of BOA. Bachhuber stated there is a difference between what Land Use at the University is saying about deed restrictions, and encouraging BOA to

put deed restrictions on, and how they think once one is put on it is there permanently with the land. Mrdutt stated it is staff's belief that there are better ways to have conditions rather than deed restrictions.

Jazdzewski asked for further discussion on the motion on the floor. There being none, Jazdzewski called for a vote on the motion to remove condition #7. Motion passed unanimously by roll call vote.

Jazdzewski stated if BOA members go back and read the minutes and decisions from a period of time, most decisions included conditions stating they cannot ask for any further petitions. Jazdzewski stated for this reason, they may or may not see more reconsideration requests in the future.

Jimmy D. and Tina M. Jaggar, Owners (P14-16)

The Jimmy D. and Tina M. Jaggar, owners, Special Exception request from the provisions of the Portage County Zoning Ordinance to construct a detached garage exceeding the 2,800 total square foot maximum accessory building space, and operate a Taxidermy/Art Studio as a home occupation, in the R1 Rural & Urban Fringe Residence Zoning District, Town of Stockton, was opened by Jazdzewski, who read the public hearing notice.

Pelky explained this is a two-fold special exception request, one of those being to exceed 2,800 square feet. Pelky added the applicant went through BOA in 2004; at the time the ordinance had a 2,000 square feet maximum, but it has since been raised to 2,800. Pelky stated the second request is to operate the home occupation out of this building, proposing a 26'x40' detached building that the taxidermy/art studio will operate out of. Pelky stated both requests can be tied together or acted on separately; whichever BOA prefers.

Jazdzewski swore in Jimmy Jaggar and asked him to explain the request. Jaggar stated he wants to build a 26'x40' outbuilding/shop to operate a taxidermy business. Jaggar stated he asked for the home occupation because he wants to start running the business right away, and by spring he is hoping to have the building built and be operating out of it by June. Jaggar said he measured all the setbacks and as far as he can tell, he has no problem meeting them; he has 13.9 acres of property.

Jazdzewski explained to Jaggar he has asked for two special exceptions; a home occupation and exceeding maximum accessory building space. Jazdzewski stated these requests can be put together or they can be done separately. Jazdzewski asked Jaggar if he will still operate the taxidermy business out of the home if he is not granted the special exception for the building, and Jaggar stated if he does not get the special exception for the building he will not operate the business because he does not have enough room in the house. Jazdzewski stated in that case they will tie the requests together.

Szachnit asked if Jaggar is going to operate this out of his house, and Jaggar replied he will temporarily until the building is built. Jaggar added if he does this business full time, he does not have enough room in his house.

Bachhuber commented Jaggar has provided very detailed plans, and BOA appreciates that.

Jaggar stated in the petition for the building, there are two different locations noted. Jaggar stated the reason the building is on the east side of the driveway is because of the proximity to the septic system. Jaggar asked if he could choose either side, east or west side of the driveway. Jazdzewski replied they are dealing with exceeding the square footage, and location deals with setbacks; Jaggar will deal with staff on setback issues. Jaggar stated both locations meet setbacks. Jaggar stated the only quote he has received is for the outer shell of the building. Soik stated the location of the building is an issue Jaggar would take up with staff.

Meis asked how he deals with remains of the animals, and Jaggar replied as submitted in his letter to Pelky, carcass removal will be done by Advance Disposal; they will pick up from his dumpster once per week. Jazdzewski stated anything used in the process, granted most of it is household type, would also be addressed in conditions that they must be handled in a legitimate and safe fashion.

There being no further questions for Jaggar from BOA, he was excused. Jazdzewski closed testimony and opened deliberation. Jazdzewski asked if there were any members of the public wanting to address this matter. Two neighbors stated they were in support of the request; adding Jaggar keeps a tidy property and there are no concerns or issues.

Pelky stated there was no additional correspondence received.

Soik asked staff if there is anything currently in the works to someday remove the 2,800 square feet maximum accessory building space limitation, and Pelky replied there is nothing new being considered at this time. Pelky added in the past there had been many requests brought before BOA, and that is why the maximum was raised.

Jazdzewski noted the Town of Stockton approved the request. Jazdzewski discussed the conditions suggested in the staff memo.

Bachhuber read from the Special Exception standards and the following was noted:

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code. BOA agreed.
- The use is consistent with surrounding uses and the neighborhood would not be injured thereby. Jazdzewski stated he assumes there aren't that many taxidermists in the neighborhood, but it is a slightly rural residential area; he does not think it would negatively affect anybody. There were neighbors speaking in support.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts. It was noted the Town of Stockton approved the request, as stated in the Town of Stockton Board Meeting Minutes.

Bachhuber asked if 9' sidewall height is fine, and Mrdutt answered yes.

Jazdzewski closed deliberations and noted this is a request to construct a 26'x40'x10' detached garage.

Motion by Bachhuber to approve the petition to exceed the 2,800 square foot outbuilding allowance to build a 26'x40'x10' workshop, and to operate a home taxidermy/art studio out of the home at 6870 Old Highway 18, with the following conditions:

Mrdutt pointed out that the motion states to operate out of the home, and Bachhuber stated that's what the petition says, out of the home at 6870 Old Highway 18. Jazdzewski stated the request is for a home occupation, not out of the home. Mrdutt stated it is not out of the home. Bachhuber stated that is what the petition says. Pelky stated the publishing was as a home occupation. Bachhuber agreed, stating to operate a home taxidermy/art studio at 6870 Old Highway 18, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. Obtain a Stormwater Permit approved by the Land Conservation Division.
3. All animal/hazardous waste is to be properly disposed of.
4. Color/siding of the shed is to complement the color of the house.

Bernhagen asked about road setbacks, and Jazdzewski stated those are all met and this is a special exception for the home occupation and exceeding square footage.

Motion to approve seconded by Szachnit. Motion to approved passed unanimously by roll call vote.

Jazdzewski reminded the petitioner there is a 30 day appeal period. If Jaggar were to start building before that and somebody appealed, he may have to change that if this were overturned. Other than that, they will work with staff to get the permits. Jazdzewski explained the appeal process to Jaggar.

James A. Hintz, Owner/Dennis Groshek, Zenith Builders Inc, Agent (P14-17)

The James A. Hintz, owner, Dennis Groshek, Zenith Builders Inc., agent, Variance request from the provisions of the Portage County Zoning Ordinance to construct a 24'x32'x9' detached garage within State Highway 66 road setbacks, in the A4 General Agricultural Zoning District, Town of Sharon, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated the reason for the petition is the slab recently placed is located 90' from road centerline; the Ordinance states the setback is 110' from road centerline. Pelky stated the slab was poured 20' too close to the road, and BOA needs to determine if they will permit the continuation of construction in the current location.

Jazdzewski swore in Dennis Groshek, agent, and asked him to explain the request. Groshek stated he is the agent for the property owners, and they did not realize they were in the setback when they had the foundation poured. Groshek explained how they looked at the sloping, potential drainage issues, and access issues when

determining where to put the slab. When determining where to place the slab, they also took into consideration topography and where the septic is located. Groshek stated he and the property owner realized that mistakenly neither had gotten a permit. Jazdzewski asked if he realized he needed a permit, and Groshek replied he realized they did, but they thought each other had gotten it. Groshek stated in speaking with Pelky, they realized they were too close to the road. Jazdzewski stated other than starting without the permit, the request is the variance because they are located in the setbacks, thus the hardship. Groshek stated that is correct. Szachnit stated they measured while at the on-site, and it is 90' as stated in the petition. Jazdzewski stated they know why the slab is there, and why it was not located somewhere else. Groshek agreed had he applied for the Zoning Permit, he would have been made aware of the setbacks. Groshek stated it didn't appear to them when walking up to the road that it was too close when they were looking to place the garage.

Szachnit asked if there will be any screening or vegetation from the building to the highway, and Groshek stated the landowner wants to place a retaining wall along the dirt to keep it off the garage. Other than that, Groshek is not aware if they are planning anything else. Groshek stated there is a line of trees that hides the garage from the road in one direction already. Szachnit stated it is not directly from the road. Groshek stated he believes Hintz would be open to the possibility.

Bachhuber asked Groshek if he checked with the Town before construction to see if there were any ordinances that might say no building in front of another building, and Groshek replied he did not. Groshek stated in his past experience for building, the biggest thing to consider was setbacks from side lots or roads; he never anticipated having any issue with where the building was located as long as it was within setbacks. Bachhuber stated he should be aware that some towns have separate ordinances and should be checked to be sure they are also in compliance. Jazdzewski stated usually if you address the County Planning and Zoning Department, they are aware of any Town ordinances and they would direct people to the Town if needed. Groshek stated he is aware of that and stated he normally deals with Pelky right away to get permits. Groshek stated he believes this was due to the fact the owner had already put in some dirt and he assumed the owner had gotten the permit, while the owner assumed Groshek had gotten the permit. Groshek stated the original idea was to make sure they had good drainage for around the building. Jazdzewski stated it appears they found what they thought was the best placement.

There being no further questions from BOA for Groshek, he was excused.

Jazdzewski read the following into the record:

- A letter from William Burant, surrounding property owner, stating he has no objections to the request and asking BOA to grant the request.
- Excerpts from the Town of Sharon Board Meeting Minutes dated December 9, 2014, approving the request.
- Excerpts from the Town of Sharon Plan Commission Meeting Minutes dated December 2, 2014, approving the request.

Szachnit stated in the minutes read into the record it says the State Highway setback is 60', and asked who has a setback of 110'. Pelky said the ordinance states from the right of way, the point the landowner owns up to the road is a 50' setback, or if you go from centerline to the road, 110' back; whichever distance sets you back farther. Pelky stated when Groshek was in the office, this property had not yet been surveyed; however, the neighbor's property to the south has. When Pelky scaled off the right-of-way and the centerline of the road, the centerline of the road would be a greater setback than the right-of-way. The slab is 90' from centerline; the ordinance calls for 110'. Jazdzewski stated the right-of-way is 60' from the centerline to the highway with the additional 50'. That additional 50' is like a building setback from the right-of-way, which makes it 110' total from the centerline.

Jazdzewski asked if there was anyone in the public wishing to testify on this matter. Patrick Wanserski, Town of Sharon Chairman, was sworn in. Wanserski stated the Town Board met and the consensus was that if State Highway 66 is rebuilt, the property directly across from this property would be more in jeopardy because they will not make the curve more of an arc; they will take out the property closer, which is the one across Highway 66. Wanserski stated Highway 66 has just been rebuilt; there will be no plans in our lifetime. Wanserski stated this is a good project for the landowner and they agree there are topographical differences in where the garage should be put; they picked the best spot for what they want to do.

Szachnit asked Wanserski if the Town of Sharon allows buildings in front of existing buildings, and Wanserski stated they look at things on a case-by-case basis, but they do not have restrictions like that.

Wanserski was excused. Jazdzewski closed testimony and opened deliberation.

Bachhuber read from the Variance Standards and the following was noted:

- Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done. Jazdzewski stated the reason for the variance is because it's not going to be where the ordinance or code says it can be. It is obvious to Jazdzewski there are hardships for location. The negative in this case is the fact it was started without a zoning permit, for whatever reason; other than that, no damage. Bachhuber stated they have to ask themselves if they had come in for a Zoning Permit and then came to BOA, would they grant the variance. Soik stated they cannot go back and ask that. Soik stated they have the builder here and this building could have been easily erected and standing fully complete when they went today for the on-site. The builder and owner realized their oversight and stopped what they were doing. Soik asked how this came before BOA; did Mrdutt see this while out driving? Pelky stated he received a call from Groshek who realized somewhere along the line that no permit was granted. Pelky stated in speaking with Groshek he had him measure the distance, and discovered it was 90' from centerline. Soik stated he does not believe there is any deceit here; that building could have been fully erected already. Clearly they noticed there was a problem; they stopped, and are now here in front of BOA. Soik added they went through the Plan Commission and Town Board to get approval.
- The use is permitted in the District. Yes.
- Exceptional circumstances apply to the use that does not generally apply to other landowners. Jazdzewski stated this is not a use variance. Bachhuber asked if this encourages other homeowners to just build out from their homes in that direction and is that something that the Town would want; understanding they don't have anything in the ordinances right now to prevent that. Soik said the Town already stated on a case by case basis. Bachhuber stated that would be the only thing that would come to her mind about exceptional circumstances. Jazdzewski stated he assumes the aesthetics or appearance of the garage will somewhat match the house. Jazdzewski stated they need to look at if granting this variance will encourage other people to try to build 90' from the centerline of the road; adding the Township itself said it is not a concern with the location, respecting setbacks and this is where the problem lies. Jazdzewski said if the Town does not have a problem with garages in front of houses, then that is the Town's business and they can update their Comprehensive Plan anytime they want to change it. Jazdzewski stated this is a specific case that they have to address and basically they have two options; they either grant a variance or they remove a slab. Jazdzewski stated they can demonstrate a hardship both by their design and also by the Town's, that it really is the only place. They saw the property lines and it would be pretty hard to put it anyplace else on the 2 acres and have it usable yet still respect setbacks. Jazdzewski stated this is what they have to base their decision off of.
- Hardship is not caused by any person having interest in the property. Bachhuber stated obviously the owner caused his own hardship in this case because he brought dirt and piled it there and told the builder that is where he wanted to put the building. Bachhuber reiterated he caused his own hardship; the hardship is not caused by topography. Jazdzewski stated in part it is; because of the slope and the drainage and the location of septic. To put it on the other side of the property, unless they went around behind the house, there is really no way. That would make it even closer to the road and that is the issue, the setback. Where it is, to go to the side of the house would be possible but in order to put it over far enough to access the garage, you probably have to cut down a tree, which he assumes acts as a buffer for the farm field. Jazdzewski stated either way, because of the proximity to Highway 66 and where the house is placed on the property, if the owner said he didn't want to build a garage, there would not be a hardship. Jazdzewski stated because he elected to build a garage, it brings it to a point as to where he can build it. That is where part of the issue comes up; to say that is an owner-induced hardship, while true, it is not necessarily what you normally see as owner-induced hardship. Bachhuber stated this property has never been surveyed, so do they know if the side-yard setbacks are accurate? Pelky replied he is comfortable enough based on the GIS that the side-yard setbacks are not an issue here. Pelky stated there is enough wiggle room or margin of error at the current location that it will not infringe on a 10' setback, which is the minimum they have to meet. Pelky stated the diagram included indicates 60' to the south and he only needs to be 10'. Bachhuber asked if by building the garage is he exceeding square footage, and Pelky answered there is no maximum because the property is zoned A4. Jazdzewski stated setbacks are the only limitations.

There being no further comments or questions, Jazdzewski asked for a motion.

Motion by Soik to approve the variance request with the following condition:

1. Obtain a Portage County Zoning Permit.

Motion to approve seconded by Szachnit. Motion to approve passed 4-1 by roll call vote, Bachhuber voting nay.

Correspondence/Updates

Jazdzewski explained there were no minutes in the packet; he was aware of this in advance.

Jazdzewski stated the next meeting is set for January 19, 2015. Jazdzewski explained how last winter a meeting had to be cancelled due to inclement weather. Jazdzewski and Pelky had a conversation and the petitioners for the hearing next month want their petition heard in January; therefore, Jazdzewski has proposed to have language in the notices and agenda listing a postponement date if there is inclement weather. This date would possibly be Tuesday, January 20, 2015.

Adjournment

Motion to adjourn by Szachnit, second by Bachhuber. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 5:20 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

January 19, 2015
Date of Approval