

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
JANUARY 21, 2013

Call to Order

Chairman Szachnit called the Portage County Board of Adjustment (BOA) to order at 4:03 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Pledge Allegiance to the Flag

Bernhagen led the Pledge.

Roll Call

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

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

Ryan J. Yenter, Owner (P13-01)

The Ryan J. Yenter variance request from the Portage County Shoreland Zoning Ordinance and the Portage County Zoning Ordinance to rebuild a house damaged by fire within the shoreland setbacks and road setbacks, in the R2 Single Family Residence Zoning District, Town of Sharon, was opened by Szachnit, who read the public hearing notice.

Pelky stated the petitioner's home was destroyed by fire in 2012. Petitioner would like to rebuild his home in a different location, and has worked with staff to locate the home further from the lake. However, no matter where he builds on the property, a variance is required from the Ordinary High Water Mark (OWHM) of Lake Jacqueline and road setbacks.

Szachnit swore in Ryan J. Yenter and asked him to explain the request. Yenter stated he wants to rebuild his home and would like to be further from the lake. The original home was approximately 55 feet from the lake, and he wants to build the new home approximately 80 feet from the lake. In addition, he would be further from the road setback. The original home was approximately 41 feet from the road, and the new one would be approximately 50 feet from the road setback.

Szachnit asked if this home is going to be larger than the previous home, and Yenter answered approximately 500 square feet bigger. Szachnit stated the home will be bigger, but he will still get additional setback on the home.

Yenter stated he has had a perc test completed for the septic, but he received a call this morning about phosphorus going into the lake from his lot. Yenter stated he is unsure what this is about. Mrdutt stated this will be discussed further in the meeting.

Bernhagen stated the letter from Mike Wenzholz, Department of Natural Resources, states the home will be 2,850 square feet. Yenter stated the home will be 30x62, approximately 1,800 or 1,900 square feet. Jazdzewski stated they are using the total square footage of the home and garage.

Bachhuber asked the size of the proposed home and garage, and Yenter responded 30x62 and 33x30, respectively. Bachhuber asked if the original home had a walkout, and Yenter responded yes. Bachhuber asked if the original home had a deck and concrete patio, and Yenter answered yes. Bachhuber asked if there was a front porch on the original home, and Yenter answered yes, there was a small 4x4 or 4x6 stoop. He wants to make it bigger to have a covered porch. Bachhuber stated this will increase the encroachment onto the road, which is supposed to be 63 feet from the centerline. The house as proposed will be 55 feet from the centerline.

There being no further questions from BOA, Szachnit excused Yenter. Szachnit asked if any members of the public wanted to speak on this request. Patrick Wanserski, Town of Sharon Chairman, was sworn in.

Wanserski stated a concern brought up at the Town of Sharon Board meeting was future upgrade of the road, which does not affect the Yenter property at this time. That upgrade will shift the road to the west, which will make the topography better. The Town Board viewed the property and the way the house is shifted is better and there are fewer concerns with the placement of the house; it is a good position on the lot.

Wanserski stated there were two issues brought to his attention this morning during a conversation with the Town of Sharon Plan Commission Chair, Ron Hensler. Hensler asked Wanserski to address these issues with BOA. Wanserski stated there was a Portage County Lakes Study done, and he believes most of the lots on that lake would prove to be inflow lots, for surface water or groundwater, and both a roofline and septic system affect the lake in the long run. The Town did not concern themselves with this as they figured BOA would address this issue. The other comment made by Hensler, which was a comment made by another party, is they would have preferred the house stay in the same footprint, with adding a second story.

Szachnit asked Wanserski about relocating the road to the west and would it increase the distance of the home from the road, and Wanserski answered yes. Wanserski stated this is a future plan, and he is going to direct the Plan Commission to start investigating next month. Wanserski added as some of the cottages become summer homes, there is an increase in vehicle activity and this can be a problem for rescue response because the road bottlenecks down after the Yenter property. Szachnit asked if the road ends past the Yenter property, and Wanserski answered yes, in a cul-de-sac.

Jazdzewski asked Wanserski when the road is shifted where the road right-of-way would shift to. Wanserski stated there was property developed to the west that was laid down as a cul-de-sac. This would be something the Township would have to work on with adjacent landowners.

Bachhuber asked Wanserski to clarify the comments made by Hensler, specifically wanting the footprint to remain the same and add a second story. Wanserski stated he believes the comments were made by a couple of people and then went through Hensler, as well as other Plan Commission members. These people felt they would rather see the house rebuilt in its existing footprint as it was, but add a second story to it. Wanserski believes they felt it would lessen the runoff because there would be less impermeable surfaces with one roof. Szachnit excused Wanserski.

Szachnit read the following into the record:

- An email to Chris Mrdutt from Michael Wenholz, WI Department of Natural Resources (DNR) stating the DNR does not believe the applicant's request meets all criteria required for granting a variance. Wenholz attached conditions to be considered should BOA grant the variance request.

Mrdutt stated he spoke with Wenholz, and Wenholz wanted to make sure BOA is emphasizing the variance criteria. If there is something BOA feels is not spelled out enough, Wenholz, as well as Mrdutt, encourages the applicant to demonstrate more than what is presented in the packet.

Mrdutt pointed out an error in his memo where the Wisconsin River is referenced. He wanted to emphasize the body of water being discussed is Lake Jacqueline. He will correct this on the staff memo.

Mrdutt stated staff has recently started looking at Lake Jacqueline, and added Wanserski had stated it is in an inflow area. When looking at the lake studies, there will be future work done at the staff level to emphasize the importance of those studies, along with other ordinance changes. Mrdutt stated one item BOA can look at is how well a septic system is working on a site. Staff would like BOA, if granting this variance, to add a condition that the owner must talk with Ray Schmidt to go over different options to determine what may best suit the lake, such as a holding tank. If Yenter were to use a holding tank, this could open the property up to more development possibilities because without a drainfield, there is potentially more room for the structure. In addition, with using a holding tank, there would be less phosphorus entering the lake. Mrdutt stressed this is advisory only. The ordinance currently is not set up to enforce this recommendation. Staff would recommend it be advisory that Yenter speak with Ray Schmidt before issuance of any permits.

Mrdutt stated he would suggest to BOA they set up a building envelope, which looks at dictating the setback lines from the road and lake. If Yenter pursues a holding tank option, there is wiggle room to place whatever size structure in there. Szachnit asked if this meant Yenter could slide the footprint of the house over to allow a

greater setback, and Mrdutt answered yes. Mrdutt stated Yenter could work with staff on potentially utilizing a holding tank that would open up more room to build, because there would not be a drainfield. Bachhuber questioned the term building envelope and asked if this means the building envelope should be large enough to include a holding tank. Mrdutt explained if Yenter works with Schmidt and decides to utilize a holding tank, which would better the water quality of the lake, this would allow Yenter to move the house one way or the other, or expand it towards one side of the property. Mrdutt does not believe BOA should specifically say Yenter has to work within a certain space, but should allow him to build within certain setbacks. Mrdutt stated if there is no drainfield, the house could be expanded that way. Mrdutt added Yenter would have to meet proper setbacks from the property lines, which in R2 Single Family Residence Zoning is 10 feet. Szachnit asked if this is changing the footprint of the house in any way, or is he shifting the entire house. Mrdutt clarified this would shift or expand the house; it would be up to Yenter. Mrdutt added there will eventually be ordinance changes that will affect how holding tanks are looked at, but they are not in effect yet. This is why the issue of the holding tank was not officially presented to BOA.

Soik asked if Wenholtz physically visited the property and conducted an on-site, and Mrdutt answered no. Mrdutt stated Wenholtz received the packet and spoke in person with Mrdutt prior to the meeting.

Bachhuber read excerpts from 2007 Act 170, which pertains to how State law regulates non-conforming structures and sub-standard lots in shoreland zones, and asked Mrdutt what this means as far as strictest standards. Mrdutt stated Act 170 got rid of the 50% rule. It also has to deal with not allowing counties to be more strict than NR115. Mrdutt stated the 50% rule is no longer used, and they are not considering this a lot that is not buildable. Bachhuber went on to read that failure to revise the Ordinance means there would be no limitations to repair, maintenance, renovation, or remodeling of non-conforming structures, except in a floodplain. Bachhuber asked if this is in a floodplain, and Mrdutt answered no. Mrdutt stated he hopes the Shoreland Ordinance will be updated next month. At this time, BOA must deal with the Ordinance as it reads now.

Szachnit asked if any other members of the public wanted to speak on this request. Dave Kurszewski was sworn in. Kurszewski stated he owns property on the lake. Kurszewski stated the University conducted studies and recommended landowners around the lake take gas engines off the lake because of pollution. Kurszewski stated there was a Watershed Act. Kurszewski lives across the road from the lake and has an empty lake lot. Kurszewski stated the Town created 5 acre lots because septic systems on 2 acre lots would pollute the lake. Kurszewski stated he is willing to do this if it helps the lake. Kurszewski stated Yenter is being allowed to have a new septic system located right on the lake, which he feels will pollute the lake for 30 years, but he is not allowed to have a septic on less than 5 acres, and he is located more than a quarter mile from the lake. Kurszewski feels the current drainfield is probably at the end of its life and will pollute the lake. Kurszewski feels Yenter should do his part in helping the lake by putting a holding tank in because 30 more years of high phosphorus will harm the lake. Kurszewski feels BOA should make Yenter put in a holding tank. Kurszewski is concerned with pollution.

Szachnit asked if BOA can require that Yenter speak with Schmidt to consider if he should go with a holding tank, and Mrdutt stated staff is asking that a condition be placed that Yenter speaks with Schmidt about the option of a holding tank. Mrdutt stated there is a pre-existing lot of record, and a house can be built on this property, as a house was already located on the property. There was already a previous septic; there would be a new septic. The development of Kurszewski's lot from 2 acres to 5 acres is discussion that needs to be held with the Town Plan Commission and Town Board. They are the ones that decided the density standards for lots. This is a pre-existing lot that can be developed regardless of the lake study or the development pattern established by the Town. Kurszewski stated the drainfield itself is probably to the end of its life. Mrdutt stated Yenter is proposing a new system. Kurszewski stated the laws are maybe going to change, which would require a holding tank, and if granted now, there will be 30 more years of polluting the lake instead of putting a holding tank in now. Mrdutt stated this is why staff is asking BOA to have Yenter speak with Schmidt. Mrdutt stated the Ordinance is not presently set up to require holding tanks. Kurszewski stated it is on the books to be. Mrdutt stated it will be a while, but they are exploring ways to enforce phosphorus levels. Kurszewski stated there could be a change in the law in 6 months or a few months where Yenter would have to put in a holding tank.

Jazdzewski stated BOA can put in a condition that Yenter speak with Schmidt, but BOA is in no position to require a holding tank as a trigger to allow a variance. It is a condition, that in good faith, Yenter would look into; Mrdutt agreed. Mrdutt added the Ordinance is not set up this way; holding tanks are not allowed in Portage County. Jazdzewski stated if in the future, because of water conditions and lake studies, if they went to holding tanks, the Ordinance would be written to say a failed system would have to be replaced with a system meeting

new criteria. If Yenter puts in a system and it ends up failing, and at that time there is an Ordinance in place, then he would have the option. Mrdutt stated BOA has to act on the Ordinance currently in place.

Kurszewski asked why Yenter is going to a new drainfield and what is wrong with the old one. Pelky stated the old system is not sized large enough for today's standards. It is only a 2 bedroom septic system. Kurszewski asked if the old house was 2 or 3 bedrooms. Pelky stated the old system was for 2 bedrooms. Kurszewski stated now Yenter is upgrading and making it bigger yet. Yenter stated the old house was a 3 bedroom home. Pelky stated the old system was a 2 bedroom septic. Regardless whether there is an old drainfield or new drainfield, they are both going to do the same thing. Kurszewski stated the old system would probably fail because they are only good for twenty or thirty years. Kurszewski stated with the new system, Yenter will be good for another 40 years of polluting the lake. He stated this means he is being denied because of his pollution, which is a quarter mile away.

Bachhuber stated Kurszewski's situation is different from Yenter's in that Yenter's is an existing sub-standard lot with a house, and Kurszewski's would be new development. During comprehensive planning, the Town Plan Commission made 5 acre lots. There is a difference between what is old and what is going to be new. Kurszewski stated he is doing his part and Yenter should do his. Kurszewski is concerned about the lake.

Pelky stated with the house being shifted closer to the road, the proposed house is over the top of the old drainfield. This is the reason for getting rid of the old drainfield and putting a new one in. By shifting the house further away from the lake, it will place the new drainfield further away from the lake. Kurszewski was excused by Szachnit.

Bachhuber asked if holding tanks are not allowed in Portage County. Pelky stated they are a system of last resort. If there was a pre-existing home and the septic failed and it turned out there could not be a mound or any other type of system, they are allowed in those instances to have a holding tank.

Wanserski stated when the Town re-did their Comprehensive Plan; they received input from University Staff who conducted lake studies to help them determine conservancy lines. Wanserski added it was at that time they decided if somebody wanted to dispute, it would be at the landowner's expense to dispute and get a change in conservancy lines.

Wanserski related a situation from last fall. An owner of property did not live on the property and was granted a variance to add on to property and to have a holding tank. The tenant, before they were evicted, had tried with a pump and hose to empty the holding tank, which presumably would have gone to the lake. It is for this reason that Wanserski urges BOA not to require a holding tank. Wanserski believes this will burden Yenter as it would be cost prohibitive in the form of pumping with having a family. Wanserski stated there was almost an issue with the tenant pumping directly into a lake, and he does not want to see that happen.

Bachhuber asked to have Yenter recalled to testify. Bachhuber asked Yenter to describe why he wants to do what he is proposing to do. Yenter stated he does not want a two story home because he was in bad car accidents and a motorcycle accident. He has to have his hip re-done and his knees are bad. He wants a single story home, with hallways wide enough for wheelchair access, if it comes to that. He does not want to have to crawl up steps when he is older, because he has a hard time at his current age. He wants to make the home wider to make it handicap accessible. He is planning for his future. Bachhuber asked Yenter why he is making his garage and house larger, and Yenter answered he wants doors and hallways that are wheelchair accessible. The garage will be larger in case he needs a van that is wheelchair accessible.

Soik asked Yenter what his feeling is on a holding tank, and Yenter answered he is unsure. He does not know how big of a tank he can get. Pelky stated there is really no size you cannot get. You can put in multiple tanks to get up to the gallons that you need or some people put in larger than what they need. Yenter stated he would speak to whoever he needs to. Soik stated the larger the tank, the more expensive it is at the time. Yenter stated he will discuss this, if need be, with Schmidt, and see where it goes from there. Yenter added new septic systems are more efficient than older systems. Yenter stated he spoke with Bill Kolodziej who recommended a double tank to hold more sediment and have less going to the drainfield. Yenter stated there are other options that can accommodate less going into a drainfield.

Soik asked Yenter when he would like to have the home completed. Yenter answered he would like to start when road limits come off and be finished by the end of the year.

Szachnit asked if any other members of the public wanted to speak on this request. Robert Stephenson was sworn in by Szachnit. Stephenson stated he lives two houses away from Yenter and he has no objection to Yenter rebuilding. Stephenson was excused by Szachnit.

Szachnit asked if there were any other members of the public wanting to speak. There being none, Szachnit closed the testimony portion of the hearing.

Soik stated during the on-site visit, they took measurements from the corner at 80 feet. Looking at the proposed site and old site, it appears the other corner is more than 100 feet from the lake, 90 feet off the 45% angle, and 90 feet from the deck as well. Soik asked if those numbers are correct and what would be the average overall the house would be set back? Soik added he realizes it would also depend on the ordinary high water mark. Mrdutt stated what they measure, and what variances and zoning permits go by, are the closest measurements to the lake.

Bachhuber asked if Yenter would not need a variance if he was going to rebuild in the same footprint, and Mrdutt answered correct. Bachhuber asked if Yenter would need a variance just because he is moving the house, and Mrdutt answered yes. Bachhuber asked even if the house was the same size, and Mrdutt explained under the current Shoreland Zoning Ordinance, yes.

Soik stated it appears Yenter is moving the proposed house further back than the previous, and Mrdutt replied yes. Yenter is increasing the setbacks all around by moving the house. Soik stated that looks like a good faith move by Yenter.

Jazdzewski referenced a sketch provided in the packet and asked about a concrete patio. Even though Yenter is moving the house back, the patio is taking up where the old house used to be. Jazdzewski stated he is increasing the square footage of the roof surface, but then he is adding impervious patio surface, with an increase of runoff possibilities. Jazdzewski added it appears there is a downspout from the roof on the street side of the home. In addition, on the back side, it appears there are downspouts, but unfortunately they run towards the lake. Jazdzewski stated they are looking to get the water to run away from the lake so it has more time to saturate and filter before it contributes to any degradation of the water quality. Jazdzewski believes the variance is for the house, it should not encompass the patio. He feels if it was a porous surface, such as paving stones with space between them, there would not be 200 square feet of water running off. Jazdzewski stated there could be downspouts on the house that direct the runoff from the now larger roof away from the lake. The elevation allows this because the building site slopes toward the road. Soik stated the stormwater management plan that is more than likely going to be attached to the conditions will be a benefit, and staff will take this into account. Jazdzewski stated there is a proposed patio deck, with a deck above. He feels if a variance is approved based on the proposal, will this give Yenter the feeling that it approves everything on his sketch. Soik asked if Jazdzewski wanted to separate the house from the patio, and Jazdzewski stated he wants the patio to be spelled out as to the conditions of the patio. He does not have a problem with the patio; he has a problem with it being a solid slab of concrete. Yenter stated the original patio was 10x60 of concrete. He understands, and he would be willing to use pavers if requested. Jazdzewski stated he is giving his opinion of the patio.

Bachhuber agreed with Jazdzewski and stated she is pleased the house is being moved further back. Taking into consideration Wenholz's memo and input from the Town Board and Town Plan Commission, they would prefer if it was in the same footprint. Bachhuber states it will not be in the same footprint, it is not on the same foundation, and it has been moved. For all purposes, this is like new construction. This is not a case of the house burned down and here is the foundation and Yenter wants to rebuild. She would initially say yes, there is a foundation. But now there is no foundation and it has to be new construction, including a new drainfield. Bachhuber stated there is an increase in the impervious surface area, this is an inflow lake, and these issues concern her. Bachhuber feels if there is a possibility of Yenter making use of the lot and pushing the house back, she would prefer he stay within the same square footage and size as the previous house.

Soik stated if Yenter was going to rebuild in the same footprint and the same size as the original house, BOA would have no say in the matter. Soik added in good faith, Yenter is moving the proposed house back 20 feet. Yenter is giving up something to try and gain a little more space. Soik believes BOA should look at the good faith of moving the house back.

Jazdzewski added he is great with moving the house back, and he can deal with the increase in size. What he wants to do is minimize the amount of water treated as runoff; thus the concern about the size of the deck. Jazdzewski agrees this would be a stormwater management issue. As far as the home being demolished, one

could argue to have the burnt home sitting there and being rained on and snowed on and having runoff, it would probably cause more damage running into the lake on top of the frozen ground. He expressed his concerns and feeling that the patio or deck is an issue that needs to be addressed, either through stormwater management or through the permitting process. He understands the need or urge to upsize.

Mrdutt stated what Yenter presented is what he is asking for. BOA can act and say a concrete slab below a deck should be made out of impervious surfaces, be it patio pavers or whatnot. Jazdzewski asked if this is something that would be taken care of by stormwater management, and Mrdutt answered no. Mrdutt explained how stormwater is calculated and treatment prescribed. Szachnit asked if most of the water from the property would runoff to the lake, and Jazdzewski added at the building line, it appears to slope toward the road. Mrdutt stated all of this would be addressed in a stormwater management plan. They will look at the lot and deal with the impervious surfaces. Szachnit asked if a stormwater management plan could adversely affect Yenter building a house, and Mrdutt explained how they calculate and design basins accordingly to direct stormwater through eaves or drain tiles or waterways to get to a certain area on the lot where they feel it is adequate enough to treat the water and let it saturate into the ground before overland flashes into the lake. Mrdutt stated he is confident there is ample area on the lot to produce and maintain a proper stormwater plan. Mrdutt stated they would only issue permits if they can meet standards for stormwater. Szachnit stated this could be worked into the conditions, and Mrdutt reiterated this is a recommendation from staff in his memo.

Bachhuber read through criteria for a variance to determine if conditions are being met in this case.

- Would granting of the variance be contrary to public interest? Bachhuber takes into consideration the inflow lake and if they allow Yenter to expand or increase the impervious surfaces that run into the lake. Bachhuber does not believe this helps the public interest.
- The hardship issue is not caused by any person having interest in the lake. The hardship criteria has not been met.

Szachnit stated the hardship has to be caused by the property and not by a person. Soik added the hardship being the fire and demolishing the existing home, State law says he can rebuild in that footprint. Yenter is coming for the variance because he wants to move back from that footprint and expand, while giving up 20 feet on average to the lake. Soik stated in all definitions of the word hardship, he thinks there is a lot of gray area that needs to be looked at. Szachnit agreed this issue is not cut and dried. Soik does not think that just because they read it off as stated, it should be automatically denied. Soik added the Town Board and Town Plan Commission are people who live in the area and are the ones that take care and pride in their township.

Bernhagen asked if Schmidt has looked at the drawing, and Mrdutt answered yes.

Bachhuber stated if there is a motion to approve, the Town of Sharon has requested there be a survey and that they get a copy. This should be included in the motion. Mrdutt stated there is a survey of the property. Wanserski clarified they want the lines to be remarked to make sure there are no disputes. Pelky stated this would be called a plat of survey.

Motion by Jazdzewski to approve the variance request as submitted, to include conditions 1 through 4 as listed in the memo from Chris Mrdutt, in addition to conditions 5, 6, 7, and 8.

1. Obtain a Portage County Zoning Permit.
2. A Shoreland Revegetation Plan must be approved and issued before obtaining a Portage County Zoning Permit.
3. A Stormwater Management Plan has to be approved and issued before obtaining a Portage County Zoning Permit.
4. A Sanitary Permit must be issued and obtained before a Portage County Zoning Permit.
5. You are to meet with Ray Schmidt, Portage County Water Quality Specialist, to discuss the possibilities of installing holding tanks for the septic system.
6. You are to reduce runoff by avoiding impervious surfaces, i.e., the proposed back patio.
7. A Plat of Survey is to be updated for the benefit of all parties involved.
8. The runoff and shoreland revegetation plans are to be addressed by the Portage County Planning and Zoning Department Land Conservation Division, as requested by Mike Wenzholz, Department of Natural Resources.

Motion seconded by Soik.

Soik noted the Ordinance states holding tanks are not permitted in Portage County. Pelky stated this is a replacement dwelling, so it would be voluntary for Yenter. Soik stated he would have no problem attaching a condition requiring a holding tank, if it were permitted in the ordinance. Soik stated the way the Ordinance reads at this time, holding tanks are not permitted. Mrdutt stated as the Ordinance reads at this time, they cannot request that be added as a condition. Staff is not comfortable with BOA mandating a holding tank as a condition at this point.

Szachnit stated his interpretation is holding tanks are not prohibited, but are used as a last resort if other systems cannot be used. Mrdutt stated this is correct. Jazdzewski stated it basically has to be a hardship case for a holding tank to be used. Soik added he does not like this condition, especially because the Town Chairman had concerns. Soik would like to see this condition eliminated.

Motion by Soik to amend the original motion to strike condition number 5. Motion seconded by Bernhagen.

Motion to amend failed 3-2 with Jazdzewski, Bachhuber, and Szachnit voting nay.

Mrdutt added this condition is advisory only.

Motion to approve, as originally stated, passed 4-1 with Bachhuber voting nay.

Approval of Minutes

Jazdzewski moved to approve the minutes of December 17, 2012, Bachhuber seconded. Motion passed 4-0, with Soik abstaining.

Correspondence/Updates

Next meeting tentatively set for February 18, 2013.

Adjournment

Motion by Bachhuber, second by Soik to adjourn. Meeting adjourned by Szachnit at 5:27 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Lowell Klessig, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
FEBRUARY 18, 2013

Call to Order

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

Klessig led the Pledge.

Roll Call

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

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

Pierre Ovanin and Margaret Woodside, Owners (P13-02)

The Pierre Ovanin and Margaret Woodside special exception request from the Portage County Zoning Ordinance to operate an art gallery as a home occupation in the A3 Low Density Agricultural Zoning District, Town of Lanark, was opened by Szachnit, who read the public hearing notice.

Szachnit swore in Pierre Ovanin.

Pelky stated the owner would like to operate an art gallery, which will be run out of a building not attached to the home. For this reason, a special exception approval is required. Bachhuber asked if the business were run in a building attached to the house, would a special exception be required. Pelky stated if the activity was done from inside the home, and no more than 50% of one floor of the home was converted, they could run the business out of the home with a Zoning Permit only. Jazdzewski asked if the special exception is for the operation of the business in the building, or is it for the building to house the business. Pelky stated the special exception request is for the home occupation. If this building were constructed as a private storage building, no special exception would be required. A special exception is required for the activity of an art studio, selling of merchandise, and the general public coming in.

Szachnit asked Ovanin to explain his request. Ovanin stated he wants a building for combined storage and public access. Ovanin stated pottery takes up space and he is in need of more storage. He thinks having a place for public to access and purchase artwork would be a benefit. Ovanin added he and his wife are nearing retirement and they thought this would be a good venture to pursue together later in life.

Klessig asked if there will be a restroom facility in the building, and Ovanin answered he plans on having a waterless toilet. Ovanin stated he was assured by an On-Site Waste Specialist something could be worked out for this type of toilet.

Szachnit asked if restroom facilities and issuance of a Sanitary Permit are part of the building, or a requirement for running a home business with public access. Pelky stated details on the most appropriate type of system to use can be worked out with an On-Site Waste Specialist. Pelky stated BOA could generally state conditions of the Sanitary Permit should be worked out with Portage County On-Site Waste Section. Pelky's understanding is if there is a home business, the owner has the option of offering restroom facilities from their home. Klessig asked if there has to be restroom facilities in the building, and Pelky answered Ovanin must provide some type of restroom facilities to the general public, whether that is a compost toilet, the toilet in Ovanin's house, or some other type of facility. Soik reiterated the restroom facility does not have to be in the new building, but some type of restroom facility must be available. Klessig asked when is the Sanitary Permit issued, and Pelky answered the Sanitary Permit must be issued prior to the Zoning Permit. If Ovanin is going to use the restroom facilities in

his home, he would not need a permit; however, if a new system was installed for the new building, Ovanin would need the Sanitary Permit issued first. Szachnit stated BOA needs to be sure Ovanin will provide some sort of sanitary facility for his customers; the details will be worked out with Planning and Zoning staff.

Bachhuber asked Ovanin how many vehicles he expected at the art studio at any one time, and Ovanin responded two vehicles. Bachhuber asked if he intended to conduct any classes, and Ovanin replied no. Bachhuber asked if Ovanin would participate in the Hidden Studios tour, and Ovanin answered yes. Bachhuber stated at that time, there would be more people coming through, and asked where would these vehicles park. Ovanin replied they would park along the driveway, where it is mowed and wide enough for vehicles. Bachhuber asked if there is a place where the vehicles can turn around, and Ovanin stated they would direct the flow of traffic and identify an entrance and exit, using the circular driveway.

There being no further questions from BOA, Szachnit excused Ovanin. Szachnit asked if any members of the public wanted to speak on this request. Craig Buttke, neighbor, expressed support for the art gallery, stating it would be a great addition to the area. Szachnit asked if there were any other members of the public wanting to speak. There being none, Szachnit closed the testimony portion of the hearing.

Jazdzewski stated it is important a condition be added to address the sanitary issue with the Planning and Zoning On-Site Waste Section; BOA's purpose is whether or not to allow the business.

Bachhuber read the ordinance provisions from page 2 of the packet, and the following was noted:

- The maintenance of safe and healthful conditions. This issue has been addressed.
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- The importance of the services provided by the proposed facility to the community.
- The availability of alternate locations. Bachhuber does not believe this is necessary under the circumstances, because of the zoning.
- Such other factors as are relevant to the purposes of this Ordinance.

Bachhuber continued to read from the Ordinance provisions and stated the Board is required to find all of the following:

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code.
- The use would be consistent with surrounding uses and the neighborhood would not be injured thereby. Bachhuber stated she believes the Board agrees this would be okay.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts. Bachhuber noted there is a letter of support from the Town of Lanark.

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

1. You must work with the Portage County Planning and Zoning Department On-Site Waste Section regarding your sanitary facilities, and obtain a Sanitary Permit prior to issuance of a Zoning Permit.
2. You must obtain a Portage County Zoning Permit.

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

Rodney Feltz, Owner/Chris Burt, Manager, Asylum Scrap Services, Inc., Agent (P13-03)

The Rodney Feltz, Owner, Chris Burt, Manager, Asylum Scrap Services, Inc., Agent special exception request from the Portage County Zoning Ordinance to operate a recycling transfer station in the Industrial Zoning District, Town of Carson, was opened by Szachnit, who read the public hearing notice.

Mrduitt stated any change in use in Industrial Zoning requires BOA approval.

Szachnit swore in Chris Burt and asked him to explain the request. Burt gave a background of the current organization at Marshfield Scrap, because that fits into the transfer station aspect of this request. Burt stated the following:

1. Hub City Metal Recyclers will be the name of the transfer station. Burt stated this is to help establish a local identity.
2. Marshfield Scrap is owned by Asylum Scrap Services, which is located at the old Norwood Health Facility in Marshfield.
3. This transfer station would be a collection point for materials that would either be shuttled back to Marshfield or direct shipped to a final destination.
4. In the past, this location had a similar type activity; however, the type of business Burt wants to set up would benefit the community in several ways:
 - This would be a convenient method for residents to recycle metal materials. The closest site providing the same services is 22 miles away.
 - They would collect materials at this location and then transfer them to either their final destination or to Marshfield.
 - He is projecting they would have four to five full time employees within the first year.
 - They are projecting in the first 12 months they would purchase approximately \$500,000 worth of materials.
 - Any purchase over \$20 is paid via check. Any purchase under \$20 is paid in cash.
 - The uniqueness of this type of business is that it is not a business where people are coming to a store and purchasing materials. This business pays the consumer for their materials. Statistically, a lot of these dollars are spent in local businesses. This is a good way to put money back into the local economy.

Szachnit asked if they will pay for or get paid for electronics that are recycled, and Burt answered both. There are charges on certain items, such as TV's. Items such as CPU's are free. There is usually a \$10 charge for monitors. If someone were to break down the electronics, and pull the boards out, there are components the consumer could receive money for, such as RAM and drives. Any item with refrigerant typically has a charge of \$20 for vacuuming and abatement of the refrigerants.

Burt stated he had a meeting with the Town of Carson Board, and has letters of recommendation from the following:

- The Mayor of the City of Marshfield, to verify they have been a good community partner
- Opportunity Development Center of Marshfield (ODC)
- Big Brothers/Big Sisters of Wood County
- Columbus High School.

They did a boiler demolition for the high school last summer, at no expense to the school. Burt stated as a business, they need to be a presence in the community, and they believe the letters of recommendation show they are active members of the community. They would like to be in the same position in Portage County and Junction City. Burt stated this is the reason for their sign design.

Burt stated at the Township meeting, they were restricted to 7:00 am to 7:00 pm hours of operation for loading, to reduce or avoid noise problems. Burt's proposal included bunker blocks for screening; however, the Township felt a 10 foot high fence in earth tones, new material construction with a solid fence, would cut down on potential noise, as well as act as a more efficient screening method. Burt used a map provided in the packet to show where the fenced in area would be. The site runs north and south approximately 500 feet, and east and west approximately 400 feet. Burt informed BOA he would like to run the fencing east to west 300 feet, and north to south 400 feet. This would leave approximately 50 feet on either end for a buffer. He said they did not intend to use that much space. At the on-site, there were cones showing the proposed fenced area; however it is now a considerably smaller area. Burt wants to make sure they follow the intent and spirit of the law. The area to the east of the building, which is used for maneuvering vehicles, will be included inside the fenced area right away. Burt originally had questions with the maneuvering of vehicles in the front parking area, which is approximately 200 x 75 feet. Burt wants to avoid congestion on the road.

Szachnit asked what type of surface will be installed in the area where the trucks come in to the scales, and Burt answered the front parking area will be gravel. The scale area is a hard surface. The area leading off the scale is gravel. Unloading and sorting areas to the north of the building will be on a 33 x 133 foot poured concrete pad. Any unloading will be done on a hard surface that can be easily swept and maintained so nothing runs onto the ground. Burt stated he has been working with the Land Conservation Division regarding water runoff issues. Burt added he will be meeting on the site with an environmental engineer to evaluate the stormwater

runoff plan. This engineer works in conjunction with the Brad Johnson, Wisconsin Department of Natural Resources (DNR).

Bernhagen asked if there will be recycling of vehicles, and Burt answered yes. Bernhagen asked if vehicles will be disassembled on a concrete slab, and Burt replied any dismantling of vehicles or basins of fluids or anything like that will be done inside the building. If fluids are stored after being drained, they will be on an impervious surface. Burt explained the process for storage and disposal of fluids, and stated they follow best management practices of the Cooperative Conservation Program (CCP).

Burt stated there is a bathroom in the building that had all fixtures removed and he intends to re-install the fixtures. In addition, there will be a secondary containment area and storage with block walls around it for any fluids they would be pulling out of any type of vehicle or machinery. Fluids would be stored to a certain quantity, usually 250 gallons, and then picked up for disposal.

Pelky stated he is unsure when the fixtures were removed, and is unsure whether sewage may have come from these bathrooms. Burt stated his understanding is a new mound system was installed in 2007. Pelky stated this could have been why the plumbing was removed, because it may not have gone into the septic. Burt must be sure the new bathroom runs to the mound system. Burt added there are holding tanks there, and he will speak with the previous owner to find out what was done. Pelky stated we will have records, if there was a new system installed.

Klessig asked if there is a letter from the Town of Carson, and Pelky answered yes. This letter has to be read into the record.

Klessig stated there was water running from outside into the building, and stated this should not happen. Klessig asked if there is a simple way to deal with this flood issue since there is no natural drainage at the present time. Burt stated he believes with the rain from a few days ago and the buildup of snow, the water could not get away because there was not sufficient plowing. Burt added he feels there is sufficient draining with proper sloping to make exterior water stay away from the building.

Bachhuber asked Burt if he is going with a 10 foot fence instead of an 8 foot fence to comply with the Township's request. Burt stated they initially intended to install an 8 foot bunker style barrier consisting of stacking of blocks, to serve a dual purpose of screening as well as containment. However, the Township requested changes to help with aesthetics and sound control. Burt has checked into colors he feels would be sufficient. Szachnit asked how this compares with the original plan, and Burt stated they will now use rib panels with a neutral color scheme. There will be gates that can be closed and locked at the end of the business day. This will be for security as well as aesthetics.

Jazdzewski stated the facility in Marshfield has a perimeter fence somewhat similar to what the Town requested, and it is basically a shed wall without a roof, ten feet high. Burt used a picture to describe the containment system and show where the fence will be and what it would be constructed of.

There being no further questions from BOA, Szachnit excused Burt. Szachnit asked if any members of the public wanted to speak on this request. It was noted there were no members of the public wanting to speak on this matter.

Szachnit read the following into the record:

- A letter from the Town of Carson Board stating they support the request, subject to conditions. Chairman Zywicki also expressed concern over runoff control and asked BOA to address this issue.

Bachhuber asked Jazdzewski why the Town of Carson requested improvements are to be made before July 1, 2013. Jazdzewski stated they asked Burt when he intended to have this done, and Burt replied May 1. Jazdzewski stated knowing the ground conditions, they were not so much enforcing a deadline, but wanted a target date so they know when it is intended to be done. This way if it is not done, they could question it. They believed they were giving Burt more leeway than he asked for, because he thought he could get done by May 1st. Jazdzewski stated the privacy screening was to cut down on sound and to divert away from the attention of what goes on in a recycling yard. Jazdzewski noted this is not bad; just that some people are offended. Jazdzewski also stated Junction City is a neighbor, and this is inside of their extraterritorial limits. There is an elementary school and residential areas on the east side of Junction City. This is less of a temptation for anybody to try to go in, and also helps with their liability. Jazdzewski also stated originally the scale was going

to be outside, but it is now going to be located inside the security area. Jazdzewski stated this works with the flow of traffic, and will protect the scale. Burt stated this will open up the traffic flow more for parking so there will not be congestion in the initial ingress and egress areas of the property.

Szachnit asked Burt the number of trucks he anticipates coming through at any one time, and Burt replied he forecasts the traffic count to be around 50 per day at peak. Szachnit asked how many at one time would be lined up, and does Burt think there will ever be a time when there will be more trucks than space? Burt answered no. He believes the staging area in the front and back will be sufficient to handle 20 customers in the yard at any given time. That would be inbound, unloading, and outbound. Burt added he believes the traffic would mostly be pickup trucks with trailers. If there are large volumes of materials, this can be diverted directly to the Marshfield location.

Szachnit asked if most customers are large trucks or community people coming through. Burt stated the majority will be community people. Burt estimated the ratio of people with aluminum cans and household type items versus large loads to be 3:1. Szachnit wanted to know how many larger trucks would come through, as opposed to smaller vehicles like pickup trucks. Burt believes the number will be diminished because with the double handling and transfer station, they do not have the capacity for it. They are not trying to attract large loads of material. They do not have the ability to go up in the air like they do in Marshfield, and they don't want to backlog the material. The business model's ideal is three days and the material is gone out of the facility. They would divert larger loads back to Marshfield. Burt also explained the financial advantages of larger loads being diverted to Marshfield. It is more advantageous for smaller loads, for time and fuel, to go to the transfer station. It is more advantageous for larger loads to go to Marshfield.

Szachnit asked if there will be employees disassembling computers, and Burt answered there will not be a lot of value added labor done at this facility.

Bachhuber stated this facility is an existing facility and operation, and asked staff how many of the previous BOA rules apply to this. When did this originally come before BOA? Pelky stated there have been two or three requests on this property, but BOA needs to look at enforcing this operation. They should not look at previous decisions and what was approved. Bachhuber explained she questioned this because a letter from the DNR refers to annual registrations, and do these approvals refer to the Marshfield location or this location. Mrdutt stated this approves their licensing to handle that type of material. It is his understanding it does not matter where they operate, as long as they have that license. Burt explained the different licenses and whether they are individual or site specific. Burt stated there are numerous licenses and registrations. Mrdutt stated the licenses are not something BOA needs to be concerned with.

Szachnit read the special exception standards and closed the testimony portion of the hearing.

Jazdzewski asked about the stormwater runoff plans with the Land Conservation Division and the DNR. Jazdzewski stated there is a concern that Junction City has a municipal well north and west of the site. He does not know what direction the groundwater flow is, but he understands the stormwater management plan would take into consideration those wells.

Jazdzewski stated based on the presentation, Burt puts a lot of pride into the appearance and character of the business. Jazdzewski stated there will be a sign, and added there is a six square foot restriction for signs. Jazdzewski asked since this is Industrial Zoning, if Burt affixes the sign to the building proper, can he go beyond the six square foot restriction. Pelky stated Industrial Zoning has no size maximum; signs need to be located five feet from the road right-of-way.

Klessig asked when a business is abandoned, or in this case not being used, are sanitary inspections typically done in order to reactivate a site? Since the fixtures are going to be put in, would they have to get a professional certification of this? Mrdutt stated they would have to work with staff. Szachnit asked if Klessig is concerned with the additional bathroom to make sure it is hooked up to the septic. Klessig stated yes, and to make sure there is in fact a functioning sanitary system.

Bachhuber asked staff how detailed BOA needs to be in making conditions for this operation since this is a new business on a site previously used. Mrdutt stated this is a new business on an Industrial Zoned piece of property, and they should treat it as they would other similar operations where they look at the hours of operation, screening requirements, stormwater, etc. Bachhuber asked if BOA must say there will be no disposal of waste on-site, or is that a given with the application. Mrdutt stated this would be a given, and added one of

his recommendations is to have a hazardous material list on file with numerous agencies. Mrdutt stated Burt will work with staff to verify all materials are in proper containers, and staff and BOA have seen the room where these materials will be stored inside. Mrdutt added this information is in the packet submitted to BOA.

Jazdzewski stated in the packet the possible hours of operation are listed as 6:00 am to 9:00 pm. The Town of Carson restricted the outgoing loading from 7:00 am to 7:00 pm, and clarified this is for loading activity only, not business operating hours.

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

1. Obtain a Portage County Zoning Permit.
2. List of hazardous materials on file with Portage County Sheriff's Department, applicable Fire Department, Portage County Emergency Management, and the Portage County Planning and Zoning Department.
3. Hazardous materials are to be disposed of according to all local, State, and federal requirements.
4. A stormwater plan approved by the Portage County Planning and Zoning Department and Brad Johnson, Department of Natural Resources, prior to the issuance of a Portage County Zoning Permit.
5. As requested by the Town of Carson, you must install solid, complimentary privacy screening, 10 feet high, around the operation area.
6. Exterior lighting must shine inside the complex.
7. Operation hours, referring to the loading operation, are restricted from 7:00 am to 7:00 pm.
8. The target date for completion is July 1, 2013.

Motion seconded by Klessig.

Motion by Klessig to amend the motion to include the following condition:

9. The sanitary system is to be professionally inspected and certified.

Motion to amend seconded by Bachhuber.

Jazdzewski stated this condition is already covered with approval by the Planning and Zoning Department. Mrdutt stated it would be addressed; however, if they wish, they can have it as a condition to strengthen the language. Jazdzewski stated the sanitary issue would be covered when the Sanitary Permit is issued; it is part of the process the County goes through.

Motion to amend passed 3-2 with Jazdzewski and Soik voting nay.

Motion to approve, as amended, passed unanimously by roll call vote.

Approval of Minutes

Jazdzewski moved to approve the minutes of January 21, 2013, Bachhuber seconded. Motion passed 4-0, with Klessig abstaining.

Correspondence/Updates

Next meeting tentatively set for March 18, 2013.

Adjournment

Motion by Soik, second by Klessig to adjourn. Meeting adjourned by Szachnit at 5:12 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Lowell Klessig, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
APRIL 15, 2013

Call to Order

Chairman Szachnit called the Portage County Board of Adjustment (BOA) to order at 4:24 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Pledge Allegiance to the Flag

Klessig led the Pledge.

Roll Call

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

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

Stephen and Betty Casper, Owners (P13-04)

The Stephen and Betty Casper special exception request from the Portage County Zoning Ordinance to operate a dog grooming business as a home occupation in the A3 Low Density Agricultural Zoning District, Town of Belmont, was opened by Szachnit, who read the public hearing notice.

Szachnit swore in Betty Casper, and asked her to explain the request. Casper stated she currently has a dog grooming business in Wautoma. She wants to downsize the business and move it to a shed located behind the house on her property. There will be a maximum of two or three dogs per day, five days per week, by appointment only. There will be no overlap of appointments.

Pelky stated there are letters from surrounding property owners that should be read into the record. In addition, there is a letter in the file from the Town of Belmont approving the request, as well as an email from Sam Solberg, Commercial Building Inspector with the Department of Safety and Professional Services, indicating the business may be operated without approval from his department.

Bachhuber referenced a diagram of the property and asked if the parking area is already completed and where parking for customers will be located. Casper showed the parking area and stated it will be gravel.

Szachnit asked how close the neighbors are located to the property, and Casper stated pretty far away. Szachnit stated there have been previous concerns of long driveways that are not paved causing dust. Soik stated there are woods on each side of the driveway and this should not be an issue.

Klessig asked if she anticipates having a sign on the road, and Casper answered she may have a small sign. She is downsizing and does not want to advertise, so the sign will be very small.

There being no further questions from BOA, Szachnit excused Casper.

Szachnit read the following into the record:

- A letter from Ray and Luann Weiss, surrounding property owners, stating they do not object to the dog grooming business.
- A letter from John Koerner, surrounding property owner, stating he has no objection to the petition.
- A letter from Thomas and Mary Jo Kraus, surrounding property owners, stating they have no objection to the dog grooming business.

Bachhuber read from the Ordinance provisions and stated the Board is required to find all of the following:

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code.
- The use would be consistent with surrounding uses and the neighborhood would not be injured thereby. Bachhuber stated she believes this was heard from the neighbors.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts. Bachhuber noted there was nothing from the Town of Belmont indicating any objection.

Neil Eastman, Town of Lanark Chairman, stated they sent a letter of approval. Szachnit stated it is in the packet so there is no need to read it into the record.

Szachnit asked if any members of the public wanted to speak on this request. There being none, Szachnit closed the testimony portion of the hearing.

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

1. You must obtain a Portage County Zoning Permit.
2. Any signage must conform to the Portage County Zoning Ordinance.

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

Approval of Minutes

Jazdzewski moved to approve the minutes of February 18, 2013, Soik seconded. Motion passed unanimously by voice vote.

Correspondence/Updates

Bachhuber asked the status of the Shoreland Zoning Ordinance. Mrdutt stated the ordinance will go before the Portage County Planning and Zoning Committee on May 1, 2013. Mrdutt added this is not a public hearing; it is a discussion item.

Klessig asked the status of the special meeting. Pelky stated we have not received a petition yet so there is nothing scheduled. There is a possibility of a special meeting on April 29th or May 6th. As soon as we get a petition, all members will be contacted.

Next regular meeting tentatively set for May, 20, 2013.

Adjournment

Motion by Jazdzewski, second by Klessig to adjourn. Meeting adjourned by Szachnit at 4:44 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Lowell Klessig, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
MAY 6, 2013

Call to Order

Chairman Szachnit called the Portage County Board of Adjustment (BOA) to order at 3:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Pledge Allegiance to the Flag

Bernhagen led the Pledge.

Roll Call

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

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

Portage County Fair Association, Owner (P13-05)

The Portage County Fair Association special exception request from provisions of the Portage County Zoning Ordinance to expand the use of a race track, in the A3 Low Density Agricultural Zoning District, Town of Amherst, was opened by Szachnit, who read the public hearing notice.

Pelky stated this request is due to the fact the previous use is non-conforming. BOA will need to approve the request to expand the use for a race track.

Kenney Behrens, Portage County Fair Association Member, and Karen Stuczynski, Portage County Fair Association Treasurer, were sworn in by Szachnit. Behrens read prepared remarks (attached 8 page document).

Jazdzewski stated the current special exception permit allows for the racetrack, and added current activities include the ice wars, tractor pulls, the annual race at the Amherst Fair, and the demo derby. Jazdzewski asked what level of activity is permitted now versus the amount they are pursuing. Stuczynski stated she believes they currently conduct one event, and they want to do a weekly event. This is why they have to request a special exception. Jazdzewski stated this may lead one to believe that some other activities were outside of the boundaries of what is permitted. (Behrens stated his argument is that all the racing is within the purview of the Zoning Ordinances, but under the police powers and because they don't have a specific ordinance, they must appear before BOA.) Szachnit stated they would be allowed a one-time event; however, if it is a multiple event for the year, they need to appear before BOA. Pelky stated there was no previous approval for the site. The fairgrounds have been in existence for years, but no approval was granted. When this request was presented, it was determined these types of activities were done one weekend out of the year. With the proposal of 17 weeks, and the activity increasing in intensity, it was determined the best way to handle this is a special exception request to evaluate the uses and possible conditions.

Behrens stated the Town of Amherst Board and Plan Commission authorized this for a one year period, and then an assessment will be done with the landowners to see what their concerns are. Behrens added they are willing to look at different ways to mitigate, such as additional tree plantings, shrubbery, and billboards on the backside of the track, which also offer sponsorship and advertising opportunities. Behrens stated they will direct positioning of the audio system so it does not go up and over the park, but rather stays directed at the track and grandstands. Bachhuber told Behrens the Town of Amherst has a billboard prohibition ordinance and he would have to go to the Town of Amherst Plan Commission for that request.

Bachhuber asked if the Fair Association receives funding from the State, and Behrens answered no. Stuczynski added they receive funds from the County through the Parks Department. Bachhuber asked how much they

receive, and Stuczynski answered \$3,000. Bachhuber asked if the only other stipulation involving Portage County was to obtain a large assembly license from the County, and Stuczynski answered no. Pelky stated the County has a large assembly ordinance, and they would have to check with the County Clerk to see if that is applicable. Bachhuber stated the only other relationship with the Town of Amherst is to get a liquor or beer license. Behrens agreed with this statement. Stuczynski added additional funds are received through the County because they run the 4H Program.

Szachnit stated the staff memo in the packet states the Amherst Fire Department will be contacted for ambulance and EMT services. He believes the rest of the documentation states they will be contracted for the service, and contacted if anything more than EMT services are needed. Szachnit asked if they will be contacted, or are they actually going to be contracted? Stuczynski stated two EMT's will be on the grounds during the events and if any other services are needed, they will be contacted. Mrdutt stated they wanted to make sure the Fair Association would be working with the Amherst Fire Department.

There being no further questions from BOA, Szachnit excused Behrens and Stuczynski. Szachnit asked if any members of the public wanted to speak on this request. Dave Allen, Assistant Chief of EMS with Amherst Fire District, was sworn in by Szachnit. Allen stated he was approached by Jalopy Enterprises to provide EMT services on-site. It was stated they needed two EMT's on-site, which Allen is willing to provide from his staff. Allen stated they entered into a contract in which he will provide two EMT's and supplies and radio communication. In addition, the ambulance will be on-site, but it is not dedicated for that event. It will still be responsible for 911 response. The track is located across from the fire station. Allen added they are being paid a stipend to cover expenses.

Bachhuber stated one condition from the Town of Amherst was that the Sheriff's Office and Highway Department must be in charge of traffic control. Bachhuber asked if they will be contacted so in case there is a fire, and ambulances and fire trucks have to leave the department, there will not be traffic issues. Allen stated he cannot attest to that. He does not know the involvement of the Highway Department or Sheriff's Office. Allen has been in this area for many years, and added they never had any issues. They have signage that restricts parking in the driveway. They never had a situation where parking or getting out of the fire station for an emergency has been an issue.

There being no further questions from BOA, Szachnit excused Allen. Szachnit asked if any members of the public wanted to speak on this request. Dave Crubaugh, President of the Amherst Business Association, was sworn in by Szachnit. Crubaugh is here to show support for the organization, and stated the Amherst Business Association membership includes businesses from Nelsonville, Village of Amherst, and Town of Amherst. The proposed racing series has the support of a lot of the businesses, especially in the Town, including Whitetail Lanes, Bootleggers, and the B-Bar-10 Western Store. The racing series also has the unanimous support of the Board of Directors of the Amherst Business Association. They fully expect the racing series will have a positive economic impact, not only for the fair board, but for the community as a whole.

There being no further questions from BOA, Szachnit excused Crubaugh. Szachnit asked if any members of the public wanted to speak on this request. There being none, Szachnit closed the testimony portion of the hearing.

Szachnit read the Special Exception provisions.

Szachnit read the following into the record:

- A letter from the Stevens Point Area Convention and Visitors Bureau expressing support for the request.
- A letter from Bob Rausch and Tom Ashline, owners of Amherst Inn Bed & Breakfast, expressing support for the request.
- A letter from Rebecca and Janusz Izdebski, surrounding property owners, stating they are not in favor of this request.
- Excerpt from the unapproved Town of Amherst Plan Commission meeting minutes from April 11, 2013, recommending conditions.
- A letter from the Town of Amherst Board recommending approval of the request, with conditions.

Regarding the letter from Rebecca and Janusz Izdebski, Bachhuber pointed out they live on Opening Drive. Mrdutt stated their parcel is indicated on the map distributed to the Board.

Bachhuber read from the Ordinance provisions noting what the Board is required to evaluate in order to approve the petition, what conditions the Board is required to find in order to approve the petition, and conditions that may be attached to further the purposes of this Ordinance.

J. Blair Ward, Portage County Deputy Corporation Counsel, stated he issued an opinion at the request of the Portage County Planning and Zoning Department and requested that legal opinion, as well as the response by Vice-Chair Bachhuber, be referenced by the Chair and received into the record. Ward suggested Szachnit give a summary of the issue.

Szachnit stated because the information was included in the packet, it does not need to be read into the record. Ward asked Szachnit to make a reference that it has been received by BOA and it will be incorporated into the BOA records.

Ward summarized by saying he issued an opinion regarding whether or not there would be a lack of impartiality by Bachhuber. Ward's opinion was the decision to recuse herself is up to Bachhuber based on whether or not she feels she can be impartial in addressing this matter. State law requires that every member of BOA be impartial, and not have prejudged the case. In response to his decision, he received an email from Bachhuber indicating she believes she is impartial, and will be able to decide the case impartially, and has not voiced opposition to the proposal before BOA at this time.

Bachhuber stated she wanted to read the letter into the record. Bachhuber stated when the issue arose, she was asked if she was impartial about her decisions. Bachhuber stated she was the past Chairman of the Town of Amherst Plan Commission. She resigned as chair in 2011 and stayed on the board for guidance purposes until June of 2012. Bachhuber added she is not an officer of the Town.

(Letter read into record by Bachhuber - attached)

Bachhuber stated she is impartial.

Motion by Bachhuber to approve the special exception request as submitted, for one race season ending in 2013, with the following conditions:

1. The 2013 weekly race season will be May 16, 2013 to September 12, 2013.
2. A new proposal for a 2014 car race season would have to be made to the Town of Amherst Plan Commission and the Town of Amherst Board for further approval.
3. The hours of operation on racing days shall be from 4:30 pm to 10:30 pm. No competitive event may start after 10:00 pm.
4. Lights out by 11:00 pm.
5. There will be no parking of any vehicles on town roads. The town roads involved are Fairgrounds Road, Packer Avenue, and Western Way.
6. All parking of vehicles associated with these car races will be parked on the Amherst Fairgrounds property.
7. You will have a strict muffler rule for all competitors with a noise level of 95 dba at 100 feet, as measured on the A rated scale. The event for the loudest cars, street stocks, will run right after intermission; about 8:30 pm.
8. The public address system will be limited to the grandstand and the speakers will be aimed at the crowd. The separate PA system in the pit area will only be used to inform drivers of the need to line up for their respective races or for very limited special announcements. Volume on both systems will be kept at a reasonable level and will be closely monitored.
9. Traffic control will be managed by the Portage County Sheriff's Office and the Portage County Highway Department.
10. Competitors will use the entrance on Packer Avenue as specified at the on-site property visit.
11. Spectator traffic will use the main gate on Fairgrounds Road.
12. All lighting will be aimed toward the fairground property.
13. Dust control enforcement will be provided by Portage County Fair Association and Jalopy Productions.
14. A copy of the \$1,000,000 per event liability policy must be on file with the Portage County Planning and Zoning Department prior to the issuance of a Zoning Permit. Likewise, a signed contract with the Amherst Fire Department and EMT Services must be on file before the issuance of a Zoning Permit.
15. You must obtain a Portage County Zoning Permit.

16. The grandstand food concession and beer stand must be brought up to code. Sam Solberg is to be contacted for inspections.
17. The racetrack must be brought up to code for car racing.
18. You will abide by signage ordinances of the Town of Amherst and the Portage County Zoning Ordinance.

Szachnit asked if there was a second to the motion; there was none. There being no second, motion failed.

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

1. You must obtain a Portage County Zoning Permit.
2. Use of the Fairgrounds to be reviewed annually by the Town of Amherst Board.
3. A copy of the liability insurance policy must be on file with the Portage County Planning and Zoning Department prior to issuance of a Zoning Permit.

Motion to approve seconded by Bernhagen.

Motion by Bachhuber to amend the motion to strike condition number two referencing being renewed annually. Soik stated he meant reviewed annually. Bachhuber stated this was not the condition that the Town of Amherst Board put on the request. She would amend it to strike that condition and to insert:

2. A new proposal for a 2014 car racing season would have to be made to the Town of Amherst Plan Commission and the Town of Amherst Board for further approval. The 2013 weekly car race season will be from May 16 until September 12, 2013.

Soik asked if Bachhuber wanted to put that back into local control of the Town, and Bachhuber answered yes. Motion to amend seconded by Jazdzewski.

Szachnit stated the proposal is only for this year and asked if this is an annual renewal or will a decision be made next year to allow for more racing seasons. Pelky stated if the Town of Amherst reviews it and deems 2013 to be a success, and if they permit races to continue, they would want something from the Town showing approval of a 2014 schedule, and here on out. They would not have to appear before BOA again.

Jazdzewski feels BOA's position is to approve the opportunity to hold a race. The details should be between the Town of Amherst, Amherst Fair Commission, the producer of the operation, and that is what needs to be reviewed. Those details need to be dealt with locally. If there are problems, it is for them to determine. Jazdzewski stated by attaching the amendment approval be for one year, they are basically forcing this issue to come back to the table. Pelky stated Amherst would need to review this yearly and the Portage County Fair Association could cut them off at any point in time if they feel they are not meeting expectations and do not want to renew. Jazdzewski asked what purpose the amendment serves if they are already asking for annual approval by the Town. Bachhuber stated it clarifies the wishes of the Town for a one year racing season, then they get to review it again next year after reviewing what went on this year. Jazdzewski stated he wanted all members to understand and feel comfortable with the purpose of the amendment.

Szachnit commented on the letter read into the record opposing the request, which addressed noise and the landowner's proximity to the fairgrounds. Szachnit feels both the Portage County Fair Association and Jalopy Productions agree if there are any noise problems, they would install some sort of screening. Bachhuber stated billboards are not allowed.

Schuler clarified that if the main motion and amendment were approved, BOA would be giving approval to have the race function at the fairgrounds, and leave details to the Town. Schuler is unsure if there is a mechanism for the Town itself to enforce the concerns they have. The action they have taken is past and questions if it would be better for BOA to approve a one year trial, with the approval being reexamined in one year. If all is going well, a more general approval can be given. Schuler does not see how it is a clear indication of how the operation should run if BOA gives approval, but does not establish any conditions about parking or other issues of concern. Schuler stated he is not suggesting they should attach particular conditions; he is stating the Town has raised questions and made recommendations that so far have not been addressed in this action. Schuler suggested BOA ask Ward what the best way would be to address this issue.

Bachhuber stated she believes Ward had comments as far as what can be done by the Town for enforcement. Ward stated the Town can do whatever it needs to do. He is not concerned about the Town. His concern was BOA appears to be going down the road of granting approval and having conditions imposed by the Town for not only this season, but for future seasons, and that would, as a result, not require the Portage County Fairgrounds or Jalopy Productions to come back before this Board at all. Ward cautioned the Board, and wants the Board to put it on the record that this is their intent. If something doesn't work out down the road, this Board may say they wish they would have required Portage County Fair Association or Jalopy Productions to come back before the Board. An example would be if they were given a one year expansion or conditional use. BOA could require they come back and take another look at this issue. If BOA is not satisfied with how things are shaping up with the operators of the race working with the Town, this Board could then modify the conditions in a way it feels is appropriate. Ward's concern is this Board will be giving up control to the Town and relinquishing control from any future conditions.

Szachnit asked if Ward is looking for the Board to make that statement, one way or the other, and Ward answered by stating they should make that statement, and he wants the Board to understand what it is doing, and that is their intent.

Bachhuber stated BOA is acting right now in a manner contrary to the way it has acted on many other petitions. In the past, the Board has added recommendations or conditions about landscaping for noise and for sight, and so on. BOA has added on a lot of conditions for operation, including hours of operation, on a lot of things that have come before them. Bachhuber stated this, for whatever reason, seems to be an anomaly. She did not hear conditions, so this is why she put conditions in her original motion. Soik stated Town roads are not the place for billboards and signs; however, he believes the County fairgrounds differ from Town roads where signs will be a distraction to drivers. This is a stationary billboard at the fairgrounds. Bachhuber stated you cannot change an adopted ordinance of a town. If they wish to have a billboard, which is against the ordinance, they must go to the Town Plan Commission and follow proper procedures to ask for a variance for billboards. Ward agreed with this statement.

Jazdzewski stated if it is necessary to put a one year probationary period, subject to re-approval and re-issuance of a special exception, if everything operates as planned, then so be it. Jazdzewski does not want to take the local power away from the constituents who have brought this issue before BOA. It would be easier to give a one year probationary period than to say the Town of Amherst must come back to repeal, if there is a problem. A one year probationary period would make this easier for BOA. The billboard issue would have to be worked out with the Township.

Soik suggested striking down the motion on the floor, and attach the entire packet as submitted, along with any motion brought to the floor, instead of rehashing something nobody likes.

Szachnit asked for a vote on the amendment, and then the proposed motion. Bachhuber stated Soik withdrew his motion. Szachnit stated once the motion is made and seconded, it must be voted on and passed or struck down. They cannot withdraw the motion. Jazdzewski stated in the first motion, there were numbers dealing with decibel levels determined by Jalopy Productions and the Portage County Fair Association to be at 100 decibels at 100 feet. Jazdzewski asked Bachhuber why she put the level at 95 decibels in her motion. Bachhuber thought she said 100 decibels, as that is what she meant.

Szachnit called for a vote on the amendment. Motion failed 4-1, with Bachhuber voting aye, Jazdzewski, Soik, Bernhagen, and Szachnit voting nay.

Szachnit called for a vote on the original motion. Motion failed 5-0, all nays.

Schuler stated the letter from Jalopy Productions mentioned 95 or 100 decibels. The general point he is making is there is a plan of operation and an agreement between the Fair Association and Jalopy Productions. If they are looking to incorporate anything from the packet, they could use that plan, establishing those things already mentioned.

Bachhuber stated the reason she wrote down these things, is because she very carefully went through every bit of information presented by Jalopy Productions and she found many inconsistencies between what was proposed, including the hours of operation and noise levels at 95 feet or 100 feet. This is why she specifically wrote her conditions down. Bachhuber stated she saw a contract with Jalopy Productions signed by Stuczynski

and she didn't see all these conditions in that contract. Her concern was how any of this is going to be controlled.

Szachnit asked for another motion to be made. Motion by Jazdzewski to approve the special exception request as submitted, with the following conditions:

1. You must obtain a Portage County Zoning Permit.
2. Use of the Fairgrounds to be reviewed annually by the Town of Amherst Board.
3. A copy of the liability insurance policy must be on file with the Portage County Planning and Zoning Department prior to issuance of a Zoning Permit.
4. As per the packet provided, all conditions that Jalopy Productions and the Portage County Fair Association agreed on must be strictly adhered to. This is to include 95 and 100 decibels, depending on class of car. The times were spelled out, approximately 15 hours per series. Last race to start no later than 10:00 pm. Lights out by 11:00 pm.
5. This approval is for a probationary period of one year, ending at the end of the 2013 racing season.

Ward recommended deleting the term probationary period and saying for a period of one year and comes back to this Board. Jazdzewski stated he is in agreement with this; it will be for a period of one year, ending with this year's racing season.

Motion to approve seconded by Bernhagen.

Bachhuber commented she would hope the Fair Board will rewrite a contract with Jalopy Productions so they make this as tight as possible, because there are too many discrepancies that exist right now. She thinks they will be unhappy if they do not rewrite the contract.

Jazdzewski reiterated his condition specifically referred to the information in the packet; an agreement between Jalopy Productions and the Portage County Fair Association, pages 11 – 15. This is the text he based his condition on.

Motion to approved passed unanimously by roll call vote.

Approval of Minutes

Jazdzewski moved to approve the minutes of April 15, 2013, Soik seconded. Motion passed unanimously by voice vote.

Correspondence/Updates

There are currently no petition requests for June. Next regular meeting tentatively set for June 17, 2013.

There was a discussion among Board members regarding impartiality and conflict of interest issues, based on correspondence from Ward and Bachhuber. This will be an item for discussion on a future agenda.

Adjournment

Motion by Jazdzewski, second by Bachhuber to adjourn. Meeting adjourned by Szachnit at 4:53 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Lowell Klessig, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
JUNE 17, 2013

Call to Order

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

Klessig led the Pledge.

Roll Call

Members present included Edward Szachnit, Marj Bachhuber, John Jazdzewski, Scott Soik, Lowell Klessig, and William Bernhagen (Alternate). Staff present included Tracy Pelky and Gayle Stewart, Planning and Zoning Department.

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

David and Judith Zdroik, Owners (P13-06)

The David and Judith Zdroik special exception request from the provisions of the Portage County Zoning Ordinance to construct three garages exceeding 2,800 square feet total accessory building space, in the R1 Rural and Urban Fringe Residence Zoning District, Town of Dewey, was opened by Szachnit, who read the public hearing request.

Pelky stated this property is zoned R1 Rural and Urban Fringe, and has a limitation of 2,800 square feet total accessory building space. This is an old farmstead property and has an existing 34' x 80' barn. The petitioner wants to remove the existing house on the property and build a new house with an attached garage, a proposed 40' x 60' shed, and a potential future 20' x 20' garden shed, which all together exceeds 2,800 square feet. The Town of Dewey has approved the request and a letter is in the packet. There is also a letter from a neighbor, which will need to be read into the record.

Szachnit swore in David Zdroik and asked him to explain his request. Zdroik stated he plans to build a small, 1,400 square foot, retirement home for him and his wife. He would like an attached garage, in addition to a 40' x 60' shed. Half of that shed would be used for storage and half would be used for his own personal shop area or crafts. The proposed 16' x 20' shed would be built when they can afford it, but it was suggested by Pelky they address that request at this time. Zdroik stated this was an old farmstead with an old barn that was in rough shape. He fixed up the barn and would like to use it to store farm implements and lumber. Zdroik stated he has 20 acres; 14 of those being fields. Zdroik added he would like to do some hobby farming.

Klessig asked Zdroik if he plans to reduce the visual impact of the new shed, and Zdroik answered the shed will be built towards the field where there are no houses. There are trees to the north near the road. Klessig asked about colors for the buildings, and Zdroik stated they would match. The barn is clay with a shingled roof. The shed will have clay colored steel siding to match the existing barn and a brown steel roof. Zdroik added the house will be a similar color.

Soik stated the sketch shows the shed will be located behind the existing barn. Zdroik stated it would be south of the barn. Soik stated it will be screened that way, and aside from the new house, there will only be two additional outbuildings.

Bachhuber stated this is in the rural/urban district and only 2,800 square feet are allowed. Bachhuber stated she saw that Zdroik is in the process of asking for a re-zoning. Pelky stated contact has been made with the Town of Dewey which is updating their zoning map at a future date. Pelky stated Zdroik has made contact to potentially have the property removed from R1 to an agricultural district. Bachhuber stated there is nothing from the Town of Dewey stating they plan to do this, and asked if the Town of Dewey has adopted its zoning map.

Pelky answered they did that years ago, and are looking at updating their map. Pelky asked Zdroik if he had contact with the Town of Dewey on this issue, and Zdroik stated he spoke with Chairman King, who told him they are going to start working with the County to get the property zoned back to A1 Exclusive Agricultural, as it was previously zoned, but it probably would not get done until fall. Zdroik agreed with this because the surrounding properties are all farm fields. Soik added it looks like everything to the north and east of Zdroik's property is A4 General Agricultural. Pelky stated there is a 40 acre parcel that is zoned R1, 20 of that being Zdroik's property. Everything surrounding these 40 acres is zoned A4.

Bachhuber stated Zdroik is proposing a 2 car attached garage to the new home, a 20' x 20' storage shed, a 40' x 60' shed, and the existing barn, for a total of 6,096 square feet, which is 3,296 square feet over what is allowed in that zoning district. Bachhuber asked Zdroik why he wanted to do this before he changes the zoning, and he responded he would have to go through the long process. Zdroik currently has his house for sale and he needs to be prepared if his home sells soon, and needs to plan for his garages. Zdroik stated he spoke with King who thought this would be a good route to go through because if his home is sold, he needs to know what he can do on the property. If he waits for a rezoning, he may have to wait until winter to know what he can do on the property. Zdroik stated because of the barn already on the property, he will be over the square footage limit with the house and attached garage. Zdroik stated he has a lot of personal belongings and he wants to be able to start emptying his present home and storing it in a new shed. Bachhuber asked if he could store it in the barn, and Zdroik answered no; he wants to use the old barn to store farm implements.

Szachnit asked how many square feet the old structures were and Zdroik stated he believes the granary was approximately 30' x 50', one shed was approximately 20' x 60', and another approximately 24' x 24'. Zdroik added it was a farmstead. Szachnit asked if King gave him any idea of how certain he was the zoning would change, and Zdroik replied King stated he was going to work with the County. Zdroik does not know the process, and stated King told him it may or may not happen this fall.

Pelky stated he explained to Zdroik if he went for a rezoning, it would require approval from the Town of Dewey, the Planning and Zoning Committee, and County Board. This would be at least a three month process; however, the process through BOA would be approximately four or five weeks to get on an agenda. Zdroik was given the options, but decided to go through Board of Adjustment because of his personal circumstances. Pelky stated BOA needs to consider Zdroik owns 20 acres; it's not a small parcel in a subdivision. It is up to BOA to determine if this amount that exceeds the threshold acceptable to them. Soik asked if the Town of Dewey has been in contact with anyone from the County regarding rezoning the property, and Pelky answered it is in the works with the Town of Dewey, and they usually work with their Planning Commission and Chuck Lucht, Associate Planner, from the Portage County Planning and Zoning Department. Lucht will work closely with the Town of Dewey to get mapping and plans done correctly.

Szachnit asked if something has been started, and Pelky answered he is unsure where they are in the process.

Jazdzewski stated he assumes Zdroik spoke with the Town of Dewey about a specific rezoning, and the Town is looking at updating their town comprehensive plan. Zdroik stated that is what he was told in his conversation with King. Jazdzewski stated he looks at this as agricultural land, but that does not make it right; it gives him a reason for justifying it.

There being no further questions from BOA, Szachnit excused Zdroik.

Szachnit read the following into the record:

- A comment on a surrounding property owner letter sent to Richard and Joan Kowaleski stating "No contest" to the request.

Szachnit asked if any members of the public wanted to speak on this request. There being none, Szachnit closed the testimony portion of the hearing.

Szachnit read the special exception standards.

Klessig stated he is pleased to see the barn being maintained, and feels Zdroik should not be penalized for preserving the structure. Klessig has no problem with this request; however, feels the color of the buildings should be regulated.

Jazdzewski stated the intention is to rezone the property to A4 where there are no restrictions on building size. Jazdzewski asked if, as a condition to prevent anything from going awry, is it possible to place a restriction on the parcel that no divisions could take place until a zoning change takes place. Once a zoning classification goes into effect, they would have to follow rules of that zoning classification. Pelky replied he is not aware that this has been done in the past. The Board can do that, if they would agree to it.

Bachhuber suggested, in a case like this, having a deed restriction on the property that prevents any splits until it is rezoned. Her concern is there is nothing in writing from the Town of Dewey that it intends to rezone the property, there is no timeframe set, and nothing is in the works yet. They must take into consideration how they treat this property owner, and future property owners. Bachhuber would feel better about this if the Town of Dewey had sent a representative to this meeting with something stating they intend on doing this zoning change. Zdroik stated if he had known this earlier, he would have done more research.

Soik stated he would question the Town of Dewey as to why this parcel is zoned R1, while the surrounding properties are zoned A4. It appears there are five acre lots in the area that are zoned A4. Soik feels even though BOA can put a deed restriction on, does not mean they should. He feels they need to look at this from a common sense viewpoint with it being surrounded by A4. Pelky stated one reason may be that during the last update, the Town of Dewey was thinking if someone was going to subdivide land, they would want it in R1.

Szachnit asked if the Town of Dewey would benefit with a bigger tax base based on R1 Zoning, and Pelky answered no; the zoning classification does not affect the assessment. The assessor will look at the use of the property.

Klessig asked how many lots could be created from this parcel at this time, under R1 zoning, and Pelky answered two acres, both ways; A4 is two, R1 is two. Density is the same under zoning. It is just that R1 is strictly for residential uses, while A4 allows farming and as many accessories building as you want, at any size, provided it is not commercial in nature.

Pelky stated BOA needs to focus on this property as it is zoned currently and if it should it be allowed. They should not be concerned whether the town six months from now is going to rezone the parcel.

Jazdzewski stated it is a legal factor, and if there is a deed restriction on the property until the zoning changes, this is precedence for allowing it. The intention is to change the zoning; it is just a timing factor. The deed restriction could have a clause in it that once the zoning classification changes, the restriction can go away. He feels this would legitimize allowing the exception for square footage of storage space. Soik asked Zdroik if he is okay with the deed restriction, and Zdroik answered yes. Jazdzewski informed Zdroik that he would not be able to sell half of his property if it is zoned R1, and explained their 20 acres has to remain as 20 acres. Judith Zdroik asked the cost to them of having a deed restriction, and Pelky stated there is a minimum \$30 recording fee. Pelky added if BOA were to make this a condition, staff would not approve any Certified Survey Maps until the zoning changes. BOA could cover this issue either way, but it is less cumbersome for the landowner not having to record a deed restriction. They would both serve the same purpose. Jazdzewski stated this would legitimize it because the intention is there.

Zdroik stated he had his 20 acres surveyed and has seven acres where the home is, and in the future may give this to his kids. At this time, he wanted seven acres surveyed so he knows he has enough room east of the barn. Jazdzewski stated this property has not been legally split; he just has stakes pointing out for his reference where the seven acres are. Zdroik stated he has a survey map, but he does not have any property description yet.

Bachhuber stated this means Zdroik is asking for a lot split. Zdroik stated he does not want to have all this property later on in life. Bachhuber stated if this is what he is surveying off, he is asking for a lot split, and this is more complicated because he will have to go back to the Town of Dewey Plan Commission to ask for a lot split. Zdroik stated he was not aware of this. Soik stated it is his property, and Zdroik should be able to have a survey done of his property showing it split up, if he wishes. Soik added he can have a surveyor come out and section off his seven acres. It doesn't mean Zdroik is going to split that lot. Jazdzewski asked if he is actually going through the process of having the certified survey map made, or is he just having the survey for the general knowledge of where those lines would be if he decided to split it up, and Zdroik replied the Town of Dewey has approved the split.

Pelky stated there is a proposal to split the property, but that is not part of this request. Pelky added the Town of Dewey is not at the stage of signing the map.

Szachnit swore in Dale Rosicky, surveyor. Rosicky stated he is the surveyor for Zdroik, and surveyed the property and split it off according to what Zdroik wanted. Zdroik wanted seven acres around his barn and where the house will be located. Rosicky added he has provided a preliminary certified survey map to Pelky, and a letter has been received stating water tests are to be conducted. Rosicky stated he has prepared the official certified survey map and sent it to the town, and added King has reviewed and signed the map.

Bachhuber stated they are no longer talking about a 20 acre parcel; they are now talking about a 20 acre parcel minus seven acres for the other buildings. Rosicky stated the seven acres is an allowable split. Bachhuber stated they were previously talking about putting these buildings on 20 acres; but now it appears Zdroik intends to split the property.

Jazdzewski stated once the certified survey map goes through, where the buildings would be located would be a seven acre parcel. Jazdzewski realizes it is all zoned the same and Zdroik owns the land, but there is now a seven acre parcel that is legally described, and he could sell seven acres or the remainder. Jazdzewski is not comfortable saying he is restricting 20 acres from being rezoned, and now Zdroik could say he wants only the seven acres rezoned to A4. Zdroik stated his understanding is the Town of Dewey wants to rezone the entire property. Zdroik stated he was unaware of the process and would have done more homework.

Klessig stated he no longer feels the way he did before, and will not vote for this request without the deed restriction. They are no longer talking about a farmstead anymore; they are talking about two lots that may be divided further.

Soik stated he wants the Board to make their decision and discussion using common sense of what is already taking place and going on in the Town of Dewey. Without a Town of Dewey representative, they cannot hold Zdroik accountable for what the Town has done. There being no further questions from BOA members, Szachnit excused the witnesses.

Bachhuber asked Pelky if the petitioner would have to pay an additional fee if a motion to postpone to a future date would be approved, and Pelky answered no.

Motion by Bachhuber to postpone this hearing until the next scheduled meeting, for the purpose of the landowner getting more information from the Town of Dewey and for doing further homework on this request. Zdroik stated he was unaware of the Township information. Motion to postpone seconded by Jazdzewski.

Soik asked Zdroik if he would be aggrieved by a 30 day postponement, and Zdroik responded no.

Judith Zdroik was sworn in by Szachnit. Zdroik stated they are putting their belongings in totes. This is where they raised their family, and they have acquired a lot of stuff that she is not willing to get rid of or store in a barn. It is unfortunate there is a barn on the property, and it is unfortunate that her husband was a farmer and that he likes his farm. They have fought to clean up the farm from rodents, woodchucks, spiders, beetles, termites, etc. They have also spent a lot of money supporting the building so they could continue to have it. The storage building is what she would like to put her belongings in until she can build a house. She will not pay storage somewhere else if she can put a storage facility up. Judith Zdroik stated her husband will also do his hobbies in this storage shed, and she does not want her belongings to be stored where he does his hobbies. Zdroik stated they do not plan on building a new house until the existing house is sold; they cannot afford to have two homes. Zdroik stated they should look at the condition of their property now and what they've done to the property, compared to what it used to look like. Zdroik added the neighbors have commented on how much work they have done, and they plan to continue to take care of the property. They have put their heart and soul in to this property and this is where their children were raised.

Jazdzewski stated he sympathizes with Zdroik. Unfortunately, the Town Chairman should have approached the County to ask the proper sequence and order for them to do this. Jazdzewski noted the property directly across from Zdroik's property definitely exceeds the square footage of storage buildings that they have, but added they are zoned A4. This gives the neighbors legitimacy, and unfortunately, with a certified survey map in play and waiting for water tests, Zdroik no longer has a 20 acre parcel. Jazdzewski stated he can sympathize, but if BOA allows it on this property, then others will want the same thing. He asked what credibility or legality would BOA

have if someone contests their decision. Jazdzewski feels BOA is all for this, but they have to do this in the proper order.

Zdroik asked if there was any way for him to get permission to put a 40' x 60' building up and leave the house and other buildings out. Bachhuber stated she believes you cannot put up a storage shed on a property without having a home on it because in the past, people have put up storage sheds on property, and then they have moved into them. Jazdzewski stated Zdroik could do that if this property was zoned A4. Jazdzewski stated he assumes if Zdroik were to request to rezone his property to A4, he believes this would get Zdroik where he wants to be.

Pelky stated if we fast forward 30 days and the Town of Dewey states in six or nine months they will rezone the property, will that affect how BOA will make a decision? BOA will still have to make a decision under R1 to allow this. Regardless of whether the Town of Dewey said yes they are going to do it, in 30 days BOA will still have to make the same decision. If BOA denies the request, Zdroik will maybe go through the rezoning process, which will take three months. Szachnit stated at this point, they have nothing from the Town of Dewey stating they are going to rezone this property.

Bachhuber asked for a vote on the motion on the floor. Motion to postpone failed 5-0.

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

1. You must obtain a Portage County Zoning Permit.
2. Storage buildings are only to be used for private purposes.
3. You are to leave the existing trees as a buffer.
4. Earth-tone colors are to be used for outbuildings.
5. The 20 acre parcel #014-25-0824-13.01 cannot be subdivided prior to rezoning to a zoning district with no limits on square footage of the outbuildings.

Motion to approve seconded by Jazdzewski.

Bachhuber asked Klessig to repeat his final condition. Klessig repeated his condition, and prefaced stating this is in lieu of a deed restriction, which Pelky suggested would serve the same purpose.

Bachhuber stated her understanding is this means the survey stops until such time as the property is rezoned, and a certified survey map cannot be filed. Jazdzewski stated they can hold the survey map until such rezoning takes place, and then it can be filed. Pelky stated everything can be ready to be signed until the rezoning takes place; whether that is at the Town level or by Zdroik. Soik asked if this would impede Zdroik moving forward with the shed, and Pelky answered no.

Motion to approved passed unanimously by roll call vote.

KD & BE Wogsland Rev. Living Trust, Owners, Dale Rosicky, Agent (P13-07)

The KD & BE Wogsland Rev. Living Trust, owners, Dale Rosicky, agent, variance request from the provisions of the Portage County Zoning Ordinance to create a lot less than 200' wide at the building width line, in the A3 Low Density Agricultural Zoning District, Town of Amherst, was opened by Szachnit, who read the public hearing notice.

Pelky stated in 1989 a second farm residence was built on this parcel. Where the house is placed, a 200' minimum lot width cannot be met. The owner applied for a variance to have a lot approximately 155' wide.

Szachnit again swore in Dale Rosicky, agent, and asked him to explain the request. Rosicky distributed a copy of the preliminary survey and stated he was contacted by a banker, Keith Williams, to represent the Wogsland Family on this particular survey. Rosicky added he has never been to the site, and his map is based on the dimensions agreed upon by Pelky, in addition to air photos. The final field verification will come if this request is approved. Rosicky stated these are the closest dimensions he could get from an aerial photo. They need to have a 4:1 ratio with the length in order to accommodate, and this is where the dimensions came from. It was based on the two houses on the property, and he tried to maintain 25' off the house to the west that would not be on the new lot. Rosicky stated he realizes this can be changed if BOA wants it to.

Szachnit asked if this is being done so the other house meets the requirements for setbacks, and Rosicky stated they have no other choice on the other side. The landowner attempted to purchase land from the landowner to the east, and she was not willing to sell at this time; however, that neighbor had no objections to the split as presented.

Bachhuber asked Rosicky if he was saying he could move the lot line towards the other house, and Rosicky answered the west lot line is discretionary; the east boundary line is fixed. Bachhuber asked if setbacks are able to be met, and Rosicky answered that is why he used the 25' boundary. Rosicky stated he will have more accurate measurements once he is able to locate the house; his measurements were based on an aerial photo. His measurements could vary five feet.

Klessig asked if there had been a previous variance granted because the other house looks closer than 25' to the lot line. Pelky stated at the time, the setback was 10'.

Bachhuber asked if Rosicky is representing a banker, and Rosicky answered yes. He is representing the bank because the property is in a trust. Bachhuber stated with a variance, they are to look for a hardship, but Rosicky is not representing the owner so they cannot ask him what the hardship is. Rosicky stated he believes, based on his conversations with Keith Williams, the mother wants to continue living there.

Szachnit stated the owner should speak. Klessig asked Rosicky if he knew why he was asked to be here, and Rosicky stated to represent the Wogsland family because of the trust, and to answer any questions related to a survey.

Karl Wogsland, owner, was sworn in by Szachnit. Wogsland stated the house was built in 1989, and was a second farm residence. He would like to separate this house from the existing farm buildings. They own the entire farm, and as pictures show, they have land available to the north, but they are just short on the width between the houses. Rosicky stated they are extending the lot back to 620 feet because it is required for a 4:1 ratio.

Bachhuber stated the logic for allowing a second home on one lot was for farm purposes, and was usually family. Bachhuber stated this is still for family and why do they need a lot split? Wogsland stated this will give them the option to sell the farm, and still have his house.

Klessig asked if this property was ever zoned A1, and Pelky stated the land is currently zoned A3, and previous to that it was A4 when the lot was created in 1989.

Pelky asked if there was a small shed located on the property next to the house, and Wogsland answered it is a movable playhouse.

There being no further question from BOA, Rosicky and Wogsland were excused.

Szachnit read the following into the record:

- A letter from the Town of Amherst and excerpts from the meeting minutes stating the request was approved at their June 13, 2013 meeting.

Szachnit closed the testimony portion of the hearing.

Klessig stated if this property was in A1, he would oppose this request, because A1 would have meant there were favorable facts even before the present agricultural use taxation went into effect.

Szachnit read the variance standards.

Jazdzewski stated the lot has been made as wide as possible, and when this house was built, he assumes there probably was not a 200' minimum lot width. Pelky stated there were no air photos at the time. Jazdzewski stated the hardship is there are two houses, which are legitimate, if you have two families farming. With financial issues and the trust, the family needs to get their ducks in a row. Jazdzewski stated he feels they made the lot as wide as they possibly can, and longer than they need to in order to maintain the ratio. Jazdzewski feels in this case, less would be more of a variance, and they are holding them to the letter of what it takes to fit the requirement for the request. Jazdzewski added he feels the landowners have no other option.

Szachnit stated when the second house was built, it met conditions because it was in A3, and they met the minimum setbacks, with no limitations on how close one house could be to another; Pelky agreed. The Zoning Ordinance allows a second farm residence, as of today, in an agricultural district.

Bachhuber stated they must look at the purposes or the ordinance as it was written. It was meant to have a second residence on a lot, and the lot was to remain intact. It was not meant to encourage lot splits in the future. Bachhuber stated in this case, the owners are saying the hardship is that the mother wants to live in the house; she can, she is a member of the family. There is no other hardship to look at. The hardship cannot be caused by any person having interest in the property, and from what she has heard in testimony the owners want to sell the other property. Bachhuber does not believe this is a hardship, but a matter of convenience. This is a self-imposed hardship, and BOA is not to look at these.

Soik asked when the ordinance was written, and Pelky answered it was developed in the 60's. Soik asked if this is when the ordinance was written, and Pelky replied that provision may have been added sometime after. Soik stated his point is the ordinance was written some time ago, and anything that was done then would have unintended consequences for today and going further, such as they are presented with here. Soik added anything BOA does is going to eventually have unintended consequences as well. Pelky stated the language reads pretty straight forward; second farm residence located anywhere on the parent parcel does not require a lot split; this gives farmers a second farm residence. Pelky is unsure if it was put in the original ordinance in the 60's, but it was there in 1989.

Klessig explained differences relating to parcel size and lot splits on parcels in A1 and A3 Zoning. Klessig stated in this case, the issue is the proposed lot is too narrow, and that is the hardship; not that the mother wants to live there. Jazdzewski stated the petitioner wants to separate the house from the rest of the farm property. Klessig added the hardship is the houses are going to be forever married unless they allow the variance to have a more narrow lot. The only other option would be to move the house, and that is not a feasible option.

Szachnit closed deliberations.

Motion by Jazdzewski to approve the request for a variance as submitted, to create a new parcel of less than 200' at the building line, with the following condition:

1. A certified survey map must be approved by Portage County Planning and Zoning Department.

Motion to approve seconded by Soik.

Jazdzewski stated he assumes Rosicky will do a hands-on stake, which will be maintained at its widest possibility, and Rosicky answered yes.

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

Sharon Anderson, Owner, Guy Stewart, Agent (P13-08)

The Sharon Anderson, owner, Guy Stewart, agent, special exception request from the Portage County Wireless Telecommunication Facility Ordinance to construct a self-support communication tower and associated ground equipment, in the A4 General Agricultural Zoning District, Town of Amherst, was opened by Szachnit, who read the public hearing notice.

Pelky stated this request is for a 260' lattice tower.

Szachnit stated it appears the fenced in area will be 100' x 100', and asked if that area has to be half of the tower height. Pelky stated the company has to lease an area, with a letter stating if the tower were to collapse, it would fall in the lease area, which would require an area at least 260' x 260'. What is fenced in is determined by the cell tower company. Szachnit asked if it has been determined that where the tower will be situated is at least 130' from the road, and Pelky answered yes, that will be determined in the survey.

Bachhuber read excerpts from page 11 of the information provided in the packet by the petitioner, 7.3.8.1, Setback and Separation.

Szachnit swore in Guy Stewart, agent, and asked him to explain the request. Stewart stated he was asked by Verizon Wireless to find a communication site in the Town of Amherst area, and explained the process for locating a site. Stewart stated there were no other communication towers within three miles that were available to co-locate on. Stewart detailed several documents provided to BOA. Stewart informed BOA that Verizon will be a tenant of the tower, while Central States Tower will be the tower owner. Stewart stated as part of the final submittals, a letter will be submitted from the engineer stating the tower will essentially fall within itself.

Jazdzewski asked if there will be three or four tenants on the tower, and Stewart replied there will be a minimum of four, depending on the equipment.

Bachhuber asked if he has ever had an instance where the tower didn't fall within the fall area, and Stewart answered no, adding it is extremely rare to have that happen. He has never had a tower fall in his experiences. Stewart explained how guyed wire towers, monopole towers, and self-support towers are designed to fall.

Jazdzewski asked the area of trees that will be cleared out, and Stewart replied an area 100' x 100' will be cleared. Jazdzewski stated it is a possibility that a tree falling could take a tower out. Stewart stated they would take out the minimum area, and because they are leasing the entire area, they could potentially have the right to control the tree growth; this would be analyzed down the road. Jazdzewski's point is they want to maintain screening, which up close will prevent people from seeing the tower, yet they need to maintain the integrity of the tower.

Klessig stated he is surprised at the location of the tower, and stated some people are going to be unhappy with this tower as they drive past and see it. Klessig asked why this wasn't put 400' or 500' into the woods, and Stewart answered this was the landowner's preferred location. The landowner's primary concern was they want to put a house on this property in the future, and they want to locate it towards the back of the property. From Stewart's perspective, it is an access issue; the longer the road, the higher cost to them. Jazdzewski asked if this was maybe an elevation issue, because the property seems to slope down. Stewart stated they are looking for a certain height, and the tower company preferred 300'. Stewart added they are looking at designing systems based on 250' towers.

There being no further questions from BOA, Szachnit excused Stewart. Szachnit asked if any members of the public wanted to speak on this request. Joe Radtke, surrounding property owner, was sworn in. Radtke stated his family has owned property north of this since 1850. His land is the last of their property and he has been hunting on this property for years. Radtke had plans to turn this into a retirement home within the next 10 years, and added he is very worried about the property value. He understands people are worried about radiation, bird migration patterns, health in animals, how the tower will fall over, how it will be setback, and how it looks. Radtke stated if he builds on his property, and decides to sell the house, can he tell the purchaser that all the items he listed are okay. Radtke stated we all need towers, but he was hoping there was a better place to look. He is sure there are other places closer to the freeway, or silos which will help a farmer out. Radtke's biggest concern is property value, and if this tower goes up, he believes it will hurt his pocket. Radtke stated tower owners are only concerned with their costs if they have to put it further off the road, but what about what it will cost him if he has to sell his property or wants to put a homestead on it. He will lose money on it. Radtke stated this is the first time he was notified about this cell tower going up in the Amherst area. Radtke showed on a map where his property is located, and Jazdzewski asked if the location he wants to build is a full quarter mile behind the tower area. Radtke stated it is the aesthetics of seeing the tower, and would somebody want to buy a property with a cell tower near it. Radtke stated he was planning within the next six years to see if he could get his property zoned to put a homestead on the property, and has already looked into the costs for electric service and a driveway. Radtke added he will probably have to pack up. Szachnit stated he cannot predict what home properties will be valued at.

There was a brief discussion on cell reception near the tower, and Radtke stated he is not worried about reception. He currently has Verizon and he gets very good reception. He is not concerned with dropping calls, but the tower is going to be across the street from him. Bachhuber asked Radtke where would he put the tower, and Radtke answered they should ask some of the nearby farmers who need the extra income. There is a farmstead north of him with a silo. He is sure there are other places they can take a look at.

Jazdzewski asked Stewart what the target purpose was, and looking at the roads, Highway 161 is the closest road. Radtke stated most cell towers are running down the highway. Jazdzewski stated there was a purpose for putting the tower in this area, and asked if there is a scientific or engineering purpose to choose this general area. Stewart stated the requirement he has from Verizon is that he contact at least three other surrounding

landowners to get a general consensus where they would allow a tower. He then makes sure it matches zoning, and then submits the information to Verizon. Verizon then tells him which property will best fit their RF signal (map provided in packet). Klessig asked which landowners agreed with him on the placement of the tower, and Stewart stated he would have to check because he is currently working on over 28 sites now and he does not remember which ones. Stewart stated he believes one of them was a property owner adjacent to this land, but he cannot remember the name; he believes it is a trust. Radtke stated he is a trust, and Stewart could have called him. Radtke stated he has contacted everyone in the area and nobody knew anything about the tower, unless whoever was contacted in a certain area. Stewart stated he is required to contact at least three people in the area. He can certainly supply the information to Radtke, but he did not bring the information with him tonight. Klessig asked if the people contacted have to give a positive response, and Stewart answered yes, and they have to have a general consensus on roughly where the tower will be located so Stewart can verify the zoning requirements.

Szachnit swore in David Glodowski, surrounding property owner. Glodowski stated if he heard correctly, Arlene Koehl was contacted by Stewart. Glodowski stated that must be incorrect because someone in attendance earlier hunts on her land and he was here to speak against it. Szachnit asked why he did not wait to speak, and Glodowski responded some people had to leave at 5:00. Glodowski stated his friend did not get a letter because he only hunts the land, but he wanted to speak against it. Glodowski stated his friend spoke to the owner, Arlene Koehl, but he didn't think she heard much about it, and certainly didn't have the impression that she wanted the tower either. Szachnit stated she should have been notified, and Pelky responded landowners within 300' of the site were notified. Glodowski stated he is here to speak against the tower; he does not want the tower here. He is concerned about property values, believes it will be an eyesore, and it does not look like something they would want in their area. He realizes he is only four miles from Amherst, but wants to keep it looking country in his area. A 260' tower would not do that. Glodowski referenced a tower near the annex building and stated it was probably under 200' and stated he wouldn't want to look at that driving to and from work every day.

Gary Oliver, surrounding property owner, was sworn in by Szachnit. Oliver stated he has lived in that area for almost 30 years, and it is a pristine area. He does not understand slicing into trees; he feels this is what they are trying to keep out there, not take down. Oliver asked if BOA members lived in the country, would they want one of those outside their house. Oliver stated he is just down the road from the tower location, and he knows every tower over 200' has to have a light on it. He and his wife do not want a spotlight in that area; it will take away from what they moved out there for. Oliver stated he and his wife have no type of problem with cell reception in their area. North of them in the Town of New Hope, they have problems with dropped calls. Oliver stated Stewart said Verizon needed this tower; but he disagrees, stating they prefer the area. Oliver stated this tower is based on a coverage need, but they have coverage in their area, and asked why they would want a tower in the area. Oliver added because of an agreement with Element, Verizon will not be allowed in the area for another two years. He feels they are just setting themselves up for when they are allowed to come into the area. Oliver stated the main issue is what it is going to do to their area. Typically, towers are found by highways and near farmland; why would they put it in this area where it is this far away. Oliver referenced the pictures distributed of what the tower will look like, and does not feel they are a true representation. Oliver referenced a tower located near the Annex building, stating it is approximately 180', and the proposed tower will be an additional 70' or 80' taller. He believes this is a monstrosity in a pristine area, which is why people live out there. Oliver believes the value of property will decrease, but the main issue is he feels the tower will be an eyesore. He does not believe it is needed in this area, but more to the north, across Highway 161. Oliver added it is barren close to Sunset Lake, on County Road M, and asked why they wouldn't put a tower in that area. Oliver stated this is not because they need it; it is because the cell companies prefer it. Oliver stated he owns land south of the area, and this is to keep the area country.

Bachhuber asked Oliver if he attended the Town of Amherst Plan Commission meeting, and Oliver responded he did not know anything about it. Had he known, he would have attended. Oliver asked if BOA members were in this situation, and if they had known about the meeting, would they have attended the meeting? He believes they would have, and added all of those from the area would have attended.

Szachnit stated it appears Oliver has coverage and does not get dropped calls, and asked if Oliver is getting picked up as a roamer by Element since Verizon is not in the area. Oliver answered he is not able to tell that. Szachnit stated he believes Verizon wants to get into these areas so they can provide 4G services, and asked Stewart to explain. Oliver stated Verizon cannot come into the area for the next couple years.

Stewart covered the following points:

- Bird migration study is part of the federal requirement, and towers cannot be placed within a migratory bird path. This issue has been addressed.
- Part of the FCC license requires the tower to maintain a certain level of radiation, or less, in the signal. This is well below the standard.
- The Town of Amherst meetings were, to the best of his knowledge, posted and reported in the newspaper. It would be his understanding everything was done and people were notified of both meetings.
- Regarding property value; it has never been shown that communication towers affect property value. Stewart explained that because of the property mortgage one of the last towers erected in the Town of Dewey, the bank required an appraisal be done on the property to ensure there was no property value loss. It was determined in the appraisal there was no property value lost, based on the fact there is a communications tower on the property.
- Regarding the Element Mobile Issue; Stewart is unsure why Oliver made these statements. They are licensed in this area, and that is why they are moving very fast and forward to get all the towers up and running. They are selling service in this area as we speak, and they will be working on porting local phone numbers within the next couple of months.

Bachhuber noted surrounding property owners stated this is a preference, and not just a need. Stewart replied that would be incorrect. Verizon's RF engineers are the ones that say where this tower needs to go. Stewart has a little play in terms of a quarter mile or so, but has only found one landowner that will host a tower, adding he has located the tower where it can be put.

Pelky stated because of the height of the tower, it will need to be lit. Pelky asked if it is possible to have a shorter tower that would not have to be lit. Stewart replied the FAA requires any tower over 200' be lit, and added the radiation pattern propagation map is based on a 235' elevation. The height is needed to get the propagation pattern and get the signal out to the Town of Amherst community. If they used a shorter tower, they would have to use two towers. Szachnit stated a camouflage tower is out of the question in this area. Jazdzewski asked if lighting is red at night and high intensity white from May 1 to September 30th, and Stewart answered yes, adding this helps ensure the safety of the aerial spraying community.

Szachnit swore in Diane Kuklinski. Kuklinski showed BOA members where her property is located, and stated the house she owns is very old, and purchased it about four years ago. Their goal was to live in the country and have a nice view. She did not buy her property so she could look at an industrial property. Kuklinski stated the pictures shown are very far away, and when she walks out of her house and sits on her porch, this is what she will see. Kuklinski stated property values may or not be affected, but if she does not want to live there, who will buy that view. Her main concern is she has to live there and see that every day. There may be trees, but the tower is twice as tall, and there will be a light on top of the tower. Another concern for Kuklinski is that she was not notified about this. She heard about it from a neighbor about a week ago, and has not had a lot of time to do research. Kuklinski stated it sounds like the tower will be a gigantic lightning rod not very far from her house, and asked if they are constantly struck by lightning. Szachnit asked if Kuklinski was legally required to be notified, and Pelky stated only if she was within 300' of the tower property. Kuklinski stated she is not blaming anyone at this meeting, but she knew nothing about this tower request. Kuklinski asked about lightning striking, and Szachnit stated it is probably a lightning rod. Stewart stated the tower is extremely well grounded. Szachnit stated it is made to attract lightning, and would in a way protect Kuklinski's house from lightning strikes. Kuklinski added the towers do put off radiation and noise, and understands that most people cannot detect that sort of thing. Her concern is this is a very rural area with a lot of wildlife, she has animals, and there are farm animals nearby. Kuklinski stated this noise may or may not be noticed by humans, and asked if animals will detect the noise. Stewart responded he is not aware of this noise issue at all. Kuklinski stated she hasn't had a lot of time to do research, but she has seen reports that people can hear humming from the tower. Szachnit stated people can hear humming from transmission lines also. Kuklinski stated she lives in the country so she does not have to hear that city noise.

Radtke stated they always hear what they need, what they want to do, and what is going to help them the best; it goes back to the property value. Radtke spoke about sound decibels and asked if any research was done on how it affects dogs, horses, or cattle. Radtke asked Stewart if he had paperwork from testing on this site of migratory bird routes, and Stewart answered he can supply that. Radtke stated his son-in-law is a sub-contractor to cell towers and does a lot of this work, and what is happening now is 4G; next will be 5G or 6G.

Radtke stated they need to get closer with the towers because of the information they are sending out, and asked what is going to happen after that. They will have to go within a mile of each other. Another concern of Radtke is what if a tree hits the fence of the building, and what is to stop someone or a kid from getting in there. Radtke asked who they contact if something happens, because a lot of times they go around in circles with contractors to see who they talk to about an issue like that. Radtke again stated this is property they have owned for 150 years, and with technology the way it is, they may not have cell towers in five years. Radtke stated for right now, he does not want the tower there, mainly because it will hurt his pocket book.

Soik asked questions regarding the one mile radius for towers that is in the Ordinance, asked about the way the Federal law was written, and that it is not an option for municipalities to be more strict than Federal regulations. Pelky stated there is Federal language that local municipalities cannot prohibit towers; however they may regulate towers. Pelky stated it is based on the merit of the application, and if the Board feels comfortable with it. Klessig stated they have no legal basis to turn down a tower, unless the ordinance is changed. Klessig stated they can put conditions on requests, but they have no basis on which to turn a request down.

Glodowski stated they could choose to not have that location; they would have to find somewhere else to put it. Glodowski stated he did research and he believes Verizon will be renting space on the tower; the tower company is the one holding the lease with the landowner. Glodowski stated his research showed in some cases, the lease is payable to the landowner and the town. Glodowski stated he spoke with the Town Chairman and the Town Chairman saw nothing legally wrong with the lease; even though nobody was there to reject it. Glodowski stated he does not know if the lease is payable to the landowner and the Town of Amherst, but if it is, it would be difficult for the Town of Amherst to turn it down. Stewart stated the Board has a copy of the ground lease, and added there is no township involved. Glodowski stated with no opposition at the town level, it passed quite easily. Szachnit stated from what he has heard at this meeting, he believes the Town of Amherst posted a legal notice in the paper that stated anyone with concerns could go to the Town of Amherst meeting.

Kuklinski stated she has done research regarding radiation and research states there is no proof that this causes cancer. Kuklinski stated there is also no proof that the tower won't cause things they're not aware of today. Kuklinski compared cigarette smoking to this, and added 50 years from now there could be issues from cell phones. She does not want to live that close to something that may cause an issue.

Szachnit stated there are regulations that state no home can be built within 500' of a tower. Jazdzewski clarified a tower cannot be built within 500' of a residence; however, once a cell tower is constructed, a residence can be built within normal setbacks. Szachnit stated the government has stated that if you are not within 500', you will not have adverse effects. Szachnit stated they have to go by the law as it is written today.

Radtke stated in other words, they have wasted their time today, and they have no say in this. Szachnit stated he did not say that; he is saying the law as it stands today says studies have shown that there are no adverse effects if your residence is outside of this 500' limit. Radtke stated it appears they don't have a voice as to where the tower is located; and it seems the Board is saying Verizon can locate it where they want and the Government says it is okay.

Pelky read a fact sheet that summarized the 1996 Telecommunication Act gives local zoning officials authority over the placement of personal wireless facilities. It does prohibit the denial of facility siting based on RF emissions, if the licensee has complied with FCC regulations concerning RF emissions. It also requires that denials be based on a reason approach and prohibits discrimination and outright bans on construction, placement, and modification of personal wireless facilities. Soik asked if this act covers BOA or the Planning and Zoning Committee, which is the governing committee for the Portage County Planning and Zoning Department. Pelky stated it covers zoning authorities. Pelky stated BOA would need reasons as to why they are denying or approving the tower.

Glodowski stated BOA says they are unable to deny the request because of FCC regulations, but they do have a lot of other reasons to deny, such as property value and aesthetics. Bachhuber stated she understands this, she is only making a procedural comment; they should close testimony and go into discussion and decision making.

Kuklinski stated she invited the Board to go onto her property to see what the tower would look like, but she does not believe anyone showed up. Soik stated they went back around to the Glodowski property and near her property.

Szachnit closed the testimony portion of the hearing.

Szachnit read the following into the record:

- A letter from the Town of Amherst stating the Town Board approved the request at their meeting on May 9, 2013.

Bachhuber asked BOA if they postponed a decision and asked Stewart to present them with further documentation that he has talked with surrounding landowners about this being the only site for the tower, would that make a difference. Jazdzewski stated surrounding landowners are in the same situation. The issue is not with the exact location, but that the tower is in the neighborhood and they can see it. The tower locations would all probably be within a half mile, and he does not believe that will change the opinion of the audience, as to locating the tower or not. Bachhuber stated if the tower was on Arlene Koehl's property, they would still have the same problems and objections. If the tower was on Ostrowski's property, they would still have the same problem. Moving the tower on the same property would not solve any objections.

Jazdzewski stated another issue addressed was helping out a farmer by putting it on their silo, and added it would not be as obvious because he has seen towers on silos. Jazdzewski added it can be done; however, there was also an argument about the noise and the effect it has on animals. That got rid of the validity of that argument; but he is not discrediting anyone for it. Jazdzewski stated he has three towers he can see from his yard, and he sympathizes. Jazdzewski stated postponing a decision is not going to make it go away.

Klessig agrees with almost everything that has been said, and added they have gone through this issue before. Klessig stated the problem is they have an ordinance that says one mile, and he has no way to vote against the tower. Soik stated they cannot change the ordinance.

Bachhuber stated she lives in the Town of Amherst, near a tower, has been through this same situation, and barely notices the tower anymore. Bachhuber added she has not noticed any problem with animals, they do not hear a humming noise, the lights are there, but it is not as terrible as they imagined it to be. Bachhuber stated as far as she knows her property values have not suffered; she would be complaining if they had. Bachhuber stated she believes towers are an invasion on the landscape and way of life; however, they must have substantial reasons as a Board to turn something down.

Motion by Jazdzewski to approve the special exception request as submitted, to include all eight conditions included in the staff memo (listed below):

1. Obtain a Portage County Zoning Permit.
2. Tower designed to accommodate 3 users.
3. Submit an annual information report to the Planning and Zoning Department to satisfy section 7.3.9(D) of the Portage County Wireless Telecommunication Facility Ordinance.
4. A medium-intensity strobe light must be installed at, or near the top of the tower, and shall operate during the daytime, from May 1 through September 30 each year.
5. Contact aerial applicators about tower position and height prior to construction.
6. A letter from the FAA indicating the tower will be equipped with proper lighting shall be on file with the Portage County Planning and Zoning Department before issuance of the Zoning Permit.
7. An engineered tower specification designating the halfway collapse point must be on file with the Portage County Planning and Zoning Department before issuance of the Zoning Permit.
8. A copy of the lease agreement must be on file with the Portage County Planning and Zoning Office before issuance of the Zoning Permit.

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

There was a brief discussion amongst Board and audience members regarding possibly moving the tower back, to be a good neighbor.

Approval of Minutes

Stewart noted a spelling error was pointed out, and that has been corrected.

Jazdzewski moved to approve the minutes of May 6, 2013, Bachhuber seconded.

Jazdzewski stated on page 6, condition number 4, he does not remember saying that verbatim. Jazdzewski stated he spoke with Stewart, who listened to the recording again, and it came out as 15 hours per series. Jazdzewski stated he looked through all the material provided, and it calls for 13 series, which would be 13 races, and there was a possibility of there being 2 special ones. Jazdzewski stated he believes this is what he intended to say. The actual decision that was sent out says what it needs to say. This was Jazdzewski's only concern. Stewart stated she will clarify this in the minutes for this meeting.

Bachhuber asked Jazdzewski to explain what he meant, and Jazdzewski stated further in the minutes, he reiterated that in the packet provided, pages 11 through 15 be included in the conditions, because this is information presented to BOA and this is what made it feasible for everyone to be where they were when they voted. This gave legitimacy to the Amherst Town Board and the Fair Board to come back at Jalopy Productions, so this is all included legally. Jazdzewski stated the minutes do not totally represent that.

Bachhuber stated she is unsure if this is the final packet agreed on. Jazdzewski stated this is what she agreed upon in the motion. Bachhuber stated she meant she didn't know if the Fair Board and Jalopy Productions came to a final agreement. Jazdzewski stated this is what their conditions were.

Motion passed 4-0 by roll call vote; Klessig abstained.

Correspondence/Updates

Szachnit stated Bachhuber had a concern about getting a discussion item on the July agenda regarding policies and procedures. Bachhuber stated she asked J. Blair Ward and Jeff Schuler to come up with some wording that would encompass all the conflicts of interest that might exist in other Portage County ordinances or State law, and they could then look at it to possibly amend the BOA bylaws. Szachnit stated, for the record, Bachhuber is requesting this item be on the next agenda.

Klessig made a motion that BOA send a formal request to the Planning and Zoning Committee to review the sighting of cell towers, the ordinance, because it is very difficult for BOA to administer.

Szachnit stated they are to administer to the letter of the law, and they are within the law. Klessig stated the law needs to be changed. Szachnit stated someone would have to change the law, and Klessig stated his motion is that BOA request they review and change that ordinance. Soik stated he does not believe BOA can do this; it is up to citizens to do that. Soik agrees with Klessig, but does not believe it is their place. Klessig asked if they can communicate saying they have given them something that BOA cannot administer.

Szachnit stated they have administered it. Pelky stated anytime they have comments on any of the ordinances, they should put it in writing and send it to the office; ordinances are updated all the time. Klessig wants it done formally, and Bachhuber agreed; it is perfectly appropriate for BOA to say this is a law that needs to be reviewed. Szachnit asked if it should be said as a Board, or as private citizens, and Bachhuber replied as a Board. Bachhuber added it is a difficult ordinance for them to administer the way it is written. Szachnit stated today's opposition came from people who had mostly an aesthetic opposition to the tower. There was nothing saying they are putting up a tower within 500 feet of their house. There is no law saying that cannot look at the tower. Szachnit stated as Bachhuber had mentioned, she opposed a tower, but eventually got used to it.

Jazdzewski stated it is unfortunate, and a gentleman mentioned putting the tower on a farmer's silo, but then it would mess up the cattle. Jazdzewski added a person arguing against it would not have argued against it if they were the one getting the contract for the 55 year lease.

Bachhuber stated again it is appropriate for BOA to ask for a full review of a law, or to have it looked at. BOA is having some difficulty with the law, and if they want to come and talk about it, they can. Bachhuber believes they need, in some formal manner, to let them know this is a difficult law for them.

Jazdzewski stated if the purpose is a rubber stamp because it is a special exception, and they cannot do anything about it, other than add conditions, then there is no need.

Soik does not agree, and stated it is not Planning and Zoning Committee's job to make BOA's job easier. Sometimes they have to do tough things.

Klessig stated unless they are given something stronger, they wouldn't have to do this at all.

There was discussion about what other conditions, if any, could have been put on this tower request, and what good it would have done.

Motion to send a formal request to have the ordinance reviewed seconded by Bachhuber. More discussion on how the ordinance could be changed, and are lawmakers fully aware of how this ordinance affects BOA's decisions.

Bachhuber requested this motion be put in the form of a letter, requesting review of the ordinance. Pelky stated they could forward comments as to what they are looking for. Pelky explained they need to specify what it is they want reviewed or changed.

More discussion about how difficult the ordinance is to work with and that it needs to be reviewed, or maybe changed so tower requests are no longer special exceptions. Additional conversation regarding citizens saying they were not properly notified of this tower; Soik stated they need to be engaged earlier, and it is not BOA's fault they feel they did not get notice from the Town of Amherst.

Motion to send formal request passed 3-2 by roll call vote, with Jazdzewski and Soik voting nay.

Next meeting tentatively set for July 22, 2013.

Adjournment

Motion by Jazdzewski, second by Klessig to adjourn. Meeting adjourned by Szachnit at 6:50 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Lowell Klessig, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
JULY 22, 2013

Call to Order

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

Klessig led the Pledge.

Roll Call

Members present included Edward Szachnit, Marj Bachhuber, John Jazdzewski, Lowell Klessig, and William Bernhagen (Alternate). Member absent was Scott Soik. Staff present included Jeff Schuler, Chris Mrdutt, Tracy Pelky and Gayle Stewart, Planning and Zoning Department.

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

David and Diane Kerkman, Owners (P13-09)

The David and Diane Kerkman special exception request from provisions of the Portage County Zoning Ordinance to exceed 2,800 square feet of total accessory building space in the R1 Rural and Urban Fringe Residence Zoning District, Town of Plover, was opened by Szachnit, who read the public hearing request.

Mrdutt stated this is a unique scenario as the petitioner is looking to also rebuild and add a larger attached garage in the future. The packet contains information on the current request and future home plans; therefore, BOA needs to discuss the future building and specify setting a specific amount of allowable square footage.

Szachnit swore in David Kerkman and asked him to explain his request. Kerkman stated if he were to go with just the one pole building, he would be approximately 100 square feet over the 2,800 limit. He wants to be 100% transparent as to what their future plans are. Kerkman stated they have met with the Town of Plover Board, who approved their request for 3,928 square feet accessory building space. The amount of square footage requested includes a larger garage than currently there, and behind that garage they would locate a shop for personal woodworking and crafting. Kerkman stated when he met with staff, they said this would count toward storage, and he wanted to make sure he did not short himself for space when building the house. The main reason for wanting the storage is to be able to store a number of snowmobiles, jet skis, and a pontoon boat. They currently pay to have these items stored, and do not wish pay for this any longer.

Klessig stated the original petition was for a storage building only, and asked if Kerkman is amending the petition to ask for additional space relating to the new home. Kerkman stated his goal is to have all the structures in the request, and have a time limit established for how long they have to complete the house.

Mrdutt stated the petition was properly posted to exceed 2,800 square feet. With either scenario, Kerkman is asking to exceed that amount. Therefore, the request does not need to be revised or amended. Mrdutt stated they now use language with a request like this saying it is to exceed square footage, without stating a specific amount. Szachnit stated the petition is not to exceed 3,928 square feet.

Bachhuber stated when they were on the property visit, Kerkman mentioned they are using the current structure as a cottage, and asked when they build the new home, will that be an existing home or cottage, or will they tear it down? Kerkman replied they are either going to tear the entire structure down and rebuild it completely, or remodel the current structure. Bachhuber stated they cannot have two structures on the property, or they would need a lot split. Kerkman stated they are going to either rebuild or remodel, but there will only be one house. They are not living in the structure at this time; they are using it as a cottage. The eventual goal is to have this as their retirement home.

Bachhuber asked Kerkman the timeframe for building their home, and Kerkman stated anywhere from three to five years, but they are open with that number. If BOA gives them a limit, they will make their decision based on that.

Szachnit stated it did not appear to him that the structure is 500 feet from the neighbor's building. Mrdutt stated those measurements were from the aerial photos, and if they look at the County provided map, they will see the distance from the building to the neighboring house is significant. Mrdutt added in R1 Zoning, there is not a specific setback that needs to be met.

There being no further questions from BOA, Szachnit excused Kerkman. Szachnit noted there were no other members of the public in attendance.

Szachnit read the following into the record:

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

Szachnit closed the testimony portion of the hearing and read the special exception standards.

Bachhuber stated the letter from the Town of Plover read the request is for 3,928 square feet total accessory building space; however, in Mrdutt's letter to the BOA, he suggested they set 4,000 square feet total accessory building space. Bachhuber asked Mrdutt how he came to this number, and Mrdutt answered his rationale was picking a round number that Kerkman should not exceed. Szachnit stated if BOA agrees with this, and Kerkman does not exceed that number, he is okay.

Jazdzewski asked if the minimum lot size for a residence is 2 acres, and Mrdutt answered yes, in R1 Zoning. Jazdzewski asked if they can build an accessory building on a lot that does not have a residence, and Mrdutt answered not without BOA approval, which would be a use variance. Jazdzewski stated he asked this to negate the fact that they could split the property off and build a shed on one lot and a house on another.

Jazdzewski stated with a special exception for a building in residential zoning, they discuss using complementary or matching colors, and suggested BOA discuss this further. Jazdzewski added saying complementary or even earth tone can be open ended, and feels BOA should discuss this. Kerkman stated the actual building will be a beige color, and the roof will be a bronze color. Szachnit asked if this will be complementary to the house they are planning to build, and Kerkman answered yes. It is complementary to the house and other building.

Szachnit asked to clarify if Kerkman has to live in the house for it to be considered a residence, and Mrdutt answered no; the use is residential.

Klessig asked when the storage shed is built, can the property be split so there is a second lot which may or may not be used for residential purposes? Mrdutt stated it would be interesting to see if they could meet the lot dimensions for splitting the property. Pelky stated in this case, they would not allow the property to be split in a north south fashion, if the detached garage would be the only structure. This would require BOA approval before approval of a lot split. A garage is not allowed as a primary structure in residential zoning.

Klessig asked if there was no new home construction involved in any way, would that change the petition, and why is BOA concerned with the new home construction? Mrdutt replied because it changes the prospective total amount of accessory building space. If this project was not part of this request, he would look at asking for a cap of 3,000 square feet.

Kerkman stated he wanted to be very transparent. This is going to be his retirement home, the last house he and his wife will ever live in, and he wants to build the house the way they want. If he was more limited in allowable space, he would do something different with the pole building. The house is more important to him than the pole building.

Jazdzewski stated his concern is that BOA does not crowd the time limit to build the home. The timeframe should not matter; the intent is there. What if something was to come up and they are six months past their window; would they have to come back before BOA for an extension? Mrdutt stated this is up to BOA and conditions they establish. Jazdzewski asked Kerkman if he is confident with a three to five year building window, and Kerkman answered yes.

Bachhuber asked if this approval runs with the land, and Pelky answered yes. Bachhuber asked if unforeseen circumstances happen and the property is sold before the home is built, would the next owner have the right to do this also, and Mrdutt answered yes; up to the amount specified by BOA.

There being no further discussion, Szachnit closed discussion.

Motion by Jazdzewski to approve the petition request as stated, including the following conditions:

1. Obtain a Portage County Zoning Permit.
2. Leave trees as a buffer around the detached accessory building, to the greatest extent possible.
3. Set 4,000 square feet of total accessory building space to be utilized on the above property, based on this petition.
4. The timeframe for new home construction is five years.
5. Re-vegetation Plan on file with Planning and Zoning Department prior to issuance of a Zoning Permit, if Planning and Zoning Staff determine one is necessary.
6. The building is to have complementary earth tone colors for the exterior.

Motion to approve seconded by Bachhuber.

Klessig stated there may be circumstances in the situation of the owners, or in selling the property, where the timeframe would be a problem. Klessig added he does not believe it makes a difference in terms of the public interest in this property whether there is a timeframe, as there is already a cabin on the property. Klessig does not see a big difference between a new home being on the property and the existing use of the property, relative to this petition.

Jazdzewski stated the petitioners asked for three to five years, and they were given five. This is their plan and their property. If the property is to be sold, the window is at five years, and things can change. At that time, the issue could be revisited.

Motion to approve passed unanimously by roll call vote.

Kerkman asked Mrdutt what hydric soils are, and Mrdutt explained it is a type of wetland soil.

Approval of Minutes

Klessig moved to approve the minutes of June 17, 2013, Bernhagen seconded. Motion to approve passed by voice vote.

Discussion/Possible Action: Changes to Portage County Board of Adjustment Rules and Bylaws Regarding Section 4, Conflicts of Interest (VERBATIM)

Schuler: When we had the ah, Amherst Fairgrounds discussion

Szachnit: Yea.

Schuler: There was a question at that time ah, that is described in the memo and it regarded whether or not there was any instance of a conflict of interest possibility for an item. And so the way that that pursued figuring that out became a question of whether or not that was the most appropriate way to ah, research the information and pursue it. And so the item today is to figure out should there be a more specific way in the bylaws to handle such a situation. As pointed out in the memo, the bylaws currently kind of describe in general terms what a conflict of interest is, but there's ah, nothing in here to really figure out how to go about if there is ah, an idea that there might be that. And again, as pointed out in the memo, the job of staff is to make sure that the Board operates in a, a way that is 100% transparent. And um, if there are any issues, it's our job to make sure that we sort of get to the bottom of them to make sure that there, nothing happens that ah, prevents the Board from properly reviewing and acting on a petition that comes before them. So, we are here with some suggestions from Deputy Corp Counsel Ward on what could perhaps get at the issue and an item for you folks to discuss is to whether or not that is the case.

Jazdzewski: Question.

Schuler: Go ahead.

Jazdzewski: Ah, Mr. Chairman.

Szachnit: Yes.

Jazdzewski: And I guess this will be best to address to Mr. Ward. Ah, the Board of Adjustment is a County Board committee, statutory County Board Committee. I guess my question would be the relevance of, seeing that we serve as members of this committee to the County Board, are we in the position to, to amend or change or make up new bylaws, or is that something the County Board has to do, perhaps at our request? But do the actual standing members have the right to change the bylaws or constitution of our committee?

Ward: Yes. You're, you're not a, a Board or Committee of the Portage County Board of Supervisors like the ah, for example, the Planning and Zoning Committee owes its existence to the Portage County of Board of Supervisors, and because that is the body that created the Planning and Zoning Committee. Now this Board was not created by the Board of Supervisors. It was created by the State Legislature. The State Legislature has given this body the authority to enact bylaws.

Jazdzewski: I just wanted to make sure we weren't barking up a tree that didn't have something in it.

Ward: Good question.

Bachhuber: Okay.

Szachnit: Okay.

Bachhuber: Um

Jazdzewski: I guess going with that, I, I read what you provided, and while I wasn't opposed to what we had before, what you provided definitely makes sense to me. I have no issue with it.

Bachhuber: I do. Um

Szachnit: Go ahead Marj.

Bachhuber: I'm trying to find this now. There are two places conflicts of interest ah, that we look at this and um, the current ah, bylaw says, a disqualifying, a disqualifying conflict of interest shall be deemed to exist when the Board member is the applicant or spouse of the applicant. Not, not of the member of the Board of Adjustment. Or is related to the applicant within the third degree of consanguinity or is the husband or wife of someone so related. So, I call that to your attention, because that was something that didn't exist at all. Um, and then again, later in the um, bylaws. Ah, page eight people, page eight if you have them. You don't have them? How can we discuss something you don't have?

Unknown: I might have them.

Bachhuber: Section five, page 8. This is section five of article seven, Decision of the Board. And I will read it to you if you do not have yours with you. Disqualification motions. A member may disqualify himself/herself from voting whenever the member has a personal or monetary interest in the property concerning the case, the member will be directly affected by the decision of the Board of Adjustment, or the member has or believes that he or she has a conflict of interest under State Statutes. A member may also disqualify himself/herself from voting whenever the applicant or the applicant's agent has sought to influence the vote of the member on his or her case outside the public hearing. And I take that to mean, for instance, if the Board of Adjustment member were offered a favor in return for their vote. Another way to say bribe I guess. All decisions of the Board of Adjustment shall be made at a public meeting by motion seconded and passed and so on and so forth. So, when we look here at this conflicts of interest, I'm wondering which part of the bylaws are we looking at and then I will, that's one question. Because I saw two sections of the bylaws. The second thing is, the wording of the fair and impartial decision making that is suggested to us, members, now listen very carefully people. Members of the Board of Adjustment should not express an opinion or appear to have formed a view on a matter which they may be required on, required to vote on at a future time. Stop right there. Because if you had that wording in there, it would mean that we have to give up our first amendment rights, to never have a right to speak on anything in Portage County. Because there are many things that happen that we have no idea may come to the Board of Adjustment. And so with that wording in mind, it takes away our complete first amendment rights to have an opinion or view point on anything. Even if we don't know that it's going to come before the Board of Adjustment. Because a lot of things can come here that we don't expect. And I will use the fairgrounds as an example. At the time it was first brought up, no one had an idea that this would end up with the Board of Adjustment. So, I object to that wording on that, on that basis. That we cannot give up our first amendment rights just because we're members of this Board.

Ward: I'm not suggesting the Board should adopt this language. I just wanted to get something in front of the Board to talk about. So, you don't have to convince me that I should take it out.

Bachhuber: Okay.

Ward: This is, I did this just to get the conversation going so it can easily be stricken.

Bachhuber: Now, the rest of it I do agree with, the Board of Adjustment members must have an open mind about the issues being debated, ask questions and hear all the facts before decisions made by the Board of Adjustment. Let me say this about that first part that I disagreed with. If you were to adopt that, it would mean that John has to resign immediately as a planning commission member. Do you know why?

Jazdzewski: No.

Bachhuber: It says, you should not express an opinion or appear to have formed a view in a matter which may be, you may be required on to vote at a future time. Now in the past

Jazdzewski: That's not what that says.

Bachhuber: That you can't have an opinion on anything. Remember the time that, that you came with something from your township. You presented it to us. You had presented the information at, at your Town Board, or at your Planning Commission, and then you said I can vote on it here because I didn't vote on it there. Okay. But he had an opinion.

Jazdzewski: I'd like to correct you on that. I didn't express an opinion. I presented the information that happened at the Town Plan Commission, as if I was reading a statement.

Bachhuber: Okay.

Jazdzewski: That our chairman read from the Department of Natural Resources.

Bachhuber: Alright.

Jazdzewski: Secondly, fair and impartial decision making does not say you're gonna give up your first amendment rights. It, what it does say is that if you are, feel justified in debating an issue, that at a later time comes before the Board of Adjustments, at that time, because you have previously formed an opinion, you should ah, not be voting. It doesn't say you can't express your opinion. The purpose of the Board is, is, we're acting as sitting judges basically, to a, to decisions that are being made.

Bachhuber: Well, um, I'm, I'm gonna use another

Jazdzewski: That's, that's my, my view of it.

Bachhuber: I'm going to use another example for you, ah, because I recently overheard a speech by Sotomayor, Supreme Court Justice, and she was expressing all kinds of opinions on things may come before the Supreme Court. And she, and in fact at one point, a case came before the Supreme Court this year, and she was asked if she would recuse herself because she had expressed an opinion on it earlier. She said no, I will not recuse myself.

Ward: As the members of the Board of Adjustment have that right in a similar situation.

Bachhuber: Okay. So, the, this wording though says that I should not have an opinion.

Szachnit: So what you're saying is strike it.

Bachhuber: Well, I'm not happy with that language.

Klessig: I think that's, that's a higher bar than I have, through my wife, ah, social friendships with um, with past judges and when, and when they were current judges of this county. And they certainly talked about a wide range of issues that affect this county and other places in this, on this continent and world. We can't possibly be held to not give opinions on something that we would like to talk about because we are worried that sometime in the future we are going to have to deal with this, or to recuse our self because we had locally talked about it at some point. It's an impossible bar, if the judges in this county have, I don't think are, held to.

Bachhuber: Or anywhere else. Including the Supreme Court.

Jazdzewski: Well, then maybe, maybe we shouldn't be looking at changing our rules and bylaws then. We should be satisfied with what they have.

Szachnit: How would you propose to change it, you know?

Bachhuber: I'm not

Szachnit: Or do you have a proposal?

Bachhuber: I'm not an attorney. That's why I asked

Szachnit: Well, yea, I realize, but you must have some, since you're

Bachhuber: The Corporate Counsel to please come up with some wording, ah

Szachnit: Since you're privileged to have your opinion, you know, how would you want to change it, you know, as to influence Mr. Ward.

Bachhuber: Well, I certainly wouldn't adopt that language. And, and I don't know what would be um, a, a legal language to put in there. Um, I remember when I talked to you originally about this, you said all conflicts of interest that exist with our bylaws, or with any other laws of Portage County and other, other committees, or bodies, County Board, or with State Statutes. Now then, does

this wording that you proposed to us meet all of those standards? Have you, are those the same conflicts of interest that exist in other County?

Ward: No. You don't, you don't have anything in, similar to committees for example. We have the County Code of Ordinances, which addresses conflicts of interest, but the wording is different than what, this is more like section four, closer to the existing ah, conflicts of interest, like in the bylaws. So what I propose would be something more, giving more guidance to the Board of Adjustment than is currently present in the Portage County Code of Ordinances or State Statutes.

Bachhuber: Alright, now I will say this. I never had a problem with the conflict of interest bylaw that existed, if it had just been followed.

Szachnit: So we have no proposal to change it then, you know. Marj? Other than to follow the existing ah, bylaws.

Bachhuber: The bylaws must be followed. We cannot have a knee jerk reaction to something that happens. The bylaws have to be followed. They have to be checked.

Szachnit: It sounds like not a, a law problem

Bachhuber: And I, yes, and I

Szachnit: It sounds like an enforcement problem.

Bachhuber: It's an, it's, it's, it's a check your bylaws people problem.

Szachnit: Well, well, it's an enforcement problem.

Bachhuber: You know, that's the first thing that should be done when any issue comes up. How does this, how, how are the bylaws? What does it state in our bylaws? And um, and, and there are other parts in here that I would like to discuss in the future, because they're not being followed.

Bernhagen: I think that's more of a legal standpoint than what we're able to do here.

Bachhuber: We can discuss it. It's here.

Bernhagen: Just to sit and argue about it don't make any sense.

Klessig: Mr. Chairman, I wasn't involved in that particular issue. I wasn't there for that meeting as well. Um, my reaction to what I read, so I'm completely outside of this decision making process for that session. I thought the response was overkill. That's just a one word res, ah, response to that. The, the conflict of interest, the key thing conflict of interest is application, and are you influencing the outcome of the application. Ah, and beyond that, there are other issues relating to being recused, but that's really the center point here. And I guess I don't see any changes to that part of the, of the conflict of interest that I see.

Szachnit: Well again, I have one comment on this. And it seems as though, you know, even when you go into a court of law, the people who are selected for the jurors, there might be something that appears to be a conflict, but they're usually asked a question. Could you be impartial in your decision making, regardless of what your opinions or ah, ah, you know, your interests or opinions are. And that's what they're saying. So, and I think that's what we're up against here, regarding. We all have opinions, we all ah, ah, view things differently, our views or opinions, you know. But when we're sitting on this Board here, we have to put those aside and look at whatever ordinances are, and as we're making a decision on anybody's case, you know.

Klessig: And, and, and when there are, when there's a pattern of problems, then we should address it.

Szachnit: Yea.

Klessig: But I don't think any judicial or legislative situation ah, one case is appropriate to change a, a standing set of procedures.

Szachnit: Well, I don't know. So far I don't see a need to change anything then, you know. Other than, like you say interpretation or enforcement of these.

Bachhuber: That's right.

Ward: This is just guidance to proposed language. And maybe, maybe we could ah, instead of the Board making any changes to the bylaws, maybe issue a directive to the Planning and Zoning, direct the Department, ah, to the Planning and Zoning Director on how to handle situations with, for example, the last portion of the proposed language deals with situations if there is a complaint by a member of the public questioning the impart, the impartiality of a Board of Adjustment member. How should Planning and Zoning staff react to it?

Szachnit: Mmm-hmm.

Ward: It's not a Board decision. It's not the Board changing of the bylaws, but it would at least give

Bachhuber: Right.

Ward: Planning and Zoning some guidance on how to handle those situations.

Bachhuber: Okay. May I speak?

Szachnit: Yes. Go ahead.

Bachhuber: I have been a member of hundreds of organizations in my lifetime. Rarely have I been a member of anything that did not have separate policy and procedures to accompany bylaws. So that, and though, how do you get policies and procedures? You sit down and you talk about the what if this happens, what if that happens, how is it handled, what is our policy. It is a guideline to either staff as to how you react to certain things so that you don't have to make it up on the cuff. And so my request is that Planning and Zoning get busy as a department and come up with policies and procedures to accompany the bylaws, which is usual and normal in organizations.

Ward: Yea. I think that's a good idea.

Bachhuber: And I have written many policies and procedure manuals. So I know. Okay?

Klessig: That's an executive function. Which is their function.

Szachnit: Okay, any other comments on this issue, or? I think I'd like to close it at this time then and

Bachhuber: I would, I like to request, Mr. Chairman, that we um, how many of you do not have copies of the bylaws? And I would like the, all members

Schuler: Everyone has a copy of the bylaws.

Bachhuber: Everybody has a copy.

Szachnit: I may have it at home.

Schuler: Yes they do.

Bachhuber: I would suggest that

Klessig: I didn't bring that folder today.

Bachhuber: Bring that. And that it be placed on the agenda again at our next meeting and that we go through and point out some things that we find where maybe, ah, maybe you, you want to change them. Or you may just want an enforcement, so you want a legal ah, understanding of what it means. And keeping the part in there that refers to you of course, not by your name, but as a Corporate Counsel and your function and so on and so forth and how we deal with that. So, I would like that on the next agenda.

Szachnit: Okay.

Klessig: And I have one more. We talked a lot last time after a very difficult hearing on cell tower placement, ah, and that's been recurring. And I was disturbed by the um, the presentation we got last time. I thought it was unprofessional, um, not having the names or how many people had been positively in the neighborhood inclined to have this tower. Um, this was not a candid discussion last time. Ah, if we were in Calumet County, we would have had a third party investigation paid for by the applicants. So, um, as Jeff probably knows, and maybe these other guys, you guys, my brother was ah, I'm gonna hand this out, the Zoning Administrator and then the Planning Director at Calumet County for his whole career, and he's on Calumet County (inaudible). They had cell tower issues before there were cell phones, because of their physical location (inaudible).

Ward: Mr. Klessig, is this under correspondence? I know the cell phone issue wasn't listed on the agenda so I don't know (inaudible) about getting into too much detail. But if there is some correspondence you want to hand out or something

Klessig: Um, we talked about this last time and Tracy asked us to bring suggestions. It wasn't on the agenda for any decisions.

Ward: Even, even so, the discussion needs to be limited on it if it is not listed.

Klessig: Just background for, let's bring it back with the discussion next time.

Bachhuber: Okay, put that on the agenda.

Szachnit: Okay. Put it on. Okay, do we have any other correspondence?

(END OF VERBATIM)

Correspondence/Updates

Next meeting tentatively set for August 19, 2013.

Adjournment

Motion by Bachhuber, second by Klessig to adjourn. Meeting adjourned by Szachnit at 4:55 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Lowell Klessig, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
AUGUST 19, 2013

Call to Order

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

Klessig led the Pledge.

Roll Call

Members present included Edward Szachnit, Marj Bachhuber, John Jazdzewski, Lowell Klessig, Scott Soik, and William Bernhagen (Alternate). Staff present included Jeff Schuler, Chris Mrdutt, and Gayle Stewart, Planning and Zoning Department. Others present included Portage County Executive Patty Dreier and Portage County Deputy Corporation Counsel J. Blair Ward.

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

Kevin and Victoria Miller, Owners (P13-10)

The Kevin and Victoria Miller special exception request from provisions of the Portage County Zoning Ordinance to construct a non-farm residence, on a parcel of land greater than 35 acres, in the A1 Exclusive Agricultural Zoning District, Town of Almond, was opened by Szachnit, who read the public hearing notice.

(VERBATIM BEGINS)

Szachnit: Alright, who is gonna represent the, the petitioners in this case?

V. Miller: I guess I will

Szachnit: Alright. Can you step forward please, you know. Alright, if you could state your name for the record.

V. Miller: Victoria Miller.

Szachnit: Alright. Raise your right hand please. Do you solemnly swear that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

V. Miller: I do.

Szachnit: Thank you. Have a seat.

V. Miller: Thank you.

Szachnit: Okay, you can, you can, you know, briefly tell us ah, why you're here today. What your?

V. Miller: Well, my husband and I purchased the land, it will be a year ago next, next month. And we looked to find a parcel of land that we could hopefully retire on one day and build our house, now that we're, we have no longer have our children living at home. So it's just the next step in our life.

Szachnit: Mmm-hmm (indicating yes).

V. Miller: So we found a parcel of land and it's a beautiful acreage, and we'd like to build.

Szachnit: Okay.

V. Miller: Single family house with a pole shed.

Szachnit: Okay. Ah, Chris, could you add anything to this or?

Mrdutt: Yea, pretty much ah, like the notice reads. Um, you guys are not farming on the land

V. Miller: Correct.

Mrdutt: Or, or making a substantial ah, livelihood from farming the land. So that's what's considered a non-farm residence. Um, and on, it's on a parcel over 35 acres, that's why they're here today. It is zoned A1. Um, pretty much ah, staff sums everything up. Um, included in the packet is a department memo and a town letter. So you guys have those. And then one ah, one letter to read in.

Szachnit: You have one, okay, we'll

Mrdutt: Yep. Yea, what was also handed to you but since it is correspondence, it needs to be read. The other ones were included in your formal packets.

Szachnit: Okay.

Bachhuber: We'll read them in later.

Szachnit: Okay, we'll read that one in.

Mrdutt: Yep.

Szachnit: Ah, at the end of our ah, hearing here. Okay. Okay, if that's all you have to contribute, I'll open it up to questions from the Board members here.

V. Miller: Certainly.

Klessig: Were you aware of the zoning, um, when you purchased the land?

V. Miller: To be honest with you, no. We were not aware of it. Um, we did ask the real estate agent, Robin, if it was something that we could build on, and she said yes. And so we just, not having purchased anything like that before, we just went with it and we started meeting with the builder and, and he politely told us that we needed to move forward with appropriate regulations regarding planning and zoning. And so that's why we met with the Town of Almond last month and asked to meet with you all today.

Klessig: Was this part of a larger parcel of land that you bought?

V. Miller: No. It was just what it was, the 39 acres. We did have a, um, easement from the Soik Brothers I think it is. To have two rods on the, right at the end of Beyers Lane. So that way we can access the property. But that was it.

Klessig: And then that, that easement was purchased by you?

V. Miller: It was all part of the contract.

Klessig: So it wasn't sold as part of a larger parcel?

V. Miller: No, no. The prior owners, along with um, the owners next door, made the agreement before everything was taken care of. That was part of the contract offer, was that we would have something. We don't own it, we just have.

Klessig: So the seller purchased an easement prior to you own, buying it?

V. Miller: I guess that would be a yes then.

Szachnit: Anything else? Okay. Scott? Marj?

Bachhuber: Well, the only things that, that I'm concerned about is, is ah, that all the land around you is A1.

V. Miller: Mmm-hmm (indicating yes).

Bachhuber: All of it. Which is exclusive ag. So there will be intense agricultural activities around you. And um, when we did the comprehensive planning in the county, one of the reasons we had a designation of A1 was that it was, ah, to protect it so that we would have agricultural land and, and only agricultural land. Especially when you're right in the middle of the whole thing.

V. Miller: Mmm-hmm (indicating yes).

Bachhuber: Um, so the intent when we did those things was to keep it agricultural. Ah, I see the, that the ah, when you went to the Town of Almond.

V. Miller: Mmm-hmm (indicating yes).

Bachhuber: Ah, what was there response?

V. Miller: They met with us. They, they didn't even ask any other questions, but they talked amongst, amongst themselves and voted and then without any question or problem. So, then they looked at us and said welcome to the Town of Almond. They, you know, they afterwards instructed us that it would be better suited for a house than it is actual for agriculture because as, I don't know if you drove through the whole parcel, um.

Bachhuber: No.

V. Miller: You know, the back has an orchard in it.

Bachhuber: No. We did, we couldn't get any further than your easement. That's as far as we got.

V. Miller: You didn't go up the

Bachhuber: No.

V. Miller: Okay.

Mrdutt: We went up to the, where the pad is, I believe for the future shed.

Bachhuber: Shed an

V. Miller: Right. And then the house.

Mrdutt: Yep.

V. Miller: Is right next door.

Mrdutt: Yep.

Bachhuber: And so what is, what is on the rest of the property?

V. Miller: The rest of the property, back portion of the land, the former owners put like a little fruit orchard. Not many trees, but some of those. It has um, the middle ah, is it the middle 13 acres has

partially, before our time was cut down. Um, and then back half is pines and um, hardwoods. The other 13 acres has um, red pines I think they are.

Bachhuber: The one field in the behind looks like it's been worked or mowed or something.

V. Miller: We mow it.

Bachhuber: You do?

V. Miller: Mmm-hmm (indicating yes).

Bachhuber: The one behind.

V. Miller: We keep it mowed along with the roads and everything around up here.

Bachhuber: The one I'm talking about is this one. This.

V. Miller: Oh, that has trees.

Bachhuber: Okay. There's trees?

V. Miller: Well let me make sure I'm right at my, yes. This is where we're wanting to build.

Bachhuber: This is where we were.

V. Miller: This has red pines in it. This is an older picture. This has considerable growth in it already.

Bachhuber: Alright. Okay. And where is the orchard?

V. Miller: The orchard is back here. This is where the house, we would like the house to go. And this is just, like I said, maybe six to nine trees back here and the rest of it's um.

Bachhuber: Okay.

V. Miller: Little pines and things like that growing up.

Bachhuber: Okay. Very often, when people build

K. Miller: May I say something?

V. Miller: I'm sorry.

Bachhuber: Ah, you aren't sworn in.

Szachnit: You're not sworn in. But you can, you can testify after she's through.

K. Miller: Can I be sworn in?

Bachhuber: After she is.

Szachnit: Ah, after she

K. Miller: We're together.

Szachnit: Is that okay?

Bachhuber: He could come up.

Szachnit: Alright. You can step forward. Alright. State your name please then.

K. Miller: Kevin Miller.

Szachnit: Alright. Ah, do you solemnly swear that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

K. Miller: Yes I do.

Szachnit: Alright. Thank you. Have a seat. Okay, you can add to it now.

K. Miller: Well, what I wanted to add is the back field. He had planted this. This is all planted in pine trees now. There are approximately 12 to 14 feet high.

Bachhuber: Mmm-hmm (indicating yes).

K. Miller: This, this property when I bought it was ag 1. The woods was, let's see, there was 19 acres of woods here. And then 6 acres here, and 14 here. Well, after we purchased the property it was reclassified under zoning of this is all woods now and this is field.

Bachhuber: What do you mean by reclassified?

K. Miller: This is considered, instead of ag forest now, they consider this productive forest.

Bachhuber: Oh.

K. Miller: This whole

Mrdutt: I think what you're eluding to is the assessment, tell us how it's assessed.

K. Miller: Yes. Reassessed. Yes. Yes.

Bachhuber: The assessment.

K. Miller: Yes. They reassessed it and this is now not ag forest. This is actually now considered productive forest. Because of these trees are so tall.

Bachhuber: Like the crop, the crop.

K. Miller: Yea. That's what they're calling. Not for, these trees don't even exist anymore. Well, we replanted them, but, and then this field is considered the field part of it.

Mrdutt: So it would be safe to say that there is no intensive agricultural or agricultural use

K. Miller: No. I mean there

Mrdutt: On the 40?

K. Miller: I mean there's, yea, there's planted, he's got trees planted basically all the way around it here, and a couple rows across it.

Mrdutt: But no row crops or

K. Miller: There's some fruit trees back there.
Mrduitt: Ok.
K. Miller: That's about it. That was planted.
Bachhuber: Okay.
K. Miller: So I just wanted to make sure that you understand
Bachhuber: Sure.
K. Miller: It's been, it's not, well it's still ag one, but it's been reclassified so.
Bachhuber: By the assessor.
K. Miller: Yea. By the assessor.
Bachhuber: It hasn't been rezoned.
K. Miller: Yea, that's what I meant.
Bachhuber: It hasn't been rezoned. It's been, the assessor has.
K. Miller: Mmm-hmm (indicating yes).
Bachhuber: Okay.
K. Miller: So it's been reassessed.
Bachhuber: Okay. Alright.
K. Miller: So I just want to make sure that the backfield is not really a field anymore.
Bachhuber: Well, sometimes I just want to make this ah, comment to you because, very often when people choose, or ask to build a home in intensive ag, then they expect it to be as if they were in residential. And when you are surrounded by ag one, you can expect all the odors and dust and everything that noise that goes on with ag intensive, ag production.
K. Miller: Mmm-hmm (indicating yes).
Bachhuber: And you are aware of that?
K. Miller: Yes.
V. Miller: We're from the city, so I kind of deal with other types of noises.
Bachhuber: Yes.
V. Miller: Too, so.
Bachhuber: Yes. But they, you know, because.
V. Miller: I
Bachhuber: Okay. So.
Szachnit: That's a good point, Marj. You know people where they move near airports, and then complain the airports are making too much noise.
K. Miller: Yea. I, I understand that.
V. Miller: We're from Chicago.
K. Miller: I, where we live now in Plover, they've been building to the west of us for the last eight or nine years, so we get all their dust and we do understand that. My garage and house faces the west so there's always constant dirt.
Bachhuber: Um, let me ask the staff something.
K. Miller: So I do understand that.
Bachhuber: Um, when they're here in the midst, middle of A1, what if there's crop dusting that the farmers around them want to do?
Mrduitt: Then the farmers around them will do crop dusting.
Bachhuber: Okay. No restrictions then on the people around them?
Mrduitt: No.
Bachhuber: It doesn't? Okay.
V. Miller: I, and we did talk to Soiks and Schultz Brothers and told them our, of our intent to want to build. They did not have any type of problems with building. In fact they were for it at that point. I realize that's hearsay.
Bachhuber: Okay, that's all.
Szachnit: Alright. John?
Jazdzewski: As long as they're aware of the fact that they're in, in, what could be classified as industrial ag. I mean, yea, you have noise certain times of the year. Ah, you have crop dusting perhaps, ah, they're supposed to be spraying the productive fields they've been hired to spray. Ah, there's always that chance to miss, but that's something you're accepting when you build in the area. As long as you're aware of all that.
K. Miller: Mmm-hmm (indicating yes).
Jazdzewski: Ah, I have no other questions to you at this time.
Szachnit: And the chair, the only, the only concern I have is the fact that you know where you're moving and you don't expect, you know, to change the world because you're moving in there.
V. Miller: Absolutely not.

K. Miller: No.
Szachnit: Alright. Alright, any other questions, ah?
Jazdzewski: No.
Klessig: I was going to ask some more of those but you covered it.
Szachnit: Alright. Well, then you are excused at this point.
K. Miller: Thank you.
Szachnit: Okay Chris, you said I just need to read this?
Mrdutt: Read the one, yep, that was handed out to you guys.
Szachnit: That's the one, okay. Alright. Okay, ah, we have one other piece of correspondence here.

(Letter to Planning and Zoning Department from William and Christine Nordberg read into the record at this time. Letter placed in file)

Szachnit: Okay. Okay, is that all we have ah, as far as additional correspondence?
Mrdutt: Correct.
Szachnit: Right? Okay. Alright, is there anybody else who would like to testify or comment on these proceedings? You may step up and ah, do so, you know. I take it you are the Nordbergs?
W. Nordberg: We are.
C. Nordberg: Right.
Szachnit: Alright. You can state your name ah, for the record.
C. Nordberg: I'm Christine Nordberg.
Szachnit: Alright.
W. Nordberg: I'm William Nordberg.
Szachnit: Alright. Raise your right hands please. Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God? Have a seat. Alright. Whoever wants to start can hit us with your comments.
W. Nordberg: Well, we want to be construct on this. I, I would say that ah, we have two concerns. And one is that the Millers do understand that this is an intensive agricultural area. Um, we raise swine at this point. Not a whole lot, but we do. We have been expanding our fencing and um, we, we planned our development such that um, we have a, a possibility of expanding our livestock fencing all the way back to our property line, which we share with the Millers. Um, so ah, you know, there, there is some with the, you know, right wind or wrong wind, depending on your point of view. There is some odor periodically from the swine. Ah, last year we began a program with Foremost Foods and they apply land applied treated food waste. And when they do that, there is some odor from that that lingers a few days. Um, but again, you know, if everybody is ah, ah, understanding of, of what we do and what other people do in terms of crop dusting and irrigation and machinery that keeps going until almost the snow flies, um, you know, that's fine. The big issue that I guess we see ah, is Beyers Lane. Um, we have a problem with the snow removal in the winter time. They do ah, plow us out, and ah, it's a challenge by the middle of winter ah, where the snow goes. And ah, they've already pushed in part of our fence. They, there's just not a whole lot of room in there. And ah, because they don't go all the way through, ah, they have not plowed um, snow against our farm wall, but with the wider road, um, we would expect that that might be a problem. Ah, because, if you look at the ah, GIS ah, map for Portage County, and Portage County and the parcel lines, it looks like the right of way goes right underneath the eve of our barn. So we're right on the right of way, actually, just off the right of way of the barn.
Bachhuber: Mmm-hmm (indicating yes)
W. Nordberg: Ah, so, snow removal is an issue. Dust is a tremendous issue. Um, right now um, we periodically have some trucks come through. Um, normally other than ah, the traffic that ah, that we have, that we do ourselves on the road, our traffic is, probably we do is probably 90% of the traffic on that road. So there are trucks and farm equipment that go up and down ah, periodically. Um, sometimes they produce a lot of dust. Um, we are very concerned when ah, we think about cars going up and down, several times a day, trucks associated with construction, um, and um, that's a big concern. Because we don't want to create dust. And then the other concern was um, because our gate, and, and we're doing a better job keeping that gate closed with the increased traffic now, but um, we keep our gate closed. But um, we have dogs that don't like people going up and down that lane because they think it's theirs. And that we also have kids, three minor children still at home. And you know, that gate is right on the right of way, and um, so we were concerned about speed limits through there. Um, we saw a truck going through there yesterday, um, going at a pretty good clip down that road. And

C. Nordberg: The, the gate is actually between buildings so you can't see the drive.
W. Nordberg: You can't see.
C. Nordberg: The granary is here, the drive is here, and the barn is here. So when you're coming in, you can't really see the gate. So, when they pass it, they see it. But so if there's an animal or a child there on a bike, you wouldn't know they were there until you're right on top of them. That's the issue, where, you know, our driveway is.

W. Nordberg: So
C. Nordberg: So the gate is there to keep them from going out but, you know kids, they don't always shut it. They, you know.

W. Nordberg: So, and, we, you know, we say, we, that's a concern of ours. We did, as I said in the letter, we had a dog hit by a slow moving truck. I mean, he was not speeding, but you know, he comes out, the dog comes out, and you've got. So, that's our concern. And um, and, you know, the, it seems to me the township ought to be involved here today and I'm surprised to hear there was a town meeting. Today is the first time I heard that there's been a meeting with the Town of Almond on this. So, I'm sorry, I didn't know about that.

C. Nordberg: We weren't informed of that.
W. Nordberg: Yea, we were not aware of that.
C. Nordberg: We wished we talked (inaudible).
W. Nordberg: Ah, but we're, we would like that lane to be um, ah, properly modernized. You know, paved at least for 500 feet. And also that it be, the appropriate signage be put up. Ah, so that people aren't tearing down that road. Um, and also a dead end sign, so that we don't have transient, because as soon as you put a paved road, somebody's gonna think it's going somewhere. And so we don't want a lot of transient traffic going down that road. So I, I, I know I'm probably not talking to the right people when I talk about this, but these are our concerns and we've made them public. Um, and then the other issue, um, is almost an ancillary issue, but I felt that we need to at least get on the record that ah, as sort of part, parcel to our um, farming activities, um, we have in the past used that road. And ah, it's more in terms of, you know, neighbors getting along and being able to ah, not get too uptight about, you know, each other's activities. Um, so, that's, that pretty much puts it in a nutshell as far as.

Szachnit: Thank you. Yea. Anything else to add or?
C. Nordberg: I don't know.
Szachnit: Alright, well, you may be excused.
(Inaudible – speaking over one another)
Bachhuber: No, no, no.
Szachnit: I'm sorry, my mistake. We might have questions.
Klessig: How long have you lived in this property?
W. Nordberg: Ah, we've owned it since 99. Um, we've had animals on there a little bit longer than we've actually lived there. Ah, we've been residents there since 2007, and we've actually been on the property living there.

C. Nordberg: Full time.
Klessig: And what's the history of the use of this road during the time that you've been there.
W. Nordberg: Agricultural. It's basically ah, the Schultz Brothers have a
C. Nordberg: Machine.
W. Nordberg: Machine sheds at the end of Beyers Lane.
Klessig: And they have access there, they're (inaudible) the roads?
W. Nordberg: Right.
Klessig: They have access.
W. Nordberg: And they, they own the, they own the right of way. They own the land underneath the right of way. And that's the road they use to get to their sheds. And ah, we see them, typically for the first time when the snow melts. They'll go down the road. I think they go back to check on the machinery. There is also another way for them to get into that area too, but Beyers Lane is the quickest way.

Klessig: And the past owner of the Miller's property, did they use the road?
W. Nordberg: Yes they did. And he ah, he was quite infrequent out there. For a while there, they wouldn't be out there um, not as often as the Millers. The Millers are out there quite a bit. Ah, Chad Krause was the previous owner and he was, he had, he was out there ah, during hunting time. Um, he'd often ah, come out to kind of check on the land to make sure that it was okay I guess. Um, they did have some, I know they had some trees back there that they were tending. Ah, but ah, they were pretty infrequent visitors to that area. The, once you get past our barn, ah, Beyers Lane is just two ruts. It's a trail.

Szachnit: So, um, just a question. It seems like it's, it's a town road, but yet you're saying the ah, um, the people with the machine sheds, the, what's their name?

C. Nordberg: Schultz

Szachnit: Schultz, okay, yea. They, they own the land but it's still a town road?

W. Nordberg: Right.

Szachnit: Or they just own the right of way, you know?

W. Nordberg: They own the land. If you look at a plat book

Szachnit: Yea.

W. Nordberg: It belongs to the Schultz brothers.

Szachnit: So it's not really a town road then or?

W. Nordberg: But it's, well, it is. It's, they have a right, the town, they've named it.

Szachnit: Yea.

W. Nordberg: And, and ah, and Jim is complaining. He said (inaudible) I pay eight dollars a year property taxes, something like that.

Szachnit: Yea.

W. Nordberg: Ah, on, on that land, it's underneath.

Klessig: That's pretty common, seeing that.

W. Nordberg: Yea.

Klessig: The road in front of our house is also.

W. Nordberg: Well, I know we own up to the middle lane of EE as well.

Bachhuber: (inaudible) it's deeded. Deeded. I have a question if I may.

Szachnit: Go ahead Marj.

Bachhuber: Alright. You articulated that very nicely. Thank you.

W. Nordberg: Thank you.

Bachhuber: Um, but what I'm seeing, coming from a towns perspective, because I was on a town planning commission for many many years. Ah, I think you have more issues with the town right now.

W. Nordberg: Yea.

Bachhuber: And I would say ah, not only do you have issues with the town, but the owners on the perspective, people that are gonna build, have some issues that are town issues and they are quite extraordinary issues I think. I, I, if I were building there, I would be very concerned right now that these town issues have not been either discussed or resolved. Um, you said in your, in your um, memo, you would like to see an asphalt road. Well, that is a town road. Maybe it's a town road. Maybe it isn't a town road. And I've had experience where the actual deeds for the road, the right of way, never was correctly deeded and so on and so forth. And, and because I was very very surprised when we got out there to see the two ruts and the grass growing down the middle and that this is a town road, for which they get town aid, and they get state aid. And yet I'm, I'm not convinced who owns that road right now. Ah, that, that's one issue. I'm not convinced who owns that road. I'm not convinced, maybe it's a public road, maybe it isn't. So then you've got other people going back there with farm machines. I, I don't know that for sure from what's been presented here. Um, then let's talk about this, this um, access road. Now the access road is not Beyers Lane.

W. Nordberg: No it is not.

Bachhuber: It is right

C. Nordberg: It runs north and south.

Bachhuber: Here. I understand that this is um

W. Nordberg: Yea, it's right along here. This, yea, right here, is the lane we're talking about.

Bachhuber: Right. And I saw this cut here.

W. Nordberg: Yes.

Bachhuber: I saw that cut.

W. Nordberg: Yep.

Bachhuber: And is that then the access?

W. Nordberg: That's the one we're talking about.

Bachhuber: And you use it?

W. Nordberg: We do use it.

Bachhuber: So it's on their property?

W. Nordberg: Well

C. Nordberg: There's

W. Nordberg: If you believe that line.

Bachhuber: Yea, but you don't know where that line is (inaudible).

W. Nordberg: We don't, no we do not. No.

Bachhuber: And then, so therefore there's another problem.

W. Nordberg: Yes.

Bachhuber: You don't know where the property line is.

W. Nordberg: No.

Bachhuber: And it's sort of been by gentleman's agreement.

W. Nordberg: That's right.

Bachhuber: That this has been used for a number of years and therefore you've got an, an issue with, and a term that escapes me and maybe Blair Ward can tell me what it is. Adverse possession. Adverse possession. You've got an adverse possession ah, situation here that isn't resolved and so you don't know where your true property lines are. You don't know who really has um, ah, contractual, you know, you said well we haven't anything signed. Well, when you get into contract law, it doesn't always have to be a signed piece of paper. And so, um, you, you've got a problem there not knowing who can actually use that property and under what conditions.

Mrdutt: I think they indicated, and you're saying, and correct me if I'm wrong, you had an agreement with the prior owner to use that driveway?

W. Nordberg: Yes.

Mrdutt: So I don't think we have to be bringing up, you know, eminent domain or, or, you know.

Bachhuber: Oh yes we do. I'm sorry. Yes we do. I, I know a thing about real estate. And no, you know, we have to be concerned about that because we don't know where these property lines are.

C. Nordberg: Those, these two properties used to be one. So, you know, when the farmer owned it, he probably just put that lane in there to get to different fields. We don't really know how that lane lines up to where the 40 acres, the two, and how they go.

Bachhuber: And how, I just want the Board to remember how germane is that to the petition here tonight.

Schuler: Right.

W. Nordberg: And I added that, ah, only for the record. Because I didn't.

C. Nordberg: (Inaudible)

Mrdutt: And, and your concerns, the town, our records show, you guys can actually have that.

W. Nordberg: Okay.

Mrdutt: That shows um, the records that we have is that the Town of Almond is getting road aid for the 40 line?

W. Nordberg: Yea.

Mrdutt: Which comes up here.

W. Nordberg: Okay.

Mrdutt: And then they have their easement access there. So, that's what we have on record as being with the town road.

W. Nordberg: Okay, so it's a quarter mile long.

Mrdutt: Now there, yea, you can have it.

W. Nordberg: Thank you.

Mrdutt: Now the state of it, yea. There's no argument it's, it's in rough shape. But those concerns are, are to be had at the town level.

W. Nordberg: Yea.

Mrdutt: And I encourage you guys to, to go there. And it's unfortunate that, that you weren't notified for that meeting. So.

Bachhuber: Hmm, very unfortunate.

Szchnit: Okay, Marj?

Bachhuber: Um, well, I'm also concerned about the safety of snow removal. Ah, it is an issue. And um

Szchnit: (Inaudible)

Bachhuber: While you might say that it's not an issue for us, ah, well, safety is supposed to be an issue for us.

Szchnit: What do you mean? As far as the actual removal? That's a town function.

Bachhuber: That's a town function, but the safety of it is ours, is something that we are supposed to be concerned about.

W. Nordberg: May I ask a question?

Szchnit: Go ahead.

W. Nordberg: How accurate do you take these parcel lines to be with respect to the location with reference to landmarks?

Mrdutt: If there's good county monuments and their tied in good, generally I will say five feet. As you get farther away from them, there is more error. Um, the best is, is, you know, to have things shot out and if there's monuments that can be found, that's the most accurate. But you know, you are right, that, that line is probably tight up against your barn.

W. Nordberg: Yea. And that's what I had assumed. And, and after I wrote my letter, I had a conversation with Jim Schultz um, about this right of way, and um, he, actually it shows on here because the center of that right of way.

Soik: You know, I can't even, looks to be the far side of the road.

Mrdutt: Right.

W. Nordberg: Yea, you, yea. Rather than going down, just because, and then as soon, if you were, if this, if this is truly (inaudible) of the east.

Mrdutt: The road.

W. Nordberg: This provides all kinds of problems because there's old shed foundations in here. Ah, the ah, Union Telephone Company has a DSL box. There's power poles.

Mrdutt: Yea, that's all, that's all stuff that can discuss at the town.

W. Nordberg: Okay.

Szachnit: Alright. We have (inaudible)

Schuler: I guess I should just caution that there, there's a disclaimer on the bottom of the map.

Mrdutt: Yea.

Schuler: Which we always like to point out. It's approximately relative location, not done by a professional surveyor.

W. Nordberg: I had this conversation with GIS.
(Inaudible – speaking over one another)

W. Nordberg: Yes. I had a conversation before.

Szachnit: Okay, yes Lowell.

Klessig: I don't know whether the Millers may know this or Chris, but do we know what the history of this property was when this property was zoned A1? Was that a single farm at that time?

Schuler: It's currently zoned A1.

Mrdutt: Yea.

Klessig: When it was, when it was first zoned A1, was it a, it was a, a combined parcel, well, 80 acres.

W. Nordberg: I'm not sure. I can tell you that every time I've seen a plat map of, throughout the years, going back more than a hundred years, it's amazing all the different variations of the various owners and property lines. It's, the, the, the very last incarnation of, of our two parcels, was that the, a Pam and Roy Krause owned this 80 acres. And that they split the parcel and sold ah, half to us with the farmstead and then they sold the other half to their son, Chad. And ah, and so because, well Chad and, and us had purchased our property from the same owner. You know, it was sort of, it was sort of understood ah, where we're at.

Bachhuber: Ah, question.

Szachnit: Yes Marj.

Bachhuber: Ah, of the staff. Do we have a um, deed on, on this property? Do we have a copy of the deed? Are there any restrictions? I'm just listening to the ownerships here, and the change in ownerships, and so on and so forth. Are there any deed restrictions on the deeds that in any way would affect our decisions? Have you seen, have you gotten copies of the deeds?

Mrdutt: No.

Bachhuber: Okay.

Mrdutt: And I don't think, for this process.

Bachhuber: Well.

Mrdutt: There's access to a road. They legally own the, the 39 acres. There is nothing that, from a zoning standpoint, would not allow them to come in front of you guys to ask for what they're petitioning for tonight.

Szachnit: John?

Jazdzewski: Well, to me it just comes down to the, the purpose of the petition is to build a non-farm residence on A1 land.

Szachnit: Okay.

Jazdzewski: If part of your income is generated off of your property, ah, you would then have a farm residence. Ah, we wouldn't be here. So, that's the issue we're dealing with; the ability to build a non-farm residence on sufficient acreage. You need 35 acres, you have 39. You have issues with the town, snow removal, ah, you know, that's, that's all kinds. You have perhaps a lane that ah, your lane that you use is on their property. A lane that they maybe think is theirs is on your property. That's not the issue here and that, that has to be settled, you know, between, we're here to deal with a non-farm residence. So with that, I mean, that's the extent of my comments and questions.

Szachnit: Okay. Any other comments then? None? Okay. Now you may be excused.

C. Nordberg: Thank you.

Szachnit: Okay.

Bachhuber: A gentleman has his hand raised.

Szachnit: Oh, you do. Okay.

Bachhuber: (Inaudible)

Szachnit: Yes, you are still sworn in. Just step up forward so we can hear you.

V. Miller: (Inaudible) and snow removal concern that was part of the reason when we purchased the house that Robin did talk with the town and the town did say that up to Schultz's property is supposed to be maintained. Now, like you had said Chris, that they get the funding for the maintaining of the snow removal. And we are completely understanding of the safety and wellness of, not only their family, Nordberg's family, but our family as well. Um, so you know, it would be not very, it would be a shed this fall and the house this next spring. It's not going to be all lumped together, multiple construction right away. So, we just asked for this. We did do our homework pertaining to the road itself. We knew what we were getting into when we purchased the, you know, land going to the road, with the road. And so we just ask for the understanding for that.

Szachnit: So who is going to handle the snow, snow removal?

V. Miller: Town of Almond.

Szachnit: Up to your property.

V. Miller: Yes. Yes. It was confirmed with them.

Szachnit: Alright.

V. Miller: Yes.

Szachnit: Okay.

Klessig: Just a question. Were you aware of the swine operation and the land spreading of, of food waste and the (inaudible)?

V. Miller: We'd seen the pigs last year. And we live kind of by the Trzebiatowski farm on 54. So on, you know, days you can definitely smell the farm. It's, like they had said, it's a couple days with the spreading of the stuff. My husband, I work 10 hours a day, 11 hours a day at Donaldson. My husband works 10 hours a day. So it's, it's just us and you know, I realized that when I wanted to live out in the country that there is going to be dust and there is going to be smells. But again, living out, living in the city and living in Chicago, compared to here, there's different smells and dust and things like that. So, you know, I was looking for somewhere quiet. Not necessarily quiet because I understand about farm tractors and things, but it's different than city living. Country quiet, there you go. Thank you.

Szachnit: I suppose the smells and that are probably more noxious.

V. Miller: Than everything else, right.

Bachhuber: Okay.

Szachnit: Okay. Thank you. Okay, anybody else like to testify yes, or comment? Are you going to step up?

K. Miller: Kevin Miller. Um, I just wanted to add that the buildings that are on the Schultz's property, property.

Szachnit: Mmm-hmm (indicating yes)

K. Miller: Were actually a homestead at one time.

Bachhuber: Mmm-hmm (inaudible)

K. Miller: You can see a layout of where the house was and everything. So there was a, an actual homestead out at the end of the road. And before we bought the property, we checked in it so much that they didn't even know that they needed an easement to get onto our property. So they had dealt with the Schultzs, between the Krauses and Schultzs and got an easement set up out there. So, I mean we, we did understand that we, we questioned if it was a town road like anybody else would by looking at it, so. I just wanted to add that there was a homestead there, so. Thank you.

Szachnit: Okay. Any others? Alright? Alright. Alright then, at this point I'd like to close this ah, testimony here, and ah, we're gonna go into the deliberation. And this here, again, is for a special exception. So what we have to deal with here is the Portage County Ordinances specify the permitted uses and the special exception uses for property in each zoning district.

(Special Exception Standards read by Szachnit)

Szachnit: So that's what we're dealing with on this ah, okay. So, at this point, like I said, I'd like to ah, close ah, the open part of this testimony and we're gonna go into deliberation. So, anybody have comments on the Board at this point?

Bachhuber: Mmm-hmm (indicating yes). Well then, yea. I'd go back to the sheet that you all have that is um, the one behind their application.

Szachnit: Yea.

Bachhuber: Ah, the Board is required to evaluate the effect of the proposed use, you get the statute number, in order to approve the petition. A. The maintenance of safe and healthful conditions. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future. The availability of alternative locations. Such other factors as are relevant to the purposes of this ordinance. And then it says the Board is required to find all of the following conditions in order to approve the ah, the petition. The use would not substantially harm the public health, safety and general welfare, and would not be contrary to State Law or Administrative Code. The use would be consistent with surrounding uses and the neighborhood would not be injured thereby. The use is consistent with this ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts. Now I don't know if we can meet those standards. I, I don't, the, the safety thing ah, concerns me. Um, certainly ah, John made an excellent point that if they were just going to ask to build a, that if they had a farming operation and they asked to build a residence, well then we wouldn't be that. Ah, if I had my druthers, without voting on this, I would revert back to the town, ah, for further discussion including the neighbors who have some concerns. And let them work out the concerns first um, so that, that, it would be fair to, to be fair to you. That's what I would do. Because you have no idea, you have no guarantees right now that any of these problems are going to be resolved by the town. And you've got somebody's words but that is, you know, we want to do this, we want to pave it, or we want the snow removal. But, you know, it's just somebody's word at the town level. And ah, that would be where I would go on this, is I would refer back to the town, just like courts do when they revert back to the lower courts. I, I don't think there's been sufficient work done at the town level.

Szachnit: Okay, so at this point then, would anybody like to make a motion to either approve, deny, or postpone this request?

Klessig: Well, I have some comments I'd like to make before we get to that.

Szachnit: Alright.

Klessig: Um, mostly I agree with the issues of the town being foremost in this case. Um, there are a number of, of issues that we could go back on that weren't handled properly. Um, when this property was divided into two 40's (inaudible) there should have been a access provided for the back 40. Apparently that wasn't done and was now done later. Ah, the realtor ah, should have done, and I used to have a realtors license, should have done a better job, an ethical job, of, of informing these folks. Um, the zoning, there is obviously a public purpose to have productive agricultural, especially in the southern part of Portage County, one of the best in the state. But that's not the only purpose. And this land is not good agricultural land.

Bachhuber: Mmm-hmm (indicating yes).

Klessig: We all understand that, and we've seen it. But there's a lot of good agricultural land around it and it's equally important purpose of keeping productive agricultural is to limit the conflicts between agriculture and residential, non-farm, owners. And we've had a lot of discussion about, about that. I hope you're as, as secure in this, in this as you are, ah, you say you are. Um, but that's a real issue that you have to face after you (inaudible) so I generally agree that we have a hard time making this decision until prior land use issues. If you, if you don't have access to this property, I don't think we can, we can be making a decision on this request. If there is questions about where that road is. The farms next door may actually own it. That's probably true, they probably own it.

Mrdutt: There is not questions. They have access to this property.

Klessig: Year round usable access?

Mrdutt: It's a town road and they have an easement. That is depicted in that handout.

Jazdzewski: Mr. Chairman?

Szachnit: Yes sir.

Jazdzewski: If, if it was to be a farm residence as part of a, adjoining existing farm, you would only need two acres to build that farm residence. The purpose of the A1 with the 35 acres was to prevent the encroachment of residences on farms. Um, you know that you are building on a property that is in the middle of productive farmland. Apparently, this property is not that productive or it would not be in the condition it's in. There wouldn't be wood and stuff. Um, as far as the safety, some of those issues are self-imposed. Ah, the snow removal, they get aid. They have to remove it. It's really their problem. Doesn't mean it'll be convenient for you. You might have to battle, but it's the town's problem. Ah, and neighbors are supposed to be neighbors. Ah, you work it out.

The question here is the non-farm residence. Um, based on that, at this time, Mr. Chairman, I'm ah, prepared to make a motion.

Szachnit: Okay. Please make your motion.

Jazdzewski: I move that ah, we ah, grant petition P13-10 and that ah, we include the following condition. That you must obtain a Portage County Sanitary and Zoning Permit prior to construction.

Soik: I'll second.

Szachnit: Okay. Any discussion on this?

Bachhuber: They have not been issued a permit have they?

Mrdutt: What's that?

V. Miller: For septic?

K. Miller: Sanitary, yes.

V. Miller: Sanitary, yes.

Mrdutt: Yes, they've applied for it, yea.

Szachnit: But they have not been granted it yet.

V. Miller: (Inaudible)

Szachnit: Oh yea?

Bachhuber: They already have that. You don't already have a building permit do you? Zoning permit?

K. Miller: No. Not yet.

V. Miller: No.

Mrdutt: They have to get (inaudible)

Szachnit: Alright. You have discussion?

Soik: I like it.

Szachnit: Alright.

Jazdzewski: I call the question.

Szachnit: No, ah, no need to amend the motion, right? Nobody wants to? Alright. The motion has been made and seconded to approve this request for the special exception. Ah, take it to the vote of the, Lowell?

Klessig: Nay

Stewart: What was that?

Klessig: No.

Stewart: Okay.

Szachnit: Scott?

Soik: Aye.

Szachnit: John?

Jazdzewski: Aye.

Szachnit: Marj?

Bachhuber: No.

Szachnit: And, ah, my opinion on this is ah, I could go either way on it. But I feel that there's some issues that have to be resolved with the town. I'd almost say to postpone it, you know, till these issues with the town are straightened out.

Bachhuber: So is your vote no (inaudible)

Szachnit: Well I vote no on this one. Yea, you know. So.

Bachhuber: I am prepared to

Szachnit: Okay

Bachhuber: Make a motion to um, refer the petition ah, the request for petition ah, number P13-10, ah, back to the Town of Almond Planning Commission and Town Board for further discussion and to resolve some of these issues, and then they can come back.

Szachnit: Alright. So the motion has been made to postpone this request. Any second on it? If not, I will second ah, this motion. Ah, any discussion?

Schuler: Mr. Chairman.

Szachnit: Yes.

Schuler: After Lowell.

Szachnit: Okay.

Klessig: I'm not sure we can postpone a decision we already made. But we can, we can ask ah, it be referred back for further, if it's a, it's a semantic difference between postponing because we already made, we already, we denied this petition.

Szachnit: No, we did not deny it.

Bachhuber: No.

Szachnit: We said we would want to postpone it to have issues resolved by the Town of Almond.

Jazdzewski: No. We denied it.

Stewart: It was originally denied 3-2. This is a new motion to postpone.

Schuler: Well, it was denied?

Szachnit: It was denied for lack of

Bachhuber: For lack of information.

Schuler: (Inaudible) motion for approval.

Bachhuber: Let's ask our attorney.

Ward: I didn't hear the Chair's vote. Did the chair vote?

Szachnit: Okay, well, I, what I voted for, I voted nay because I felt it should have been postponed and ah

Bachhuber: Yes, referred back.

Szachnit: In other words we had two votes for nay, two votes for yay.

Bachhuber: It should have been (inaudible)

Szachnit: I voted to postpone. But I says it looked like I had to say I wanted to knock down or not approve this ah, initial motion. We looked for a new motion. Is that correct?

Ward: And so yea, you voted, you voted no on the motion.

Szachnit: On the motion.

Ward: That was the motion, so 3-2 um, nay. So then I think there's another motion out there that it would be appropriate to act on that motion.

Schuler: So there's been a, moved and seconded. And I will respectfully request that instead of saying those issues, that you specifically list what issues

Bachhuber: Okay, you're right.

Schuler: You want the town to discuss.

Bachhuber: You're absolutely right.

Szachnit: Okay, you're kind of right.

Schuler: What you have before you is a ah, an application for a legal lot that has access to a public road, and every right to proceed based on the facts of the case. And it's, right now it's being um, not moved forward, not on the merits of the actual use that's intended for the property, but for speculation on a um, an inability for the town to properly serve through their, their public street that they own and get money on this lot.

Bachhuber: Okay.

Schuler: Which is on a public street. And Marj, I'm not quite finished yet

Bachhuber: I know.

Schuler: If you could just wait a moment.

Bachhuber: I didn't interrupt.

Schuler: So.

Bachhuber: I only raised my hand up.

Schuler: Okay. And, and I just believe that we've talked about the land use part of this. We have a town, through its deliberation of the request at its town level, has examined its land use plan, acknowledged that it's in the middle of an area that is all agriculture and has unanimously recommended that this particular unique circumstance of a residence constructed on a 35 acre piece of property, in an area that has homesteads, farmsteads, that were similarly constructed all these years. They've moved to recommend approval, and I just, if you're going to refer it back to the town, I think you need to be very specific and very careful with what you're asking them to do. And right now, the things we're asking them to do are beyond what would normally be requested of an applicant in this similar situation. So I would just caution you in that way. And that's all I have to say.

Szachnit: Marj, would you like to enumerate on what should be referred back to the Town of Almond?

Bachhuber: Well, I want to just say this first. I feel the lack of, of a total documentation here. I have not seen deeds. I have not seen evidence of any of these agreements or ah, access easement. I've not seen any documents. And I think we should have seen the documents in this case, because of all the issues involved. And because of the safety issues that were brought forward here. And on, on those merits, I ah, feel, now if you want to list the, what do you have Gayle as far as the motions?

Stewart: We have a motion and second to refer this petition back to the Town of Almond for further discussion and then come back.

Bachhuber: Town of Almond. I said

Stewart: Plan Commission and Board, yes.

Bachhuber: Planning, Plan Commission and Board. Um, to discuss the

Schuler: Mr. Chairman, will this be in the form of an amendment to the original motion?

Szachnit: This is, the original motion

Bachhuber: You want this

Szachnit: Was denied. This is the second

Schuler: Or is this amendment intending a clarification of something that's been previously spoken?

Szachnit: This is discussion, I believe, on the second motion to

Schuler: Correct.

Szachnit: Refer back to, right?

Schuler: That's either got to be amplified or expanded. I just think we need to make sure it's covered.

Jazdzewski: You're either gonna amend it or you're just explaining your motion. You have to make that decision.

Bachhuber: Right now all I'm doing is

Szachnit: You want to explain.

Bachhuber: Just saying what are the issues that I feel are. Okay? Without them being in a motion.

Jazdzewski: You're discussing a motion on the floor? The motion on the floor

Bachhuber: Well, alright.

Jazdzewski: Which was referred back to, to the Town of Almond and the Almond Plan Commission, and that was seconded. At this time, you're discussing that motion.

Bachhuber: Yea. Discussing that motion because

Szachnit: So we're either discussing or clarifying.

Soik: Yea. I, I see no reason to discuss the motion. On page three in our packet, um, the, the Town gave this their blessing. Um, you know, we are looking to, like John stated earlier, to um, grant a special exception or disapprove it for a non-agricultural homestead on 35 acres of property or greater, in A1. Um, it's pretty cut and dry what our packet is. I don't, I don't see any more discussion being needed with the township approval already. Now is, if they have, if they have issues, that is their issues. That is the township's issues. Not, not ours up here. It's the township's issues.

Szachnit: If we were to approve it though, would the town have any recourse, to come back at some, cause it sounded like, I believe ah, Kevin or Victoria, you were saying that the town really didn't do any discussion. It just says they approved it.

V. Miller: We have a packet of information. That we sent to you guys.

Szachnit: I guess they didn't send anything out to the neighbors saying that there would be a meeting or any notice or, you know. You know.

Unknown: Mr. Chairman (inaudible – speaking from back) in the paper.

Klessig: I'm not sure that this motion is needed. Um, there is a procedure, I'm sure they know what the timeline is for the applicants to come back. And in that process, there probably needs to be more discussion with, with the town to be responsible for us to be comfortable. If this is automatic, we shouldn't be sitting here.

Szachnit: Mmm-hmm (indicating yes)

Bachhuber: Mmm-hmm (indicating yes)

Klessig: Um, that, that, this is a larger, larger public responsibility and this, this application could be stronger with additional information.

Bachhuber: Mmm-hmm (indicating yes)

Klessig: And the Town of Almond has a responsibility to help provide that, that additional responsibility. (inaudible) And certainly I don't know if Chris you can tell us when the, what, how soon an applicant can, can reapply. But there certainly is a procedure for that.

Mrdutt: Well, reapply or come back. I guess

Szachnit: If you come back, there's no problem with them coming back, no additional cost to them or, you know. It's just a matter of getting with the town in between this time and our next hearing, right? Getting with the Town of Almond and getting these issues resolved.

Mrdutt: We have to republish everything and, it's, it's like a brand new.

Schuler: Right.

Mrdutt: You know, appeal.

Schuler: They've been denied.

Mrdutt: Yea.

Bachhuber: Well, I will say this. Past Board of Adjustments have turned things back to the town.

Schuler: Based on

Bachhuber: Based on lack of information.

Schuler: And as Chris brought up, germane information. I would again say

Bachhuber: Germane information that is missing, is the right, the right of way, the deeds, ah.

Schuler: I would not agree with that.

Soik: Nor would I.

Jazdzewski: I guess that, Mr. Chairman?

Szachnit: Yes.

Jazdzewski: I would request that those that voted on the prevailing side to rescind the decision and then put it back on the floor.

Szachnit: The decision

Jazdzewski: That

Soik: To deny it.

Jazdzewski: That was denied, the motion. The three people, the three votes that were in opposition to the motion have the ability and the right to rescind that decision, because they were on the prevailing side. And at that time, the motion can be taken up for reconsideration. If you so choose.

Szachnit: So you're saying our, our original motion, right, that was denied.

Jazdzewski: I'm saying you can change your mind if you so choose, legally.

Bachhuber: Yes, I know, there can be, that

Mrdutt: That's correct.

Bachhuber: That we can have a motion to rescind. I know that.

W. Nordberg: May I comment?

Szachnit: Yes you may.

W. Nordberg: Um, I'm, I'm in a difficult position here because

Stewart: Can you step forward please? I need to this on the recorder please.

Szachnit: Yes.

Stewart: Thank you.

W. Nordberg: I'm in a difficult position because I don't want to make this tough, tougher than it has to be on the Millers. Um, what I'm afraid of though is that if at this time ah, this is, they're granted their exemption, ah, that I will have absolutely no recourse with the town.

Bachhuber: Mmm-hmm (indicating yes).

W. Nordberg: Um, we have always done sort of a low level battle with the township during the wintertime to get them to plow, you know, even 250 feet of the lane so we can have access to our property. And sometimes they never show up to plow. And, and, so I'm afraid that um, if this isn't postponed and is put back to, to the town's court, um, nothing is going to happen.

Mrdutt: The one comment I would, I'd make on that is kind of two fold, is any ah, disagreement with the town is something that you're gonna have to show up at the town level. Maybe you have already talked with your supervisors. The other point is, is if there are other occupants on there, I'm pretty sure they're gonna want the, the lanes plowed just as much as you. So, there is probably going to be more advocates in that area fighting on your behalf with the town, than if it was just, just you guys. So, there is that. That isn't something that, you know, we can't put conditions on a town road. That's, that's for the township and that's where that has to be discussed and, you know, to use that term, that battle needs to be waged there. And then that's with your supervisors

Bachhuber: (inaudible)

Mrdutt: At the town. Um, you know, that's, that's where the appropriate place to start is.

W. Nordberg: Well, that was my comments.

Szachnit: Alright. Alright, thank you. Okay, so I guess at this point we can take our original proposal, our original motion, and revote on it?

Soik: We still have a

Stewart: We still have a motion on the floor.

Soik: Motion on the floor.

Szachnit: We still have to vote, well

Stewart: We still have the motion to postpone that was made by Marj and seconded by you.

Szachnit: Yea.

Stewart: That needs to be taken care of.

Szachnit: Voted on.

Stewart: Yes.

Szachnit: Okay, alright. Alright. So then, we can, if there is no further discussion on that motion, we can vote on it, right?

Bachhuber: I'm not sure because Jeff says we must list the issues.

Soik: No, he made a recommendation that if you were gonna kick this back to the town, you best, and his recommendation would be best,

Szachnit: Be specific.

Soik: To be specific on what it is.

Bachhuber: I, I got that. That's what I just said.

Soik: No, you said he said we had to.

Bachhuber: Alright.

Soik: Jeff's not in control up here, we are.

Bachhuber: We, I know. Um, and but I'm speaking to the chair now. I think it has to now be handled by an amendment to the

Szachnit: Since it was made and seconded.

Bachhuber: Since it was seconded it has to be handled

Szachnit: There should be an amendment to add those conditions.

(Inaudible – speaking over one another)

Bachhuber: Handled by an amendment to the motion.

Szachnit: So would you like to amend this motion to add those specifics that the town should be handling?

Bachhuber: Yes. I amend the motion to say that the Town of Almond should discuss the surveyed, the, the right of way of Beyers Lane, whether it is to be paved or not, um, and the lot line between the Nordberg and Miller properties to check the deeds, that you discuss the safe removal of the snow.

Szachnit: What about the posting on the road?

Bachhuber: Pardon?

Szachnit: What about the posting on the road, as far as designating that road as a dead end, ah

Bachhuber: And properly signed.

Szachnit: And it's properly signed.

Bachhuber: And, and that, well, that I'm not so concerned about because it (inaudible)

Szachnit: Well it's something they should consider.

Bachhuber: The town can't do that.

Szachnit: We're, if we're interested in safety, I guess the sign

(Inaudible – speaking over one another)

Bachhuber: Well, it would be, and the proper signage should be applied.

Szachnit: Right, yea. Okay.

Bachhuber: That was it.

Szachnit: Okay. So we have a motion on the floor and ah, it's been seconded and now we have an amendment to it. So ah

Bachhuber: And ah, that, let, did that get seconded? Did my amendment get seconded?

Szachnit: No. Not yet. Not yet.

Bachhuber: Alright. And I will add, and any other issues that may arise at the town level regarding these properties.

Szachnit: Okay. Do I have a second on her amendment?

Klessig: Could you re-read the motion, is that possible?

Stewart: No.

Schuler: If I may summarize.

Szachnit: Yes.

Schuler: The right of way on Beyers Lane, whether it's going to be paved or not. Check the deeds for access between the ah, Nordberg and Miller properties. Ah, discuss safe removal of snow from the road, ah, and any other issues that may arise at the town level. And if I might, if I might state one more time I don't find any one of those germane to the actual request in front of the ah Board.

Bachhuber: I, I don't believe I, excuse me, but I don't believe I ever said anything about access, easement.

Schuler: You said check the deeds for the

Bachhuber: I said check the deeds. I said check the deeds.

Schuler: And you mentioned between the Nordberg and the Miller property to make sure

Bachhuber: The property line. The property line. Because they're not sure about where that is.

(Inaudible – speaking over one another)

Schuler: I'm sorry Mr. Chairman. I apologize for my.

Bachhuber: I mean, many Boards of Adjustment before have a, have determined that properties needed to be properly surveyed. And we are letting this one go without even demanding a proper survey.

Klessig: I'm going to second the motion, the amendment so we can get to the actual motion.

Bachhuber: Okay.

Szachnit: Okay. Okay, so no further discussion on it? We'll put this second motion to a vote, with the amendment. Lowell?

Stewart: First we have to vote on the amendment.

Soik: We have to vote on the amendment first.

Szachnit: Oh, okay. I'm sorry. Okay. On the amendment without the, I'm sorry, without the motion itself. We're voting on the amendment at this point. Lowell?

Klessig: Aye.

Soik: Nay.

Jazdzewski: Nay.

Bachhuber: Aye.

Szachnit: And I'll vote aye. Okay, and now we're looking at the motion, right?

Stewart: As amended.

Szachnit: As, as amended, right. You know. Vote on that. John?

Jazdzewski: Nay.

Szachnit: Lowell?

Klessig: Um, I, can I explain my, my vote?

Soik: No.

Klessig: It's, I vote aye.

Szachnit: Marj?

Bachhuber: Aye.

Soik: Nay.

Szachnit: I'll vote nay. Okay, so it has not.

Soik: So, that being killed, I would strongly suggest

Szachnit: We go back

Soik: Somebody in the majority to rescind the denial and get this back on the table where it

Szachnit: Back to the original motion.

Soik: Where it needs to be. And move forward on the packet as presented, with the township letter on page three, stating um, that they are all for this. It has to be one of you three in the majority. You care to do it?

Szachnit: You care to do it?

Bachhuber: Nope.

Szachnit: Alright. I'll put up that motion. We'll rescind the vote and take another vote on it.

Jazdzewski: I'll second it.

Szachnit: Okay. All in favor of there, of res, of rescinding the vote and taking another vote?

Klessig: No.

Soik: Aye.

Szachnit: Aye.

Jazdzewski: Aye.

Bachhuber: Aye.

Szachnit: Okay. Alright. So on the original motion.

Jazdzewski: Mr. Chairman?

Szachnit: Yes.

Jazdzewski: The decision has been rescinded. At this time, I'd like to repost my motion.

Szachnit: Alright.

Jazdzewski: Original motion to approve petition P13-10 with the following attachment, that they obtain a Portage County Sanitary and Zoning Permit prior to construction.

Soik: I'll second.

Szachnit: Okay. We have, the motion was rescinded. It was remade and seconded. Any discussion on it or amendments?

Bachhuber: I will discuss this from the standpoint I have no objections to your home being built on these 35 acres, if you understand all the things that are going on. However, I think there are so many legal issues surrounding this that I'm not going to be comfortable voting for it.

V. Miller: If I may respond?

Bachhuber: I don't know.

Szachnit: You may step up and respond, right.

V. Miller: I appreciate your concern. Um, I'm one that does my homework.

Bachhuber: I can see that.

V. Miller: And I, we, we, my husband and I would not be going forward if we did not want to live out there. We understand living in the country, at least the, you know, what we've experienced. We made the decision to buy land and then made the decision to build a house because of where it was. We have, and if I'm speaking out of turn of my husband, if there's a gentleman's agreement to access the property to the Nordbergs to get to their property, I'm all for being neighbors. I have no problem with that. When it came to the road, we looked into it. We weren't gonna spend what we spent on that parcel of land to not have access to it. My husband is a hunter, you know, I want to go out there and be able to enjoy what they've done to the property because

they've done a lot. We would not have invested the trees that we planted all spring long, if we did not care for it. So I understand what you're saying Marj.

Bachhuber: Mmm-hmm (indicating yes).

V. Miller: And I would not be investing this much time, money, or effort in something I wouldn't.

Bachhuber: Yea. I, I appreciate, I can, I can tell by your manner and everything else, exactly how much ah, preparation you have done and how much study you have done. I have no doubt about that. I have no doubt. My issues are with the town.

V. Miller: I understand, I can

Bachhuber: And, and, if, if some of these things are, are true that there's, that there's not a real property line, that there may be a property line dispute, um, you don't have quiet title on this. Um, I see an adverse possession problem. Ah, I see all kinds of legal problems with this. And, and that has to be addressed at the town level. We can't address that.

V. Miller: So, you know, and Chris had said, stated that he, you know, had said that we would have more or less, I'm sorry if I'm quoting you wrong, more of a background for the Nordbergs to be able to get this, the road taken care of and the easement because we'd have more as far as the road plow and things. We'd have more together, versus, yes, leverage, thank you, versus not having that. They, they're one, we're now a pair of landowners.

Bachhuber: Yes. But, excuse me, but it comes down to this. I personally do not think that a Board of Adjustment, here or anywhere else, has the right to agree to something when there is evidence that there may not be quiet title. Period. Amen.

Mrduitt: Where is that evidence?

Schuler: What is quiet title?

Bachhuber: You don't know what quiet title is?

Soik: Okay. Thank you.

Schuler: I don't think it's

Soik: Ah, can I go first Lowell? Do you mind? Thank you.

Szachnit: Go ahead.

Soik: Being how we have representation here, Mr. Ward, do you see any legal problems to this packet the way it's been presented by staff and submitted to us as a Board?

Ward: No.

Soik: Thank you.

Szachnit: Lowell?

Bachhuber: None at all? No legal issues?

Ward: Not as far as the Board of Adjustment is concerned? The landowners may have some issues, but there's nothing preventing the Board of Adjustment from approving the packet as presented. It doesn't mean the Board has to, ah, but the Board

Bachhuber: Even, even if we think that because of, of just comments and ah testimony, sworn testimony being given, that there may not be quiet title on this. Are we okay with doing that if, if we're not sure that there's quiet title?

Ward: Yes. You're granting special exception approval. It doesn't even have to, it doesn't mean they don't have to comply with every other law out there. It doesn't mean they won't have to battle some sort of legal claim down the road. All you're doing is granting a special exception saying the authority that the Board has to grant this exception is being given. Period. There could be many issues that you need addressed before building on that land.

Bachhuber: Yea. Thank you.

Szachnit: Okay, thank you. Lowell?

Klessig: I'm not sure why I came if it's, if it's automatic that we agree to this. If, if you don't, if we aren't supposed to ask these questions, then why are we here? Ah, this is not to be an automatic decision, if it's possible. And I agree it's legally possible. For sure it's legally possible. This, we raised some issues. We had a vote that, that this application as presented was not sufficient to get a majority vote. And we've gone in circles and in circus since then. And I'm not gonna vote for it.

Szachnit: Okay.

Jazdzewski: I call the question.

Szachnit: You what?

Bachhuber: He calls the question.

Jazdzewski: Vote.

Szachnit: Oh, oh, okay. Alright. If there's no other amendments ah, to this ah, no other discussion, we will take a vote at this point. Lowell?

Klessig: Nay.

Soik: Aye.
Szachnit: John?
Jazdzewski: Aye.
Szachnit: Marj?
Bachhuber: Nay.
Szachnit: And I will vote aye on it this time. I would say this ah, special exception has been approved. But again, I would strongly recommend that you deal with the Town of Almond on any issues before you proceed, you know. Okay. Thank you. You're either, you can be excused, all of you, or you can hang around. We have a meeting to continue. It is an open meeting. Ah, I suppose we have to, alright, the next thing on our agenda is the ah, minutes from our last meeting. Does anybody have any comments on it?

Bachhuber: Yes, I do.
Szachnit: Alright. Marj?
Bachhuber: Um, first of all, I was surprised to see the verbatim minutes. Is there any reason why?
Stewart: I asked to do that to clarify who says what, because, because it's in depth and it makes it clearer so everybody knows specifically what was stated, instead of me having to interpret. Because a lot of times, it's difficult to interpret what was
Bachhuber: So this was your decision?
Stewart: I
Schuler: It was my decision, and because of the technical aspects that were being discussed, and the nature of the conversation, I felt that every word should be recorded, so it was.
Bachhuber: Okay. Because we've been getting them just as summations.
Szachnit: Yes.
Bachhuber: Like these, and I was rather surprised. Um, as far as the minutes are concerned, I move to approve.
Szachnit: We have a motion to approve.
Klessig: Second.
Szachnit: All in favor of approving the minutes?
Klessig: Aye.
Soik: I'm going to sustain from the vote, I wasn't here.
Szachnit: You weren't here, okay. Understand. John?
Jazdzewski: Aye.
Szachnit: Aye.
Bachhuber: Aye.
Szachnit: Chair votes aye. Minutes are approved for the previous meeting held on July 22nd. Okay, ah, any other business the
Mrdutt: Yea. The Board should receive a handout, um.
Schuler: Correspondence update.
Mrdutt: Yep. You want to start Jeff?
Bachhuber: Did I take one? I don't think I took one.
Schuler: Um, there's been a couple things about cell towers in recent memory. Lowell has submitted information about ah, well, points of review that he felt needed to be looked at a little bit. There's also been ah, legislation that's gone on at the State in various areas that has an impact on what we do with cell towers. Attorney Ward, Corporation Counsel Ward, put together an opinion of just what these recent things mean. It's handed out to you tonight as homework. Please read it over the next month. At the September meeting or the next time we meet, it will be on the, the agenda. And Blair will be there to answer your questions and go through point by point exactly what do we look at these days for cell towers. Alright?

Bachhuber: Um, also, in the minutes, it says um, on page seven. We were talking about the Board of Adjustment Bylaws.
Schuler: Yes.
Bachhuber: And it says um, ah, that they didn't have their, I'm, now I'm summarizing. The rest of the Board did not have bylaws with them. And, and um, says ah, and that it be placed on the agenda again at our next meeting.
Schuler: Mmm-hmm (indicating yes)
Bachhuber: And we go through and point out and say that we find where maybe, maybe you, you want to change them or you may just want an enforcement so you that you can legal, legal, I guess I didn't finish that, understanding of what it means. And so I fully expected that to be on the agenda this time and it wasn't.

Schuler: Right. I did not put it on because we were not ready to bring it forward. It will probably be on the September agenda.

Bachhuber: Okay.

Szachnit: Okay. Anything else up for discussion?

Mrdutt: Well, next date would be I believe the 16th, third Monday of September.

Szachnit: Okay.

Mrdutt: And we'll probably have one or two.

Bachhuber: Okay.

Mrdutt: That we're aware of right now.

Soik: The 16th?

Mrdutt: Correct.

Soik: Okay.

Bachhuber: So, you're, you're looking at the on-sites then on the Friday before?

Mrdutt: Depending on how many we have.

Szachnit: Okay, anything else?

Bachhuber: Um, okay.

Szachnit: Nothing further or you want to
(Inaudible – speaking over one another)

Bachhuber: I want to just, I just, I would like to ask one other thing.

Szachnit: Alright.

Bachhuber: Because, um, seeing that we got the Shoreland Zoning revisions. And I went, I was going through all my stuff here. And I thought what do we need to keep, because um, from the State Statutes we've got the one that was given to us was NR115 and that was April 2000. Is that still good?

Mrdutt: Yep.

Bachhuber: Yep?

Mrdutt: Until they change it again.

Bachhuber: I thought that they had amended this?

Mrdutt: They're constantly amending it.

Schuler: Work in progress.

Bachhuber: Well then, do we have everything from the State?

Jazdzewski: Probably if it applies, you would put it in the packet, right?

Mrdutt: Right.

Schuler: Yea. I would be concerned about having the Portage County Shoreland Ordinance. Anything from NR115, ah, we would make you aware of. And then also it's up to the DNR to use their document.

Bachhuber: Okay. So we

Mrdutt: To present for Board of Adjustment.

Bachhuber: So anything else and um, and this is ah, 2011 Wisconsin Act 170, regarding non-conforming structures in shoreland zoning in relation to Wisconsin shoreland zoning standards.

Schuler: Subsequent to that, we made revisions in our ordinance that were okayed by the Department of Natural Resources.

Bachhuber: But is this still, this act 2011 act still stands?

Mrdutt: It's in the text, yes.

Schuler: Yes.

Bachhuber: By the State.

Mrdutt: Act 170 and NR115 you do not have to be concerned with.

Schuler: Well, I guess (inaudible) Chris, our um, in light of the regulations included in Act 170 and any other thing that is approved to date by the State Legislature and through the Department of Natural Resources, the Department of Natural Resources has found that our shoreland ordinance complies with those regulations.

Bachhuber: Okay.

Schuler: We have been approved by the State for our revised

Bachhuber: And

Schuler: Ordinance.

Bachhuber: And is yours more restrictive than the State NR115?

Mrdutt: In certain

Schuler: In certain places, yea.

Bachhuber: In, in certain respects.

Schuler: Mmm-hmm (indicating yes).

Mrdutt: Correct.

Bachhuber: It, are there certain aspects of it where you are less restrictive than NR115?

Mrdutt: We cannot be less restrictive than NR115.

Bachhuber: Alright. You, that's right, you cannot be. Okay. So you are more restrictive in some of the setbacks and

Mrdutt: Some places, yes.

Soik: Now, with that being said, is there leeway then here on the Board, when that comes up and says hey, we're more restrictive. We want it to be 150 feet, and the Board can say you know what staff, we appreciate your comments, but the State Law says 100 and that's we're gonna go with.

Mrdutt: State law would say 75. Portage County is 100.

Soik: So

Mrdutt: It's interesting you bring that up. You can hash that out at September 16th when we probably have a shoreland variance case.

Bachhuber: Wonderful.

Soik: So, the question to you.

Ward: Yes.

Soik: Mr. Ward, would that be something the Board can do? Hey staff, great, thanks for the recommendations, State says 75 feet and you say 100. Ah, according to what's presented in front of us, we're gonna go with 80 feet.

Ward: Would you be acting on a variance?

Bachhuber: Mmm-hmm (indicating yes).

Soik: Yes.

Ward: Yes. You could. You're, if you're acting

Bachhuber: If, if we can

Ward: Yea. Acting on a variance.

Bachhuber: Even though that they're, even though the Portage County Ordinance is more restrictive.

Ward: That's what a variance is, deviating from the ordinance.

Soik: And that's what this Board's for.

Ward: So yes.

Bachhuber: So we can, we can

Klessig: For you it's like automatically approving it.

Soik: So. If, if it were a rubber stamp Lowell, the citizens of this County would have shown up and said you know what, Portage County Zoning, we, we don't want this to be A1. We want to be able to have people build here whenever. If it were a rubber stamp, it would have already been rubber stamped through their office, through the people in the County, through that township.

Mrdutt: One comment, if I could.

Soik: Yea, go ahead.

Mrdutt: One comment I want to make to the, the statement you made before about the, the rubber stamp and, and this particular petition they had tonight. This scenario would probably be a lot different if let's say there's a center pivot on the property.

Bachhuber: Mmm-hmm (indicating yes)

Mrdutt: What if it wasn't heavily wooded. What if there was row crops.

Bachhuber: Exactly.

Klessig: Sure.

Mrdutt: You know, so, every case is unique and you have to weigh the merits of it. When you looked at this particular one, it may appear that it should be more of what you guys want to call a rubber stamp, because of that. Again, they have to come in front of you. They are set up this way. The next one may have center pivots. And that would lead to a whole different appropriate discussion.

Szachnit: It appeared as though (inaudible)

Mrdutt: So there is a rhyme and reason why it comes in front of you.

Szachnit: Yea, wasn't appropriate for farming either, you know.

Mrdutt: Well, and that's, that's, when you look at staff's memo, it's, you know, it's not like this land is in A1 typical use. So, I, I just want to caution you when you make those statements that every, every case is unique.

Jazdzewski: Well

Mrdutt: Some may be, or some should be easier than others.

Klessig: But there are, there are, having (inaudible) is not the only public concern on all these issues.

Jazdzewski: I have just a comment to be made on the nice letter that was brought here by the Nordbergs. I, and I can't say for sure, I don't know, we don't have that information. But to use the enterprise agriculture term, may have been convenient but not the state description of what enterprise agriculture is.

Klessig: You should have asked.

Bachhuber: Yea.

Jazdzewski: I should have asked them, but that wasn't an argument. That was just

Mrdutt: When I

Schuler: And a lot of the objections tonight were kind of beyond the scope (inaudible) agree with but they were beyond the scope of really where we are on that one. You know to, to worry about um, the road issues, while they're very important to the landowner in terms of this body having a, a, duly designated public road to a parcel, regardless of what condition it's in, to have that worked out, paved or unpaved, to your liking as a reason for not approving it, I don't think was on point. But with the

Szachnit: But I think, was it brought up Jeff, as a fact, that the condition of the road or was it brought up as a safety? I

Bachhuber: Safety.

Schuler: What, what is, okay.

Bachhuber: Safety.

Soik: If, read, if they read that over

Schuler: In what way, it's safe, it's already a publicly, it's a public right of way Marj. And not every road in the county is paved. And I don't think it's a safety issue.

Mrdutt: Town of Carson.

Schuler: If it's a, if it's a, duly designated public road that has access to the property, common sense, in the broadest and most specific

Bachhuber: Now, here I
(Inaudible - speaking over one another)

Bachhuber: You, you've missed the point here. This gentleman was saying he thought maybe the, the, line went right through his, the roof of, or, something of his barn. And I, I want, I want to know where this right of way is.

Jazdzewski: No. His, he said his barn was on the right of way line. Which means it's the self-imposed issue.

Bachhuber: Well, I, I want to be sure that this road is on, there have been too many instances, Jeff.

Jazdzewski: Then he should have made that an evidence.

Soik: And it, and it says the use would not substantiate, substantially harm the public health, safety, general welfare, and would not be contrary to State Law.

Mrdutt: Another thing that the Board needs to realize too, is we only approve, our subdivision ordinance only tackles splits 20 acres or less. And this was, when this 80 was divided, it wouldn't be reviewed by the Town. This could be just a right of way strip that they could build on, because they have access to a right of way, to a 40, that doesn't fall under the Portage County Subdivision Ordinance. And, and that's their legal access. I mean, you want to talk about ugliness, you're dealing with right of ways, easements that may or may say you can walk on it, you may drive a car on it, maybe you have to use a helicopter to get back.

Jazdzewski: If the town is

Mrdutt: But it's not our say, because this doesn't fall under the Subdivision Ordinance, it's not our say how they get to the property.

Klessig: Chris, if this was a landlocked parcel would you have held it, would you have treated it the same way?

Jazdzewski: No.

Klessig: If this, if this 40 was landlocked, you would have brought it to us the same way?

Mrdutt: If they have an easement to, they have to have some way to get back there.

Jazdzewski: Just not a helicopter.

Mrdutt: Yea, right. Well, how are you gonna, right. If there is an easement or right of way, that's their access.

Klessig: But the problem, that's not my question. If it was landlocked, would it be brought to us?

Mrdutt: If they wanted to build back there? Yea. And then you guys would have to weigh the ability of a landlocked parcel.

Ward: You would probably put a condition on it saying condition on the landowners getting access to this parcel.

Mrdutt: Because you guys would probably question, how, how are you getting back there? That wasn't a question in this one.

Jazdzewski: It is a town road. It, believe me, the State wouldn't be giving them money.
Mrdutt: Ain't happening.
Szachnit: Thank you.
Mrdutt: Anything else?
Szachnit: Okay. Nothing else, ah, motion to adjourn?
Jazdzewski: So moved.
Szachnit: Alright. Everybody in favor?
Bachhuber: Aye.
Szachnit: He seconded, I made the motion. Everybody aye?
Klessig: Aye.
Jazdzewski: Aye.
Klessig: Aye, aye, alright. So adjourned.

(End of Verbatim)

Meeting adjourned by Szachnit at 5:40 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Lowell Klessig, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
OCTOBER 28, 2013

Call to Order

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

Klessig led the Pledge.

Roll Call

Members present included Edward Szachnit, Marj Bachhuber, John Jazdzewski, Scott Soik, Lowell Klessig, and William Bernhagen (Alternate). Staff present included Jeff Schuler, Chris Mrdutt, Tracy Pelky and Gayle Stewart, Planning and Zoning Department. Other's present included Patty Dreier, Portage County Executive, and J. Blair Ward, Portage County Deputy Corporation Counsel.

Election of Officers

After discussion with Ward on proper procedures for election of officers, Schuler called for nominations for Committee Chair.

Klessig nominated Bachhuber. Soik nominated Jazdzewski. Schuler called for nominations three times. Schuler asked Bachhuber if she accepts the nomination; Bachhuber accepted. Schuler asked Jazdzewski if he accepts the nomination; Jazdzewski accepted. Schuler asked for a roll call vote for those in favor of Bachhuber as Chair. Stewart called the roll: Klessig, aye. Soik, nay. Szachnit, nay. Bachhuber, aye. Jazdzewski, nay.

Schuler called for a roll call vote for those in favor of Jazdzewski as Chair. Stewart called the roll: Klessig, nay. Soik, aye. Szachnit, aye. Bachhuber, nay. Jazdzewski, aye. Schuler stated with three aye votes, Jazdzewski is now Chair of the Board of Adjustment. Schuler turned the meeting over to Chair Jazdzewski.

Jazdzewski called for nominations for Vice-Chair. Bachhuber nominated Szachnit. Jazdzewski nominated Soik. Jazdzewski called again for nominations. There being none, Jazdzewski closed nominations. Jazdzewski asked Szachnit if he accepts the nomination; Szachnit accepted. Jazdzewski asked Soik if he accepts the nomination; Soik accepted. Jazdzewski asked for a roll call vote for Szachnit. Stewart called the roll: Klessig, aye. Soik, nay. Jazdzewski, nay. Bachhuber, aye. Szachnit, aye. Jazdzewski asked for a roll call vote for Soik. Stewart called the roll: Klessig, nay. Soik, aye. Jazdzewski, aye. Bachhuber, nay. Szachnit, nay. Jazdzewski stated with three aye votes, Szachnit is Vice-Chairman.

Jazdzewski called for nominations for Secretary, and added the Secretary works with the Recording Secretary by signing the meeting minutes and leading the Pledge of Allegiance. Szachnit nominated Bachhuber. Jazdzewski called for nominations three times. There being no further nominations, Jazdzewski closed nominations and asked Bachhuber if she accepts the nomination; Bachhuber accepted. Jazdzewski asked if anyone objected to acceptance by unanimous consent because there is only one nomination. There being no objections, Jazdzewski stated Bachhuber is Secretary.

Approval of Minutes

Klessig moved to approve the minutes of August 19, 2013, Soik seconded. Jazdzewski asked if there was any discussion on the minutes, and Klessig stated the fact he moved approval does not mean he is proud of them.

Motion to approve passed by voice vote.

Role of the Board of Adjustment – Presentation by Deputy Corporation Counsel J. Blair Ward

Ward stated he believes all members are pretty well aware of what their job is. Ward added he is able to answer any questions BOA members may have as they go through the discussion. Ward began discussion at 4:15 p.m.

Review of Board of Adjustment Bylaws

Jazdzewski asked if anybody felt they should throw out the current bylaws and start over, and there were none that felt that way.

Jazdzewski stated if anyone has any suggestions or tweaks they want to see, they can be reviewed and discussed at one meeting and then acted on at the next meeting. For purposes of revising, anyone with suggestions should send them to Jazdzewski, who will forward them on to Stewart and Schuler.

Discussion of Creation of Administrative Procedures for the BOA

Schuler stated as part of a previous discussion, it was brought up the Board should discuss if they would like to establish separate written procedures; how staff handles things, how BOA wants things handled, any rule they wanted to make for how they conduct business, and how staff does it. In the past there was no written procedure. There have been some questions about the content of staff reports, timing for when staff reports are given, and the type of interaction. BOA is permitted to write procedures of their own. Schuler stated the Board as a whole can decide to write procedures on how to interact with staff and how they want things to go. This way everybody knows their role and everybody agrees. It is a collective voice of the Board to establish these. Jazdzewski stated if any member sees any behavioral or administrative staff issues please contact him and he will see that the issues are addressed.

Correspondence/Updates

Next meeting set for November 18, 2013.

Adjournment

Motion by Klessig, second by Szachnit to adjourn. Meeting adjourned by Jazdzewski at 6:00 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
NOVEMBER 18, 2013

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 Lowell Klessig, Scott Soik, John Jazdzewski, Edward Szachnit, and Marj Bachhuber. William Bernhagen (Alternate) was also in attendance. Staff present included Jeff Schuler, Chris Mrdutt, Tracy Pelky and Gayle Stewart, Planning and Zoning Department. Others present included Portage County Deputy Corporation Counsel J. Blair Ward.

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

Margaret Linzmeier, Owner/Jared Linzmeier, Agent (P13-11)

The Margaret Linzmeier, owner, Jared Linzmeier, agent, special exception request from the Portage County Zoning Ordinance to operate a coffee roasting business as a home occupation, in the A2 Agricultural Transition Zoning District, Town of New Hope, was opened by Jazdzewski, who read the public hearing notice.

Pelky explained because this is a business conducted outside of the home, it is considered a home occupation and will require a special exception approval. Pelky clarified this will be run out of the attached garage.

Jazdzewski swore in Jared Robert Linzmeier and asked him to explain his request. Linzmeier stated his goal is to set up a small coffee roasting business. Initially, he will be the only employee running it. Linzmeier stated he will start by roasting a small amount of coffee, approximately 400 – 500 pounds per week, graduating up to almost 1,000 pounds per week. Linzmeier stated this would take approximately two years. Linzmeier stated a lot of his coffee will arrive via truck on pallets, approximately twice per month. Linzmeier explained the roasting process and stated the machine can handle approximately 60 pounds per hour. Linzmeier added he anticipates 300 pounds per week would take about five hours of actual roasting. Packaging would be done on-site. Linzmeier added some of his product will be ordered through a mail-order service on his website, but the majority would be wholesale; selling to restaurants, cafes, bars, and maybe grocery stores. Linzmeier stated if his request is approved by the Board, he will then go through the Department of Agriculture for approval, as opposed to the Health Department. Linzmeier stated the Health Department would oversee the process if most of his business was retail, but because it is predominately wholesale, the Department of Agriculture will oversee the process. Linzmeier stated he has already been in contact with someone at the Department of Agriculture who has given him an idea of what issues will have to be addressed. Linzmeier added the coffee roaster will be propane powered.

Klessig asked Linzmeier if he will be doing deliveries himself or will someone else, and Linzmeier answered he will take care of deliveries, at least initially. Linzmeier added he will use various mail services to deliver also.

Soik asked with the Department of Agriculture doing most of the oversight, how does staff communicate with that agency, and how does the Planning and Zoning Department work with the Department of Agriculture? Pelky answered they would require a letter from the Department of Agriculture before a permit is issued. If the Board approves this request, they will issue a zoning permit once the letter is issued.

Szachnit asked if Margaret Linzmeier would be working in the business, and Jared Linzmeier answered no. Linzmeier stated he is currently working on the process of taking ownership of the property; which he recently

moved into. Szachnit asked if he has a means to move the pallets of beans around and Linzmeier answered they will be unloaded with a lift gate, and then he will have a pallet jack that he can move the coffee around with.

Bachhuber asked if Linzmeier intends to have the property transferred in ownership before he starts the business, and Linzmeier stated that is the idea. Linzmeier presented a letter of intent from Margaret Linzmeier. Pelky stated it is hard to have a home occupation if you do not own the property, so ultimately that is one of the issues to be addressed before a permit is issued.

Bachhuber asked if Sam Solberg needs to be contacted for any inspections, and Pelky answered if need be. Pelky added it is the responsibility of the owner to comply with any commercial building codes.

Szachnit stated it was noted at the on-site all the filtering is done on a hopper mechanism. Linzmeier stated this is a chaff can or collector. All the filtering will be done and the chaff retained. There will only be regular exhaust fumes.

Bachhuber discussed start and completion dates. Linzmeier would like to start immediately, within 30 days, and is hoping to be producing roasted coffee by February at the latest. Linzmeier stated the things he needs to complete to make this operational are the plumbing, sinks, chimney, and finishing up the floors and other cosmetic issues. Bachhuber asked if a June completion date is enough time, and Linzmeier answered yes. Bachhuber asked if days of operation would be Monday through Friday, and Linzmeier responded yes. Bachhuber asked if there will be customers, and Linzmeier replied yes. Bachhuber asked if customers who purchase wholesale will come out to pick up the coffee, and Linzmeier stated they could potentially. Bachhuber asked if there will be regular hours of operation. Linzmeier stated he will have a production schedule and there could possibly be a local customer who needs an emergency order. In this case, the customer may come to the site. However, in most cases, he does not imagine this would happen. Linzmeier stated if he sells coffee to individuals, it would be a neighbor here and there that would swing by and pick up a five pound bag. Linzmeier added he will not have specific hours. Bachhuber asked about lighting on the exterior building. Linzmeier stated he will eventually update the lighting to improve it to the standards of the Department of Agriculture. Bachhuber stated lights may not shine out onto the roads. They must shine in toward the building.

Klessig asked about noise produced by the machine. Linzmeier explained there are four small motors. He cannot think of a decibel comparison, but he believes it is quieter than his neighbor's diesel pump. Klessig asked if there is any noise from moving parts, and Linzmeier answered no. Linzmeier stated in the future, he is hoping to get a device called a de-stoner which is like a vacuum that is used after the roasting process to separate the coffee from anything more dense. This prevents anything such as stones in the coffee from breaking customer's grinders. Klessig asked Linzmeier why he would constrain himself with specific hours if there is no noise generated from the machine and neighbors cannot hear it, and Linzmeier stated these are the hours he wants to work. Linzmeier anticipates having a clear production schedule. Most of his customers will keep to typical business hours, so there is no real reason for him to be roasting at night or early in the morning.

Szachnit asked what the cycle time is from the time the hopper is loaded until he has roasted coffee, and Linzmeier answered approximately 15 minutes. Linzmeier added he can roast approximately 20 pounds per batch, about four roasts per hour.

Jazdzewski asked if there are any more questions at this time. J. Blair Ward, Portage County Deputy Corporation Counsel, suggested the Board address any smells or odors associated with this special exception use. Linzmeier explained a lot of the fumes or aromas associated with coffee are pleasant ones. The ones that tend to be more pungent come from a very dark roast. Linzmeier stated he does not plan on roasting very dark. Linzmeier explained the temperatures associated with roasting dark coffee, and stated the coffee he roasts will produce very little amount of exhaust or odor.

Jazdzewski asked if the smell of roasting coffee is similar to the smell of prepared coffee, and Linzmeier answered yes. Jazdzewski asked if coffee roasting that is done in-house in bigger cities is done in the public or is it in a warehouse. Linzmeier stated some bigger production operations are tucked away in warehouses. Linzmeier added some shop roasters will roast in front of customers on machines similar in size to his roaster.

There being no further questions from BOA, Jazdzewski excused Linzmeier. Jazdzewski asked if any members of the public wanted to speak on this matter. It was noted there was no members of the public wanting to speak.

Jazdzewski read into the record a letter from Margaret Linzmeier, property owner, stating her intentions of legally transferring ownership of this property to Jared Linzmeier. In addition, Margaret Linzmeier stated she approves of Jared Linzmeier's intention to start the coffee roasting business at the residence.

There being no other public or staff comments, Jazdzewski closed the testimony portion of the hearing and moved into deliberation.

Bachhuber stated the following conditions must be met in order to approve the petition:

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code. Bachhuber stated if Linzmeier is dealing with the Department of Agriculture, he will have to get all necessary permits and meet codes. If these conditions and those of the Zoning Ordinance are met, he will be okay. Regarding health and safety, the control of pests and mice, etc. was discussed and should be considered to make sure there are no health issues.
- The use would be consistent with surrounding uses and the neighborhood would not be injured thereby. Bachhuber stated this property is zoned A2, Agricultural Transition, and it does not appear the business would interfere with anybody else's property to any great degree.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts. Bachhuber stated nothing was received from the Town of New Hope stating the use was not consistent.
- Bachhuber stated the use would not affect existing or future roads and development.
- Bachhuber stated they should always consider alternative sites, but she does not think that is an issue in this case.
- Bachhuber stated she does not believe it is an issue if the site has a more preferred use.
- Bachhuber stated there are no floodplain or topographical features that she is aware of.
- Regarding the issue of waste generated by the project, Linzmeier stated the chaff will be put out in the woods or in his garden. Linzmeier added it is a highly sought after gardening material.
- Bachhuber stated on-site vegetation is not an issue in this case.

Soik reminded the Board of the two year start/completion date, which is the same on any Zoning Permit. Soik stated he understands Linzmeier wants to be up and running by February, but sometimes things happen to prevent that. Jazdzewski stated there are other administrations to deal with when it comes to getting permits and plumbers, etc.

Jazdzewski stated the Town of New Hope Board minutes from October 16, 2013 read there was a motion and second to approve the coffee roasting business of Jared Linzmeier at his residence, as long as he verifies everything through the Board of Adjustment. There has been nothing received in opposition of this petition.

Jazdzewski asked how many non-family employees Linzmeier would be allowed, and Pelky answered he is permitted to employ two non-family members not occupying the home.

Klessig asked if BOA needs to form the motion around ownership of the property, as if the sale were to occur and only if it occurs. Jazdzewski replied the home occupation request applies to the property, not the owner of the property. Ward confirmed Jazdzewski's opinion, adding this is being done with the consent of the owner, who is also present today. The Board needs to decide on whether this use can be done on that parcel of property. The person conducting the business on the property is not relevant in this case.

Bachhuber asked if the Board needs to say this is limited to a coffee roasting business or a business in general, and Ward recommended the Board be specific to what is being sought, as this would allow the Board to have more control.

There being no further discussion, Jazdzewski asked members to take time to formulate a motion to approve, deny, or postpone the petition.

Motion by Bachhuber to approve Petition P13-11 as submitted, with the following conditions:

1. Must meet all proper permits from the Department of Agriculture. Will need a letter from the Department of Agriculture on file in the Portage County Planning and Zoning Department.
2. The coffee roasting business shall be conducted out of the 24' x 10' room located in the corner of the attached garage.

3. No more than two persons, not members of the family residing on the premises, may be employed in said occupation.
4. The days of operation shall be Monday through Friday.
5. Completion date shall be two years from the date the permit is issued.
6. Sam Solberg, Commercial Building Inspector, is to be contacted regarding the electrical, plumbing, and duct work.
7. Any signage would require a Portage County Zoning Permit.
8. You are to obtain a Portage County Zoning Permit prior to start of construction.

Jazdzewski asked because the property is zoned A2, Agricultural Transition, is it necessary to set operating hours. Bachhuber stated she is putting what was in the petition. Jazdzewski asked if she wanted those hours spelled out.

Jazdzewski asked because Linzmeier has to already meet regulations with the Department of Safety and Professional Services, it is necessary, because it is a home occupation only being operated by Linzmeier, that there be a commercial inspection? Bachhuber stated this is a good question for staff. Soik added without people coming in and out on a regular basis, he does not believe Solberg will want to go out and inspect the business. Soik does not believe this is something that is pertinent with Linzmeier already having to follow all guidelines from the Department of Agriculture. Pelky stated they will need to check out what is needed from that standpoint. If Solberg says he doesn't need anything that will be fine. Klessig stated he does not see a need for the provision of days of operation.

Bachhuber stated she will strike condition number four regarding days of operation from her motion. Motion to approve seconded by Klessig.

Soik asked Linzmeier if he wanted to speak on any of the conditions. Linzmeier stated the conditions all sound great. He appreciates the Board is being considerate of the hours of operation, and added he will be aware of what he is doing and keep the roasting times down to a minimum.

Bachhuber stated she did not add a condition regarding lighting. Mrdutt stated any lighting that would interfere with traffic would be enforced by the Department.

Motion to approve passed unanimously by roll call vote.

Approval of Minutes

Szachnit moved to approve the minutes of October 28, 2013, Klessig seconded. Jazdzewski asked if there was any discussion on the minutes. There being no discussion, the motion to approve passed by voice vote.

Discussion/Possible Action: Review of Forms Used by the Planning and Zoning Department for Processing Board of Adjustment Petitions

It was agreed it is good to use the motion form. Bachhuber added it would be beneficial to have an extra form.

Special Exception Evaluation Form:

- The motion form is for BOA members' use.
- Bachhuber stated this is a good worksheet to write on as they go through the hearing. It would make members think about standards that must be met.
- Jazdzewski agreed this would be a worksheet to help check to make sure all issues and concerns are being addressed. It will also help when making a motion.

Klessig asked if they should be stating the findings of fact in motions, and Jazdzewski answered it is not needed, but they should be addressed as part of the open deliberation.

Jazdzewski does not believe approval of use of these forms needs a motion; agreement by consensus is sufficient.

Discussion/Possible Action: Board of Adjustment Bylaws

Jazdzewski stated there was considerable input from members. Jazdzewski stated if by consensus or vote members feel they should go forward with addressing the bylaws, Ward would review them and give his input. Bachhuber stated her reasoning for reviewing the bylaws all at once instead of article by article is it would take a

full year just to look at the bylaws. Bachhuber feels it would be better to bring to attention some areas that need to be addressed, and then look at a revised document.

Issues addressed:

- Bachhuber asked about Article I, Membership, and the time frame a member is allowed to serve if they have served on another County committee. Ward clarified time served on other committees would not affect the amount of time a member can serve on BOA.
- Jazdzewski asked about Article IX, Amendment of Rules, which states majority vote of the BOA is required. Jazdzewski was under the impression 2/3 vote was required. Ward stated he will check into this.
- Klessig stated it seems quick that bylaws can be changed and voted on at one meeting. He feels there should be at least one meeting in between. Jazdzewski stated it must be an agenda item and there should be some discussion time in between meetings.
- Bachhuber stated the section she crossed off in Article XI, Staff, can be disregarded.

Jazdzewski stated they will wait for Ward to look into the legality of the issues addressed and have questions spelled out. Jazdzewski stated BOA will then review, and as time permits, the bylaws will be addressed at a regular monthly meeting. Ward stated he has had time to review items submitted by BOA members. He can address those questions and comments now and he can incorporate them into a draft for BOA to consider. Jazdzewski stated if after going through the proposed changes anyone has any comments, they can be addressed to Jazdzewski, Planning and Zoning staff, or Ward, and Ward can come back with bylaws BOA can vote on at a future meeting. There will be opportunities to make changes after reviewing the next draft.

Jazdzewski asked if it is the consensus of BOA members that they forward the proposed changes to Ward for review; it was the consensus.

Portage County Code of Ethics

Jazdzewski stated this is not something that BOA is trying to change. This was distributed for informational purposes only.

Correspondence/Updates

Mrduitt stated the next meeting is scheduled for December 16, 2013. Jazdzewski stated if there are no petitions in December, there will be no meeting. There will not be a meeting specifically for reviewing the bylaws.

Jazdzewski stated they have asked repeatedly that Towns use the rights and privileges they have. Planning and Zoning staff have been invited to a Towns Association meeting tonight to address this issue. Jazdzewski stated he appreciates staff sharing BOA's concerns with the Towns Association.

Future Agenda Items

None discussed.

Adjournment

Motion to adjourn by Szachnit, second by Klessig. Meeting adjourned by Jazdzewski at 5:17 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
DECEMBER 16, 2013

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:03 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Mrduitt called the roll. Members present included Lowell Klessig, Scott Soik, John Jazdzewski, Edward Szachnit, and Marj Bachhuber. William Bernhagen (Alternate) was also in attendance. Staff present included Chris Mrduitt and Tracy Pelky, 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

James N. Wirtz, Owner (P13-12)

The James N. Wirtz, owner, Variance request from the Portage County Shoreland Zoning Ordinance and Portage County Zoning Ordinance to construct a house within 100 feet of Lake Jacqueline and within the road setbacks from Jacqueline Lake Lane, in the R2 Single Family Residential Zoning District, Town of Sharon, was opened by Jazdzewski, who read the public hearing notice.

Mrduitt stated the property is zoned R2 Single Family Residence and constructing a house is an allowed use in this district. However, when dealing with constraints for setbacks from Lake Jacqueline and Jacqueline Lake Lane, a variance is required from both the Portage County Shoreland Zoning Ordinance and Portage County Zoning Ordinance.

Jazdzewski swore in James N. Wirtz and asked him to explain his request. Wirtz stated he is requesting to build a house approximately the same size as the house he tore down in 2005. The reason for a variance is the setback regulations do not allow a house to be constructed because it is too close to the lake and too close to the road. Wirtz added there is not any other place to build on his property. The road divides his property and the other side of the road is all wetland, which is not buildable. Wirtz stated he went to the Town and asked them for a variance. The Town approved an area to build on that is 35 feet from the centerline of the road and 40 feet from the closest point on the lake. Wirtz stated he is proposing a 26' x 32' house which would fit well within those restraints.

Jazdzewski asked Wirtz if the house he is requesting to construct is pretty much an exact footprint of the previous house, and Wirtz answered it is almost identical. Wirtz stated it is a couple inches wider; he wants to even it out to 26' x 32'.

Klessig asked Wirtz if he was aware when he decided to tear the previous structure down that he would need a variance to rebuild, and Wirtz answered he was not. He thought he could build where the house previously was. Wirtz stated at the time they did this, the property was owned by more than just him. The other family members have since dropped out and he is the only one left and had to wait until he had the money to build. Wirtz stated he spoke with Steve Brazzale, previous Director of Planning and Zoning, and Brazzale walked the property with him and told him what he could and could not do and helped him plot out where the buildable area was. Wirtz stated he dropped the ball because he had no money. Klessig asked if this was prior to tearing down the old house and Wirtz stated it was in either 2003 or 2004. Wirtz added the only reason he tore down the old house was because it was overrun with ants and in danger of falling down.

Soik asked Wirtz if Brazzale indicated at the time they met that Wirtz would need a variance, and Wirtz stated he was probably made aware because he had a variance request form filled out at that point.

Szachnit asked if Wirtz ever plans on putting up some sort of a garage structure, and if so, would he need a driveway to it, and would this be an impervious driveway. Wirtz stated there are no plans for a garage in the future. Wirtz stated in the future if they did this, they would go on the other side of the road where there is already a parking pad in front of the yellow building. Wirtz added part of the plan is that once they do this, there is an outhouse on the other side of the road that they will fill in. There will be ample space for parking if they need it. Szachnit asked what they would do in the meantime, and Wirtz stated where they park now is on the other side of the road in front of the yellow buildings. In addition, they also park between the house and the road. Wirtz added everyone in the area parks on the grass. Wirtz stated he has no intention of putting in any type of driveway.

Bachhuber stated when they were at the site they discussed wet conditions in the area. Bachhuber asked Wirtz if he has ever spoken with anyone about the water problems in the area. Wirtz stated at this time, the water table is quite low. Wirtz added part of what he is doing is coming up with some sort of water management design for the entire property. The building will have to be elevated some and they will have to create swales and direct water to the most desirable place as determined by the County or the DNR. Wirtz stated at this time, most of the water flows into the lake.

Klessig asked if the water flows out of Wirtz's lot or does it soak into the ground, and Wirtz answered it soaks into the ground. Wirtz stated once in 20 years they get standing water when it's really high. Wirtz stated he brought this up to indicate where the lowest spot on the property is. Wirtz stated the land is all moraine, sand, and rock.

Jazdzewski asked if the ground was frozen or spring thaw when the water accumulated, and Wirtz replied yes. Jazdzewski stated there would not have been the normal percolation. Jazdzewski asked Wirtz if he is looking at construction on a slab with raising the house enough to put a crawl space underneath to keep the living quarters above any chance of flooding. Wirtz answered yes, and a place for mechanicals. Bachhuber stated this sounds like a foundation, not a slab. Jazdzewski stated it would be a slab. Wirtz stated there would be a foundation either way. He does not want to put the house flat on the slab because he does not want his floor to be concrete. No matter what he does, he will have a wood structure to build off of, adding there will be an actual footing and block; probably be three courses high.

There was a discussion amongst Wirtz and the Board regarding where water would be diverted. Wirtz stated he is not to the point of knowing what will be done yet. Jazdzewski stated this will be addressed by the Stormwater Management Plan.

There being no further questions for Wirtz, he was excused by Jazdzewski. Jazdzewski asked if there was any member of the public wanting to address the Board at this time. Patrick Wanserski, Town of Sharon Chairman, stated his biggest concern is the distance from the centerline of the road. This is a very substandard road. Wanserski is asking for not only the 25' from the road centerline (3 rod road) but an additional 10' to have a setback of 35' from the road centerline. Wanserski stated within the 10' would be a perfect place for Wirtz's holding tank system to go in. This setback would be equal to or further than the two neighbors. This was Wanserski's biggest concern. Wanserski stated the only other issue that came before the Town was letters from the neighbors regarding a dispute over what the original size was.

Jazdzewski asked if this is a dead-end road, and Wanserski answered yes. Wanserski added there is a cul-de-sac and a school bus goes down there daily and turns around. Bachhuber asked Wanserski if they intend to widen the road anytime soon, and Wanserski replied there is pressure, and there may even be a request next month. Wanserski stated the road will have to be widened because there are factors with houses on the road and the school bus. Bachhuber asked because the road is very narrow, 14', what kind of dedicated right-of-way does the Town have, and will Wirtz be too close to the road. Wanserski stated the neighbors will actually be closer, even with the extra 10' where the holding tank will be located. Wanserski added the Town is comfortable where it is at and they can get enough of a roadway put in to keep it safe. It will never be up to standards because there are other homeowners on each side of Wirtz and wetlands across the road. There were no other members of the public wanting to speak on this matter.

Jazdzewski read the following into the record:

- A letter from Mike Wenzholz, Regional Shoreland Specialist, WI-DNR, listing conditions to be followed if the request is approved by BOA.

- An email from John Schlice, surrounding property owner, stating he fully supports the petition.
- An email from Jack and Mary Jo Adams, surrounding property owners, stating they have concerns with the proposed building size of 38' x 38' and septic being placed across the road in the swamp. However, they have no objection to a house being constructed in the same footprint of the former building with an appropriate septic system or holding tank installed.

Jazdzewski wanted it noted that the Adams' letter referenced Naults, O'Briens, and Hirschs as examples of denials for improvements, however, BOA has been provided no further documentation from Adams to back this up. Wirtz stated he would be more than happy to stay within the building envelope of the previous structure.

There being no other public or staff comments, Jazdzewski closed the testimony portion of the hearing and moved into deliberation.

Klessig asked if BOA needs to focus on the structure being two-story, and Mrdutt replied they do not. Mrdutt stated the most logical thing for BOA to look at is a footprint. They do not need to get into the details of stories or height. Mrdutt added a permitted use in a residential district has a height limitation of 35'. Mrdutt stated the new Shoreland Zoning Ordinance encourages smaller footprints going to two stories if possible. The intent of the new ordinance has a lot to do with stormwater relief and mitigation. Because of this, as many of the old cottages change to seasonal dwellings, they are encouraged to build up and keep a smaller footprint.

Jazdzewski stated one of the issues to be addressed is issuance of a sanitary permit. Jazdzewski stated this is addressed based on the number of bedrooms in the house. Mrdutt stated any scenario in that area would be looking at a holding tank.

Bachhuber discussed the following:

- Is the proposal contrary to public interest, State Law, Administrative Code or Portage County Ordinances? Bachhuber stated based on the information provided in the packet, it is in compliance and can be allowed.
- Is the proposal permitted in this zoning district? Bachhuber stated yes.
- Are there any alternatives to the variance request? Jazdzewski stated it is unlikely. There are wetlands on the other side of the road. Klessig added it is very constrained.
- Are alternative locations available? Bachhuber stated not likely.
- Would this variance be detrimental to surrounding property owners? Szachnit stated it does not look like it. Jazdzewski stated they are not changing the slope. This is only to replace what existed before. If anything, it may be beneficial to the point they would request runoff requirements which would improve water conditions for the neighbors. Klessig stated it is better than what they had before.
- What is the erosion potential on the site based upon degree and direction of slope, soil type, veg. cover? Jazdzewski stated nothing is changing. In fact, there is a stricter requirement for vegetative cover. Klessig stated the key issue is there should not be any improved drainage to the lake. Soik stated there is a natural berm out in front.
- Will substantial justice be done by granting this variance? Jazdzewski stated at the very least they are allowing Wirtz to replace what used to be there. Bachhuber stated they are giving some use to this narrow, sub-standard property.
- Determine if all the following variance criteria are met:
 - Is this appeal contrary to the public interest? No.
 - What are the unique property limitations and are these limitations adequate to satisfy the requirements for a variance? Jazdzewski stated they have addressed all of these, so the answer would be yes. Klessig stated the hardship is based on property, and this is clearly property.
 - Is the hardship caused by any person having interest in the property? No.
 - Will granting the variance be detrimental the surrounding landowners. No.
 - Does the proposal meet the minimum variance needed to relieve the situation? Jazdzewski stated this meets the minimum, and added they are addressing the issues the Town has with having to redo the road at some point. Bachhuber stated the Town Plan Commission did agree to a footprint approximately the same as the previous structure.

Klessig would like to make sure the staff memo and DNR letter cover everything. Jazdzewski stated the letter from the DNR specifically spells out Mrdutt's conditions, in addition to a condition requesting the principal structure be no closer to the lake than the previous structure and a condition addressing the mow zone and vegetative shoreland buffer. Klessig asked if there is a measurement from the previous structure. Soik stated as long as it is not closer than the averaging of the neighbors'. Pelky stated the existing cottage was 49' from

the lake and 33' from the centerline of the road. Klessig asked if the plan is to go 9' closer to the lake, and Mrdutt answered yes. Jazdzewski stated this is to get further away from the road, and Mrdutt added it is to orient the structure to meet other setbacks. Soik added it still falls within the averaging. Wirtz stated the 40' and 35' measurements are to the buildable envelope; however, the building will be smaller than that. Once they place the footprint of the building, it will be farther away from the road and lake.

There being no further discussion, Jazdzewski asked members to take time to formulate a motion to approve, deny, or postpone the petition.

Wirtz asked if the mow line is part of the runoff concern and shoreland mitigation, and Mrdutt answered yes. If BOA grants the variance, there are standards that have to be met in the ordinance, regardless of what takes place at this meeting. This is because Wirtz is over the impervious surface amounts by about 2%. There are set standards and Wirtz will work with Planning and Zoning on this issue. Jazdzewski stated if approval is granted, no zoning permit will be issued until all these issues are addressed and satisfied.

Bachhuber asked if they need to specify square footage of the building, and Jazdzewski replied the packet is a legal document and those numbers are in the packet. Jazdzewski added the proposed building has an impervious footprint of 832 square feet.

Pelky stated BOA needs to address two variances; a road variance and shoreland variance. These motions must be made separately. There was discussion on how to word the motion and should the building envelope be defined. Bachhuber asked Mrdutt how he suggests wording the building envelope. Mrdutt stated it is described on the map with the hashed area that shows it being 40' from the lake and 35' from the centerline. That 35' from the centerline is based upon the Town's request, and the 40' is using the averaging between the other two neighboring lots. Mrdutt explained when working with petitioners on a variance, he has them describe an envelope, because later when working on stormwater and sanitary issues, there can inevitably be shifting of locations. Mrdutt would rather have the ability and flexibility to work with the landowner, instead of having them come back in front of BOA because something has to be shifted a few feet. There was more discussion on the building envelope, and Mrdutt stated if BOA gives the petitioner a footprint to build in and they express they want to build a 832' house (32'x26'), the envelope is the area the house can be built inside of; this gives wiggle room and allows room for shifting to meet stormwater issues, erosion control issues, and septic issues. This is the reason for asking for a building envelope in which to build the house.

Jazdzewski clarified they will be looking at two motions; one addressing the setback from Lake Jacqueline, and to put the building envelope no closer than 40' from Lake Jacqueline. The second motion will address maintaining a minimum setback of 35' from Jacqueline Lake Lane. Jazdzewski stated they are also looking to include Mrdutt's conditions, and added the mow zone is included in the shoreland revegetation plan.

Soik stated he would like to have the packet approved, and see this go through. If they want to include additional conditions relating to the building envelope or hashed area, it would be fine with him.

Klessig stated the map is not referenced on the petition itself. Jazdzewski stated it is part of the packet. Klessig stated it is not a legal document. They should be able to reference any legal part of the staff memo, petition, or map. Klessig asked if the map was provided by the petitioner, and Mrdutt answered correct. Wirtz stated the centerline to the road, the average high water mark, and the side lot lines were taken from a survey completed by Point of Beginning in September or October.

Motion by Bachhuber to approve Petition P13-12, for a variance approving a setback from the road of 35' and to construct a dwelling of 832 square feet within the building envelope as on the detailed site plan "A" titled "Wirtz Lake House," with the following conditions:

1. You are to obtain a Portage County Zoning Permit.
2. A Shoreland Revegetation Plan must be approved before obtaining a Portage County Zoning Permit.
3. A Stormwater Management Plan has to be approved before obtaining a Portage County Zoning Permit.
4. A Shoreland Mitigation Plan must be approved before obtaining a Portage County Zoning Permit.
5. A Portage County Sanitary Permit must be issued before a Portage County Zoning Permit.

Jazdzewski asked Bachhuber if this motion was just for the 35' setback from the road, and Bachhuber stated she will be making another motion.

Motion to approve seconded by Klessig.

Wirtz asked for clarification on Bachhuber's motion. Did she mean 35' from the road or 35' from the centerline of the road? Bachhuber clarified 35' from the centerline of the road. Bachhuber and Klessig both agreed to the change.

Motion to approve passed unanimously by roll call vote.

Jazdzewski asked for a motion on the variance from Lake Jacqueline.

Motion by Bachhuber to approve Petition P13-12, for a variance approving a setback of 40' from the Ordinary High Water Mark of Lake Jacqueline, and to construct a dwelling of 832 square feet within the building envelope as on the detailed site plan "A" titled "Wirtz Lake House," with the following conditions:

1. You are to obtain a Portage County Zoning Permit.
2. A Shoreland Revegetation Plan must be approved before obtaining a Portage County Zoning Permit.
3. A Stormwater Management Plan has to be approved before obtaining a Portage County Zoning Permit.
4. A Shoreland Mitigation Plan must be approved before obtaining a Portage County Zoning Permit.
5. A Portage County Sanitary Permit must be issued before a Portage County Zoning Permit.

Motion to approve seconded by Klessig.

Motion to approve passed unanimously by roll call vote.

Approval of Minutes

Klessig moved to approve the minutes of November 18, 2013, Szachnit 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

Mrdutt stated if there is a meeting next month, it is scheduled for January 20, 2014.

Jazdzewski stated Corporation Counsel had a busy month; it was his decision to table discussion of the bylaws.

Pelky distributed copies of the bylaws which included revisions and comments from J. Blair Ward in Corporation Counsel.

Future Agenda Items

None discussed.

Adjournment

Motion to adjourn by Szachnit, second by Soik. Meeting adjourned by Jazdzewski at 5:10 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Marjorie Bachhuber, BOA Secretary

Date of Approval