

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
FEBRUARY 15, 2010

Call to Order

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

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Marj Bachhuber and Phil Janowski. Staff present included Jeff Schuler, Tracy Pelky, Chris Mrdutt and Gayle Stewart, Planning and Zoning Department. Joan Scheider was excused.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

James L. and B. Vitort (A10-01)

The James L. and B. Vitort special exception request from the Portage County Zoning Ordinance to excavate two irregular shaped ponds approximately 6.2 acres with fill to be used on the farm site for haysheds, in the A1 Exclusive Agricultural and A4 General Agricultural Zoning Districts, Town of Carson, was opened by Rutta who read the public hearing notice.

Pelky explained the request before BOA is to construct two irregular shaped ponds, which exceed the 30,000 square foot maximum. Pelky stated this will not require a reclamation permit because no material is being removed from the site; all material must stay on-site.

Rutta read the following letters into the record:

- An email to Chris Mrdutt from Simone Kolb, Army Corps of Engineers (ACOE), dated February 8, 2010, stating ACOE would have no authority over the large pond if it is located in uplands and also listing concerns about expanding the small pond.
- A letter addressed to the Portage County Planning and Zoning Department from the Town of Carson Board, dated February 10, 2010, recommending approval of the request to excavate a pond in excess of 30,000 square feet on parcel #012-24-0604-04.02. The Town of Carson Board took no action on the existing pond located on parcel #012-24-0603-07.03
- A letter addressed to the Planning and Zoning Department from Mark A. Fruin, listing his concerns on how the ponds will affect his well water, top soil moisture for surrounding farm fields, nutrient management plans, etc.
- An email to Chris Mrdutt from Ray Schmidt, Portage County Water Quality Specialist, addressing Mark Fruin's concerns.
- An email to Chris Mrdutt from Dan O'Connell, Senior Conservation Technician, addressing Mark Fruin's concerns.

Rutta swore in James Vitort and asked him to explain the request. Vitort stated he wants to move some of his hay storage across Highway 10 to a site east of Clover Road because at times trains block his driveway, which makes the hayshed he has now of limited use. In addition, he wants to lift the hay so it will not get contaminated from runoff water. Vitort stated since he has it, he'd like to use his own dirt.

Rutta stated they can agree the small pond is proposed for six feet deep and is a small extension on either side of the current pond. The large pond will be approximately 5.5 acres located in a cornfield, with a 3:1 slope, and a maximum depth of 12 feet.

Rutta questioned moving the soil from the north side to the south side of Highway 10, and asked where it would be located. Vitort stated it would be to the east of Clover Road. Rutta questioned if this violates the premise of moving materials off the site. Mrdutt replied since it is Vitort's property and he is not selling it, all they would require are letters of approval from the Portage County Highway Department and the Town of Carson to move materials across the road. Rutta questioned why so much dirt will be moved. Vitort replied for round bale storage, it has to be lifted and they take up a lot of area. Casey stated that we have no plans for the shed and asked where it will be located. Vitort answered the shed will be located east of Clover Road and the dirt will be piled approximately three feet in height. There was discussion regarding not filling wetlands and proposed start/completion dates.

Rutta proposed to BOA that they deal with these ponds separately and focus on the larger pond first. Rutta asked Vitort if he intended to peel off the topsoil and spread it on that site or move it across the road. Vitort answered he will use most of that dirt on the parcel he removes it from. Rutta asked if they should get a Certified Survey Map (CSM) because of being near the east boundary line. Pelky said that would be possible or else the parcels could be combined into one. Pelky stated Planning and Zoning staff could conduct a boundary survey. Vitort stated he has no problem with Planning and Zoning staff inspecting during and after construction. Mrdutt stated the Planning and Zoning Department would monitor compliance and he anticipates a great deal of involvement with the Department. Rutta stated he would leave it up to Planning and Zoning staff to monitor the situation. Vitort stated there will be no blasting and Potratz stated that should be one of the conditions. Bachhuber asked Vitort to explain the issue he is having with the railroad. Vitort stated the train blocks his driveway for hours at a time. Janowski brought up the issue of junk on the property and Vitort was asked if he has any inoperable farm equipment on his property. Vitort responded that most of his equipment is actively used. There was discussion regarding the route that will be used to get to the area of the pond and what Vitort's plan is for digging the larger pond. There was discussion regarding possible wetlands in that area. Mrdutt stated ACOE does not believe there is a wetland there. The map shows an estimate of where wetlands are located.

There being no other questions, Rutta closed discussion on this particular (western) pond.

Potratz questioned the location of a drainage ditch in the area of this pond. Rutta stated the ACOE is objecting to any expansion of this pond as being an inline pond with the waterway. The current size of the pond is less than one-half acre. Vitort explained what he is doing as cleaning up and contouring the pond. By taking out the dirt currently there, the pond would be expanded and more tapered instead of having just a steep drop-off. Mrdutt stated they would like to make this more of a scrape rather than a pond. The objection thus far from Planning and Zoning Department staff has been the fill already there that needs to be removed. Vitort stated he would have no objection to a condition that he follow recommendations made by permanent staff to bring this current pond into compliance with land conservation standards. Vitort stated he understood this meant that he would not be able to expand this pond very much.

Janowski stated that as long as Vitort follows guidelines set by the Department, he sees no problem with the pond; Bachhuber agreed. Casey agreed also and stated this is cleaning up the pond and correcting the slopes. He also stated this pond should be done prior to expansion of the other pond. Potratz stated this scrape will establish a slope. Mrdutt explained to BOA the goal of making this just an extension of the natural drainage area which is a wetland. In addition, Mrdutt stated that if this fill does not get taken care of, ACOE will become more involved. Rutta asked if BOA members felt the larger pond is acceptable and asked for comments. Janowski stated his only concern is that the eastern pond is completed first and Vitort could be granted an extension, if needed.

Rutta excused Vitort. There being no members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Janowski again stated he has no problem as long as the eastern pond is completed first. Bachhuber stated she agrees as long as all questions have been answered. Casey stated he has no problem as long as the eastern pond is corrected properly according to Planning and Zoning Department staff recommendations before moving on to the

western pond. Potratz agreed the eastern pond should be completed first. Rutta read aloud the standards that must be used for special exceptions.

Rutta stated he would entertain a motion for approval of the appeal with the wording change that the irregular shaped ponds be considered a pond and a scrape. Motion by Bachhuber to approve appeal A10-01, specifically referencing the eastern pond (scrape) at this time, with the following conditions:

1. The appeal is approved with the wording change to reflect that the irregular ponds will consist of one "scrape" and one pond.
2. The eastern pond must be completed first, according to permanent staff recommendations, so that it is turned into a wetland scrape.
3. The fill currently in place, in addition to any other fill removed from this location, must be moved out of the wetlands.
4. There will be at least a 3 foot horizontal to 1 foot vertical slope in place.
5. The area must be seeded properly.
6. You must have written approval from the Portage County Highway Department and the Town of Carson to move materials across existing Highway 10 to Clover Road.
7. Maximum depth on this scrape will be 6 feet.
8. Start date of June 1, 2010; completion date of September 30, 2011.

Motion seconded by Janowski. Motion passed unanimously by roll call vote.

There was no additional discussion regarding the second pond (western pond). Motion by Casey to approve appeal A10-01, specifically referencing the western pond, with the following conditions:

1. The western pond size will be approximately 5.5 acres.
2. Materials from the western pond must be transported to sites 012-24-0603-06.02 and 012-24-0603-07.02.
3. All spoils from the western pond are to be de-watered upland of the pond.
4. Start date of June 1, 2010; completion date of September 30, 2011.
5. You must have written approval from the Portage County Highway Department and the Town of Carson to move materials across existing Highway 10 to Clover Road.
6. All topsoil must remain on site.
7. There will be at least a 3 foot horizontal to 1 foot vertical slope in place.
8. All slopes are to be reseeded.
9. Maximum depth of the pond is to be 12 feet.
10. No blasting is allowed onsite.
11. There must either be a Certified Survey Map completed on the eastern boundary of parcel 012-24-0604-04.02 or the appellant must agree to combine the parcels.
12. Planning and Zoning Department staff has the authority to inspect during construction and after completion.

Motion seconded by Janowski. Motion passed unanimously by roll call vote.

Tom and Arlene Prondzinski (A10-02)

The Tom and Arlene Prondzinski special exception request from the Portage County Zoning Ordinance to construct a 36 foot by 38 foot by 10 foot high workshop / storage building exceeding the 1,600 square foot total accessory building space in the R2 Single Family Residence Zoning District, Town of Sharon, was opened by Rutta who read the public hearing notice.

Pelky explained the request before BOA is to construct a 36 foot by 38 foot detached garage and a 24 foot by 26 foot attached garage, for a total of 1,992 square feet, which exceeds the 1,600 total square foot accessory building space.

Rutta read into the record a letter addressed to the Planning and Zoning Department from the Town of Sharon Board, dated October 19, 2009, which recommends approval of the special exception provided the house is built on the site prior to the storage building and that all setback requirements are met.

Rutta swore in Tom and Arlene Prondzinski and asked them to explain the request. Tom Prondzinski stated they currently live across the street from this property and want to build a new home with a storage shed similar to their existing shed. Their intent is to build the new home first and then build the storage building after the sale of their current home.

Potratz stated that if they wanted to build a smaller storage building, a special exception would not be needed. Potratz stated this is a residential area and he does not feel there should be an exception. Casey questioned what would be built first and the Prondzinskis replied they will build the home first. Casey stated the shingles and siding should match those of the home. Bachhuber asked if they are placing the septic field in front of the home and asked if it perked, to which the Prondzinskis replied yes. Janowski stated a good majority of neighbors have this type of storage building and he sees no problems. Rutta asked if there is a CSM on this property and the Prondzinskis stated they had one when they purchased the property. Rutta also asked if they have met necessary setbacks on the property and the Prondzinskis stated they do. There was discussion regarding the start and completion dates being unknown and contingent upon their current home selling. They are hoping to be done by fall. Rutta stated this building must be for personal use only, no animals can be housed in it and the building plans must be on file with the Planning and Zoning Department prior to construction.

There being no further questions, Rutta excused Tom and Arlene Prondzinski. Rutta asked if any members of the public wanted to address this appeal. Pat Wanserski, Town of Sharon Chairman, stated he has talked with several landowners in the area recently and none of them had any objections to the project. There being no other members of the public wanting to comment, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Casey stated all the lots in this area are about the same size and in that entire area there are buildings that are over the square footage. Janowski stated he agrees with Casey. Bachhuber questioned the timeframe for building the storage building. The Prondzinskis stated they will build after their current home is sold. There was discussion about BOA possibly giving a 2 – 2 ½ year timeframe. An extension could be granted by permanent staff, if needed.

Rutta stated he would entertain a motion for approval of appeal A10-02. Motion by Casey to approve the appeal with the following conditions:

1. Approval is for a 36 foot by 38 foot building with 10 foot sidewalls.
2. The building is for personal use only.
3. Siding and shingles are to match those of the proposed new home.
4. Only electric and heat in the building; no septic.
5. The building is to be a single story structure.
6. A Certified Survey Map is to be on file with the Planning and Zoning Department.
7. A complete set of building plans is to be on file with the Planning and Zoning Department.
8. Start date, contingent upon sale of the existing home, will be within two years from the date of this appeal.
9. Planning and Zoning Department permanent staff may grant an extension beyond the two years, if necessary.

Motion seconded by Janowski. Motion passes by a 4-1 roll call vote with Potratz voting nay.

Motion by Rutta and second by Casey to take a five minute recess. Motion passed by voice vote. Meeting recessed at approximately 5:12 p.m.

Rutta called the meeting back to order at approximately 5:17 p.m.

Franciscan Hermits of Perpetual Adoration, Owner/Brice Nelson, Agent (A10-03)

The Franciscan Hermits of Perpetual Adoration, Inc., Owner, Brice Nelson, Agent, special exception request from the Portage County Zoning Ordinance to construct a 50 foot by 70 foot chapel / hermitage, in the A2 Agricultural Transition Zoning District, Town of Sharon, was opened by Rutta who read the public hearing notice.

Pelky explained the request before BOA is to construct a chapel / hermitage / church. This matter came before BOA previously and had been approved. Because the timeframe expired, the matter had to be brought before BOA again.

Rutta read the following letters into the record:

- A letter addressed to Jeff Schuler, Planning and Zoning Department Director, from the Town of Sharon Board, dated February 10, 2010, which states the Town Board passed a motion with a recommendation from the Town of Sharon Plan Commission to approve the request provided all County conditions are followed concerning driveways, parking, drainage, and any other conditions the County advises.
- A letter addressed to the Planning and Zoning Department, from Rick and Judy Rogers, surrounding property owners, stating an objection to the building of a chapel. Pelky stated he had no conversation with Rick and Judy Rogers.

Rutta swore in Father James Genovesi and Brice Nelson. Nelson stated this request was previously approved in 2000. The building at that time was substantially larger than they are asking for now. There is an existing residence on the property with a small chapel space. Nelson is hoping to start May 1, 2010. He also stated the plans require State approval and the architect is working on that. Pelky stated there is a CSM for the site. This will be a single story structure with the siding and roofing matching that of the current residence. Nelson distributed copies of floor plans for the project that show the cross sections. Nelson explained the plans show future layout with five bedrooms in the lower level. At this time, they are only building the chapel. Casey questioned the dimensions and stated they do not match the original request. Nelson stated these dimensions include the entryway and porch. Casey stated this back area is the alter area. Bachhuber asked why this was not built when previously approved. Father Genovesi stated it was due to the scope of the project and finances. Bachhuber questioned water runoff. Pelky stated Dan O'Connell, Senior Conservation Technician, will address those issues. Casey asked Planning and Zoning staff if this request is approved, does that grant permission for the proposed five bedrooms. Pelky stated the ordinance only allows one residence on a property, so if there were living quarters, that would not be allowed. There was discussion on what a hermitage is and what Father Genovesi's plans are regarding future residents. Rutta stated to clarify, this special exception is for the hermitage/chapel only. If there was going to be more than one residence, this would have to come back for a variance. Pelky stated the property would have to be split or subdivided to have an additional residence. There was discussion on the setbacks, acreage, and septic plans. Potratz asked if they will stub in the plumbing to accommodate for the future possibility of five bedrooms on the lower level. Nelson stated that is the plan; to get it done while they are pouring the concrete and they will have this shown on their final plans that are submitted to the State. Casey stated any driveway issues need to be discussed with Dale Peterson of the Highway Department. Nelson stated he has discussed this with Peterson who expressed no concerns. Mrdutt stated he also spoke with Peterson about this and Peterson expressed no concerns with the entrance. Mrdutt said the only item of concern was a corner of the driveway looks like it crosses over the property line and the entire driveway will need to be on the applicant's property.

Rutta asked if there were any members of the public that wanted to address this appeal. Rutta swore in Pat Wanserski, Town of Sharon Chairman. Wanserski stated he feels the Sharon Town Board and Plan Commission felt this might be a rubber stamp because it preceded them by ten years and was prior to Smart Growth Planning. Wanserski stated he is speaking for himself, not the rest of the Town Board. He stated citizens have expressed concern to him. Wanserski had the following concerns:

- Churches do not pay property taxes. If the church is unused in the future, does the property fall back into residential use. He stated once it is built, it is built.
- He had previously asked Father Genovesi if he was associated with the Sacred Heart Parish or the Diocese of LaCrosse. Wanserski said Father Genovesi stated he was not, yet after the fact, he stated he needed approval from the Bishop of the Diocese of LaCrosse.
- He is concerned there will be a request for a cemetery at this location in the future. He does not feel that the Town should have to take responsibility for a cemetery, if the Parish should fail.
- He inquired with Father Marson from a Parish in Polonia if there was a chance that St. Martin's Church could be used rather than building a new structure.

- What would happen if Father Genovesi passed away in the next five or ten years? Is there a successor or someone who would take over? Wanserski stated a church-style building is a prime building to become a cult-style worship.
- Wanserski believes many questions have been raised by this project. He said if BOA considers this approval, he would ask the Town of Sharon Plan Commission and Board to review this matter. He believes they should have had more input into this decision and that previous approval was rubber stamped.

Bachhuber asked Wanserski if he was speaking for himself and also for the citizens who have approached him. Wanserski stated yes. Bachhuber asked if the citizens remain anonymous and Wanserski replied yes. Wanserski stated that if this is approved by BOA, he wants the Town of Sharon to have more input. Bachhuber asked if he felt there is additional information that needs to be ascertained and Wanserski stated yes. Casey asked Wanserski if this was brought to the Town Board recently or is this ten year old information and Wanserski replied the letter read into the record was written after the Town Board meeting. However, he feels issues came up directly after the meeting that still need to be addressed.

Rutta stated they should address issues in the order they were brought up. There is the possibility of placing a cemetery at that site, however, it would require a special exception. If there was a cemetery at that site and it was abandoned, it would become the Town's responsibility to maintain. Rutta asked if the Diocese that Father Genovesi belongs to is the owner. Father Genovesi stated the property is titled to the Franciscan Hermits Incorporated. Rutta stated it is not the concern of BOA as far as what happens when Father Genovesi passes away. The issue before BOA is whether the proposal brought before them meets the requirements of the ordinance. One of the issues to be address is the proposed five bedrooms. Property ownership is not a question. Rutta explained how the ordinance is written and what the BOA's obligations are in this case. BOA cannot base approval or denial on how the Franciscan Hermits will, for example, pass on the ownership. Rutta asked if there were any other questions from Wanserski. Wanserski stated a church is not something that is built everyday and is not to be taken lightly. He is looking at it from the standpoint that any property having a septic added is changed forever. He feels building a church substantially changes a parcel forever and it not a traditional use. He believes this needs to be looked at with much scrutiny. Rutta again asked if there were any other questions for this witness. There being none, Rutta excused Wanserski.

Father Genovesi stated every priest in the Diocese must submit a will in case something happens. He said if something did happen to him, property reverts to the Diocese. Cara Spoto, Stevens Point Journal staff, asked if the bedrooms are in the chapel or in the hermitage. Rutta stated they will be in the basement of the proposed chapel. Spoto asked if the Chapel is attached to the hermitage. Rutta stated the chapel is detached from the hermitage. The building that is proposed is a chapel across the driveway from the hermitage.

Bachhuber asked if the property is titled to the Hermitage and also asked how many members there are. Father Genovesi stated the property is titled to the Franciscan Hermits Incorporated and this is a whole new venture. He is the only hermit at this time.

Rutta asked if there were other members of the public that wanted to comment or give testimony. There being none, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Janowski stated he does not see any problems except for the cemetery issue and he understands why there is concern. Pelky stated the cemetery is not part of this request and that would have to be a separate request in the future. Bachhuber asked if there was a deed on file and she wants to see it. She sees the necessity for resizing the chapel but prefers to see the parcel split so the hermitage is on one parcel and the chapel is on another parcel. Potratz stated the plot of land has already been established as such. BOA's only concern is the chapel request. He also stated that regarding future bathrooms, now is the time to plan for the plumbing. Casey asked Father Genovesi if he would be teaching future candidates that would be living there. Father Genovesi gave an explanation on how one becomes a hermit. Janowski asked if the general public would be able to attend the chapel and Father Genovesi said yes. Casey noted the original request was for a 50 foot by 70 foot chapel. The dimensions are now 50 foot by 90 foot. Can the appeal be amended since the original publication was for a 50 foot by 70 foot chapel? Rutta asked Pelky if he could answer whether or not BOA has the authority to modify this request. Pelky replied that BOA has modified appeals in the past.

(Verbatim begins at this point so as to avoid confusion regarding the different motions brought forward.)

Rutta: I, I think we've hammered this thing to death. And ah... what I will do is I will ask for a motion to approve and ah, we'll have to have our conditions. And if there's not a motion to approve or a motion to second it, ah, or if ah, in fact I don't get a, a, a majority of the Board, I will ask for a motion to postpone till next month. If I don't get that, then I'll ask for a motion to deny.

Bachhuber: I didn't bring my rules of, Robert's Rules of Order with me but I am wondering if a motion to postpone does not take precedence.

Rutta: Don't know. You want my book?

Bachhuber: (inaudible)

Rutta: (inaudible)

Bachhuber: Well

Rutta: There's something in there.

Bachhuber: Okay. Right here it says summary.

Rutta: We're wasting a lot of time.

Bachhuber: Yes, I know. But it's important. I would not take this time if I did not feel this was important. Order of precedence of a motion.

Rutta: Subsidiary motion has priority over a main motion.

Bachhuber: Mmm-hmm.

Casey: So therefore the motion to

Rutta: Postpone has more

Bachhuber: You can make the motion and then, and then I will amend it and then I have subsidiary motion.

Casey: Mmm-hmm.

Bachhuber: Okay.

Rutta: Okay. The Chair will entertain a motion to approve Appeal number A10-03, Franciscan Hermits of Perpetual Adoration Incorporated, Owner, Brice Nelson, Agent, for a special exception from the Portage County Zoning Ordinance is requested to construct a 50 foot by 70 foot chapel/hermitage in the A2 Agricultural Transition Zoning District, Town of Sharon, parcel number 032-25-0920-04.02. Ah, we will let, the Chair will entertain a motion to the, for that approval.

Casey: I'll move for approval of A10-03 for a special exception for a chapel for the fir, Franciscan Hermits, Brice Nelson, Agent.

Rutta: Mmm-hmm.

Casey: With the following conditions. Number one condition, if this reverts back to the Town of Sharon, ah, for their approval of the approval we make on this appeal for their final approval.

Rutta: Okay. Now that you want the Town of Sharon to act on it before we

Casey: No, af, well

Rutta: After we approve it?

Casey: If we approve it with their con, with their conditions that they approval this chapel.

Bachhuber: Definitely.

Rutta: Okay.

Casey: I think they've done that before.

Rutta: (speaking to Jeff Schuler in background) I'm in the middle of a motion right now. Okay.

Casey: Number one is for a 50 by 90 foot chapel. To starting date, prospective starting date May 1, 2010.

Completion May 1, 2011. A complete set of plans, State approved plans, be on file with the Planning and Zoning. All of these items from the 8 25 ah, 00 to be all of those ah, to be met. And this is for a single story structure. Only the first floor to be used. Lower level, level is not part of this decision, decision. Ah, this is for building only. No approval for any cemetery.

Rutta: Siding and roof to ma, roof to match the house.

Casey: Pardon?

Rutta: Siding and roof material to match the house, the.

Casey: Yea. Sid, siding and ah, um, roof to match the existing home. And ah

Rutta: The building plans require State approval.

Casey: Yea, I had that.

Rutta: Yea. Okay. A motion has been made to approve appeal number A10-03 with the conditions specified. Is there a second to that motion?

Janowski: I'll second the motion.

Rutta: Motion is made and seconded. I will poll the Board members to ah, determine

Janowski: Jeff has his hand up. (inaudible)

Rutta: Yes?

Schuler: If I might. I have a couple of questions for your discussion perhaps on the motion before you take action on it.

Rutta: Go ahead.

Schuler: Um, first I think that you, tell me if I'm wrong, but the town really doesn't have any authority according to the ordinance to approve a special exception that ah

Rutta: They can only recommend approval.

Schuler: Right. And if you, basically you'll approve it and any action on their part would be moot.

Rutta: Yes.

Schuler: So to refer it back to the town after your action, um, doesn't really have any basis. And in the ordinance, I don't think it's something that you could include.

Rutta: Mmm-hmm.

Schuler: Um, second I guess, part of the motion was that ah, first floor only, nothing in the basement. Um, I assume that you're building a basement in order to use it. I would suggest if you could modify your motion perhaps to say that the finishing of the base, basement

Rutta: Okay.

Schuler: For habitation is not a part of this, and, and not approved.

Rutta: Okay.

Schuler: Because we wouldn't want him to build a basement that they can't use. Um, and the (inaudible) motion as originally made basically said they cannot use the basement. So um, I think you should take that into consideration as you look at that. But I think any action you take here is gonna be the action. And there's, there's no mechanisms in the ordinance to say the town has to verify or ah, reconfirm your actions. And if you take the action that has no recourse.

Rutta: The problem that we have is we have a document from the town that says we approve this.

Schuler: Correct.

Rutta: Okay? This is what that, this is what is says. Okay? We recommend **approval**. The Town Board recommends **approval**. This is what it says. We have a gentleman, Town Chairman, who comes here at his own, as his, as his spokesman for his own opinion. Okay? And, and ah, gave us ah, some conditions. We can deal with that though. We have a document from the Town Board that says they approve it. **They recommend approval**. I'm still ah, we have a motion to approve appeal number A10-03, but ah, Mr. Schuler just present a situation in which the, the verbiage that's used, that we are not ah, approving the construction of the basement, or finishing of the basement. Ah, I think we should amend that to say that com, compliance with the ordinance concerning the occupants, occupant, occupancy of the lower level bedrooms ah, has to be met. And I will, I don't know how to do this exactly.

Casey: I think then we have another problem because I made the Town Board, this revert back to the Town Board for approval.

Rutta: They'd already approved it.

Bachhuber: No, no, no, no, no.

Casey: On my motion.

Rutta: They recommended it.

Casey: I, but see I made a motion.

Rutta: Okay.

Casey: That the Town Board, this go back to the Town Board for that motion I believe. Correct?

Bachhuber: You said

Potratz: Yes you did.

Casey: That was our, my first.

Rutta: Okay.

(inaudible)

Rutta: Okay.

Bachhuber: I, I move to amend

Rutta: Go ahead.

Bachhuber: I move to amend this motion to refer the matter back to the Town of Sharon, Sharon?

Rutta: Yes.

Bachhuber: Town Board. Ah, to take into consideration some of the information that has been brought here today.

Rutta: Is there a second to the motion to, to ah, to um, ah, re, postpone, to postpone this appeal for one month.

Bachhuber: To come back

Rutta: To provide time, I don't know if they can act on it or not. I'm not that authority on the, on the, Robert's Rules. I'm not that good at it.

Bachhuber: Well, ah, ah, in my motion, I'm not gonna say one month

Rutta: (inaudible)

Bachhuber: Refer, to the town, so the Town Board has opportunity.

Rutta: Well, but see, all, all they have to do is, they would never have to act on it. And that, that, that tables it permanently. You got to put a time. If you, if you want this, if you want the input from the town, you have to put a time limit so that you get that (inaudible) back. Otherwise, if we leave it open ended, they will say simple, we just don't act on it. And nothing can happen.

Casey: I guess I have to withdraw my motion, correct?

Rutta: Yea.

Casey: The first motion?

Bachhuber: If you'd like to withdraw your motion, then we can start over.

Rutta: Yea, let's do that.

Casey: Yea? Cause we can't have, then we'll have two motions on the floor.

Rutta: We've got, got, there's too much gibberish going on.

Bachhuber: Well, I (inaudible) that we went through all this, fine.

Rutta: Shall I withdraw your motion Pat?

Casey: I'll withdraw my motion ah, for apr, for approval of A10-03, a special exception. I'll withdraw that motion.

Rutta: Okay. Now, starting over. I'll ask the question again. Is there a motion to approve appeal number A10-3, Franciscan Hermits of Perpetual Adoration Incorporation, Owner, ah, Brice Nelson, Agent, a special exception from the Portage County Zoning Ordinance is requested to construct a 50 foot by 70 foot chapel/hermitage in the A2 Agricultural Transition Zoning District, the Town of Sharon, parcel number 032-25-0920-04.02. Is there a motion to that effect? Okay. There being no motion to approve appeal number A10-03 at this time, the Chair will entertain a motion to postpone ah, ah, appeal number A10-03 until our April, April 2010 meeting. And if it could be acted on at the March meeting, ah, they could bring it forward at the March meeting.

Casey: I'd just as soon have it

Rutta: Hmm?

Casey: April because you will be gone.

Rutta: Oh, okay.

Casey: You're going to be gone next week.

Rutta: Okay.

Casey: Or next month. And we'd have two (inaudible)

Bachhuber: I, I will move.

Rutta: Okay. The mot, the motion has been made

Bachhuber: I move

Rutta: To postpone this appeal, the decision on this appeal, ah, the, the delib, deliberation as to, until ah, April of 2010 so that the ah,

Bachhuber: Town of

Rutta: Town of Sharon can ah, readdress this issue and ah, we can find out whether or not we can change the size of the building, ah

Bachhuber: From just
(inaudible)

Rutta: Is there a second to that motion?

Casey: I'll second the motion.

Rutta: Motion is made to, to postpone A10-03 until our April meeting.

Bachhuber: Yes.

Schuler: One more quick question. Is the assumption then that if there is no feedback from the Town of Sharon by the April meeting, that action will be taken at the meeting?

Rutta: Yes.

Schuler: Thank you.

Rutta: Ah, ah

Bachhuber: Discussion? On the motion?

Rutta: Well, there's, there, we've got a motion and second. It is now in discussion.

Bachhuber: Yes. Okay. I still am looking for two things here. I want to be sure that there's a deed on record. And two, I would like there to be a consideration of splitting the property so that the hermitage is on one parcel and the chapel is on another parcel. So I can't order anybody to do that but I

Rutta: You would like that.

Bachhuber: I would like that and I would like the Town of Sharon to consider (inaudible) and discuss it.

Rutta: Well, ah, that's one member's opinion.

Bachhuber: Yes.

Rutta: One member of the Board's opinion and ah, ah, whether or not well, that is important enough to create a problem, we don't really know. The motion's been made to ah, postpone till, till our April meeting and a second. Ah, I'll poll the Board members. Please respond with an aye if you agree with this. **Jim, nay;** ah, **Pat, aye;** **Phil, nay;** ah, **Marge, aye;** the **Chair votes nay.** Motion carries, nay, ah, three to two. Or no, motion fails three to two.

Bachhuber: It's not going back to the Board.

Rutta: We're not, we're not gonna send it back to the Board. Ah, now, the Chair will entertain a motion to approve appeal number A10-03. I'm not gonna read it all again because I've read it four times already. Is there a motion to approve this?

Casey: Question Mr. Chairman.

Rutta: Fire away.

Casey: As long as I withdrew my last motion.

Rutta: Mmm-hmm.

Casey: Can I make the motion again?

Rutta: Sure. Sure. I think you can anyhow.

Unknown: Sounds good to me.

Rutta: We've dispensed with the subsidiary, subsidiary motion, so therefore, the second, this motion should be valid. Fire away.

Casey: Okay. I'll move for approval of A10-03 for a special exception for the Franciscan Hermits ah, Brice Nelson, Agent. The size of the building is to be 50 by 90. Start of construction, May 1, 2010. Completion May 1, 2011. A, the siding exterior of the chapel to match the existing home, chapel on site. A complete set of building plans to be on file with Planning and Zoning, of which are to be State approved plans. And this is a single story structure. The main floor ah, is the only part of this building that is to be approved. The lower level of the five bedrooms is not part of our decision. Ah, the, this is for a building only and no approval for any cemetery um, on this property.

Rutta: Okay.

Mrdutt: Quick question. So there is a basement in the plans?

Father Genovesi: Yes.

Mrdutt: He said, he just said single story. To build the bedrooms. That can still happen, plans for a basement.

Casey: The bl, yea, right. Single story. It's above ground, correct?

Janowski: When they put the infrastructure in for the basement, the stubbing of the plumbing.

Rutta: They can't finish the bedrooms.

Janowski: But the infrastructure for the stubbing can be (inaudible).

Casey: Am I right in saying single story is above ground?

Pelky: Finished basement.

Mrdutt: Correct.

Casey: Okay.

Mrdutt: (inaudible)

Rutta: Okay.

Stewart: Say that again? What you just said.

Casey: Single story.

Stewart: Mmm-hmm.

Casey: Is a structure above the, above ground.

Rutta: It's a single story structure.

Stewart: But you're only including the top.

Casey: Correct.

Stewart: Okay.

Casey: Am I clear?

Rutta: Clear.

Janowski: I'll second that motion.

Rutta: Motion has been made and seconded to for, to approve ah, appeal number A10-03 for the Franciscan Hermits of Perpetual Adoration Incorporated, Owner, Brice Nelson, Agent. I will poll the Board members. Is there any discussion first of all? (inaudible)

Janowski: Would the basement here, now, I wanna make sure it's clarified that, that they talked you know, for future use, I'm sure if they have to come back to get another permit. But you know, when they're doing the concrete, cause I, I work in contracting myself. If they um, you know, could prepare an infrastructure like stubbing out the pipes and then letting them come back like three, four years and bust up all the concrete. Just so the infrastructure's in place.

Rutta: It should be understood that before the bedrooms can be finished or used, I should say used, they have to come before the Board of Adjustment again or split the property off.

Mrdutt: Correct.

Pelky: They have to come.

Rutta: Now does everyone understand?

Pelky: They have to come to this body regardless.

Casey: Right.

Rutta: Even if they split it off. Okay. You got to come before the Board of Adjustment again. Okay. I'll poll the Board members. Ah, please respond with an aye if you agree with this motion. **Jim, aye; Patrick, aye; Phil, aye;** Ah, **Marj, nay;** and the ah, **Chair votes aye.** Motion passes four to one. Thank you gentlemen. Thank you for bearing with us. Question.

Wanserski: That was for the amended size of the building?

Rutta: Pardon me?

Wanserski: That was for the amended size? (inaudible)

Rutta: Yea. Motion says f... 50 by 90.

Wanserski: Okay. (inaudible)

Rutta: Cause it stubs out on either end a little bit.

(End of verbatim)

Kurt and Kay Ross (A10-04)

The Kurt and Kay Ross special exception request from the Portage County Zoning Ordinance to operate a commercial stable / riding arena, and to allow multiple irregular shaped ponds exceeding 30,000 square feet, in the A4 General Agricultural and Conservancy Zoning Districts, Town of Dewey, was opened by Rutta who read the public hearing notice.

The Chair entertained a motion to postpone this until the April meeting. The matter may be brought before the March meeting, if they are ready. Mrdutt stated this item has not been heard at the town level.

Discussion and Decision

Motion by Janowski, second by Bachhuber, to postpone this matter until the April meeting. There was no further discussion on this matter. Motion passed unanimously by roll call vote.

James and Joyce Edwards, Owners/Chippewa Concrete Services, Agent (A10-05)

The James and Joyce Edwards, Owners, Chippewa Concrete Services, Agent, special exception request from the Portage County Zoning Ordinance to operate a portable concrete plant, in the A4 General Agricultural Zoning District, Town of Carson, was opened by Rutta who read the public hearing notice.

Pelky stated that under current A4 General Agricultural Zoning, asphalt and concrete plants require special exceptions.

Rutta read the following letters into the record:

- A letter addressed to the Portage County Planning and Zoning Department from the Town of Carson Board, dated February 10, 2010, recommending approval of the special exception request.
- An email to Chris Mrdutt from Brad Johnson, Department of Natural Resources, dated February 8, 2010, stating they made a request to Chippewa Concrete to get a site specific Stormwater Management Plan for the Edwards property.

Rutta swore in Mike Mengel, agent for Chippewa Concrete, and asked him to explain his request. Mengel stated this concrete plant would be used to work on the new Highway 10 expansion. This site has already been approved for another crushing outfit and Chippewa Concrete will place their portable plant on the same property when they are done. The same driveways and access to the new highway will be used by Chippewa Concrete as the first crushing outfit. They will come off existing (old) Highway 10 with the aggregates and all other products that are needed for the project. Mengel believes they already have approval on all the plans from the Department of Natural Resources and State environmentalists. Mrdutt stated the site has been approved for a borrow site and crushing operations.

Rutta asked if BOA had any questions for the appellant. Potratz stated he has no questions at this time. Casey stated he believes this is the brown plant; the one that was up by the Starlight Ballroom. Mengel stated he is not sure if they will be using that one, but they would be using a comparable one. Mengel stated they may start sometime in August, however, the start date is dependant on how much of the materials are ready. Mengel stated the completion date is approximately November 2011. Rutta asked if they will be bringing in concrete from other projects to be crushed. Mengel stated he doesn't think they will use any of this concrete in the new project. There was discussion regarding hours of operation. The business plan states the hours will be 7:00 am until 7:00 pm. Mengel stated there could be days where they go from 6:00 am until dark. It is dependant on weather conditions. Mengel stated they informed the Town of Carson they may start earlier or work later on some days.

Mrdutt stated that last year a State law was passed that made borrow pits exempt from local zoning and this property falls under that. Because of this, there are no previous conditions to follow as far as the borrow site.

Rutta asked if there was going to be any fuel storage on the site. Mengel stated there will be proper storage tanks for fuel provided by the suppliers and they have to meet State specifications for the job. Rutta asked if any signs or lights will be put up. Mengel is unsure. Rutta stated any signage has to comply with the ordinance and all lighting must point inward and downward. Mengel stated any lights would point in towards the plant, away from Highway 10. Rutta stated there is to be no disposal of wastes on that site. Unannounced visits by Planning and Zoning staff are permitted. There was discussion regarding traffic concerns. Rutta asked if Mengel is going to check with the Portage County Highway Department. Mengel stated the only road they will be using to enter is existing (old) Highway 10 and when going out of the plant they will use the new highway. Rutta stated all materials will have to be brought in on County Road HH (previously Highway 10). Mengel stated the spec powder for the concrete will be coming from Manitowoc and the sand and stone will be coming from Wimme's pit on County Road P. Rutta asked about noise issues. Mengel pointed out they have submitted a plan and all requirements must be met. Bachhuber asked if they could just state that they must comply with all conditions in the application instead of listing conditions individually. Casey stated all of the material that has been submitted will be part of the decision. Rutta asked about a storm drainage plan. Casey stated it is in the submitted application. Mrdutt stated Brad Johnson from the Department of Natural Resources is looking at this issue. Rutta asked BOA if they understood that instead of itemizing all the conditions, they will just make the application part of the decision and they must comply with all the terms in the application. The BOA members stated they understood.

There being no further questions for the applicant, Rutta excused Mengel. Rutta asked if any members of the public wanted to testify on this appeal. It was noted there were none. Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta asked BOA for their comments. Potratz stated this issue is pretty much cut and dried with the application and addendum submitted. Casey, Bachhuber and Janowski stated they have no questions.

Rutta entertained a motion for approval of appeal A10-05. Motion made by Janowski to approve the appeal with the following conditions:

1. All terms listed in the application and addendum shall be followed and made a part of this decision.
2. Approval is for the new Highway 10 project only; no outside sales.
3. Stockpiles are to be removed at the end of construction.
4. A sign, if any, is to be no more than six square feet in size.

5. The State License Plant number is to be on file with the Planning and Zoning Department before operations start.
6. Start date of project is July 1, 2010; completion date is November 30, 2011.

Motion seconded by Bachhuber. Motion passed unanimously by roll call vote.

Rutta closed the hearing portion of the meeting.

Approval of Minutes

Bachhuber moved to approve the November 16, 2009 minutes as submitted, Potratz seconded. Motion passed by voice vote.

Casey moved to approve the December 14, 2009 minutes as submitted, Rutta seconded. Motion passed by voice vote.

Casey moved to approve the December 21, 2009 minutes as submitted, Potratz seconded. Motion passed by voice vote.

Correspondence/Updates

The next meeting is scheduled for Monday, March 15, 2010 with on-sites on Friday, March 12, 2010. There is also the possibility of a Special Exception meeting on March 17, 2010 or March 22, 2010.

Adjournment

There being no further business to come before BOA, Janowski moved to adjourn the meeting, Casey seconded, all in favor, meeting adjourned at 6:46 p.m.

Respectfully submitted,

Gayle Stewart, Recording Sec.

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
MARCH 22, 2010

Call to Order

Patrick Casey called the Portage County Board of Adjustment (BOA) to order at 4:10 pm in Conference Room 5, County Annex Building, Stevens Point, Wisconsin.

Roll Call

Members present included Patrick Casey, James Potratz, Marj Bachhuber, Joan Scheider and Phil Janowski. Staff present included Jeff Schuler, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department. Edward Rutta was excused.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Public Notice

Members of the public who wish to address the Board on specific items must register their request at this time. Such comments are subject to the reasonable control of the Board Chairman as set forth in Robert's Rules of Order.

Casey stated the Kurt and Kay Ross special exception request, A10-04, was held open at last month's meeting and will not be heard until the April meeting. An agenda will be sent out notifying all interested parties of the meeting date.

PUBLIC HEARINGS:

Jerold P. Fahrner, Owner (A10-06)

The Jerold P. Fahrner special exception request from the Portage County Zoning Ordinance to expand a campground in the A4 General Agricultural Zoning District, Town of Dewey, was opened by Casey who read the public hearing notice.

Casey swore in Jerold Fahrner and Bud Styer and asked Pelky to explain this request. Pelky stated this property was recently rezoned by the County Board to allow the special exception request to move forward. The request is to expand the current campground by up to 63 sites.

Casey read a letter into the record from the Town of Dewey Board stating the Town of Dewey Plan Commission and Town of Dewey Board support the proposal with conditions.

Fahrner stated he wants to increase the number of sites by adding new sites in the field area. Each campsite will have electric and water hookups and be almost twice the size of existing campsites. Fahrner stated the roads will be paved for dust control with one common entrance and exit. Fahrner will be adding employees, which he believes will help the local economy.

Potratz stated some of the existing sites look permanent with lean-tos and decks. Fahrner stated the decks and lean-tos can be moved and are not permanent. They are all sections that can be bolted. In addition, all sheds are portable. Fahrner stated none of the new sites will be seasonal and they are not metered for electric. Bachhuber stated one of the sites had landscaping bricks that looked like a foundation. Styer explained to BOA how these decks, lean-tos, and landscaping items are movable/mobile.

Bachhuber discussed issues brought up in a letter by the Town of Dewey Board; specifically traffic noise, music noise, noise from the siren on the fire engine used to give rides to children at the campground on weekends, and a curfew. Fahrner stated traffic noise generated by campers going down the wrong roads and having to turn around in neighbors driveways will be addressed by adding better signage directing

campers to the campground. Fahrner does not allow bands at the bar anymore and this should alleviate noise from music. Fahrner stated quiet time will be 11:00 pm until 8:00 am and fireworks are no longer allowed. It was noted by Fahrner there have been no fireworks/noise related arrests and the Portage County Sheriff's Department has only been called out to the campground on noise related issues four times in the past 17 years.

Janowski does not have a problem with excessive noise from the campground and stated there is also noise from the interstate. Scheider stated she read in a set of minutes a neighbor had said noise from the interstate was not a problem and in no way compared to the noise coming from the campground. Scheider asked what the sites are metered for and how many are metered. Fahrner replied about 75 seasonal sites are metered for electricity. There was discussion about the size of trailers and whether they all measure less than 400 square feet. Fahrner replied every trailer measures less than 400 square feet, and decks and extensions are not included in measurements. Styer clarified the definitions for manufactured homes are established by the Department of Housing and Urban Development. As long as trailers have the Recreational Vehicle Industry Association sticker, they are considered compliant. Scheider asked where she could locate this information and Styer replied from the Department of Revenue. Scheider asked how many fire rings are in the campground. Fahrner replied every site has a fire ring. He also stated if there are no burn times or he feels it is not safe to burn, campfires would not be allowed. Scheider asked if there have been any fire-related issues and Fahrner answered to his knowledge, he does not believe there have been any issues while he has been the owner. Styer stated all new campsites will have fire rings.

There was discussion regarding the type of atmosphere Fahrner is trying to create with new management. He is adding numerous activities and wants to have a more family-friendly environment. Fahrner and Styer explained the different types of activities that will be offered. Styer described the pedal carts that will be on-site. Scheider asked how they will make sure these bikes do not leave the property. Styer said these are not road-trip bikes, there will be tall flags on the bikes, and they will have personnel patrolling the grounds.

Casey asked if rules and regulations are distributed to campers. Styer stated rules, liability waivers, and other documents are issued when campers arrive. When equipment is rented, a deposit is required to ensure compliance with the rules. If the rules are violated, the deposit is forfeited. Styer stated only two dogs are allowed per site, all dogs must be leashed, and there are certain breeds of dogs that are not allowed. Two cars are allowed per site. Bachhuber asked about planting trees for a sound barrier. Fahrner replied that once they get a good idea of the traffic flow, they may plant another species of tree.

Bachhuber stated that campground signs are not being maintained very well. Fahrner replied there are signs at County Road X, County Road DB, and Maple Road. He wants to increase the size of the sign at Maple Road and add two signs at other locations in the Town of Dewey. Styer noted they now have brochures with maps and GPS coordinates, in addition to information on Google Search. These added measures should help alleviate campers missing the turn onto the proper road.

Pelky stated the septic capacity and condition will be addressed with the soil tester who designed the system. He will communicate with staff as to whether the system is sized adequately. This will be reviewed and acted on by staff before there is a determination on how many sites can be added. Styer stated as an alternative, waste from seasonal sites could be contracted with an outside septic hauler to prevent any from going into the on-site system. Pelky stated the Portage County Health and Human Services Department would have to be contacted regarding permits for new sites. Pelky stated staff also does not have a final determination regarding stormwater. The Land Conservation Division is looking at that information with the architect and they are waiting for additional data. Pelky is unsure if the stormwater data they have now will affect the number of sites. He is unsure if they will give an exact number for the expansion. Pelky stated Brad Johnson, Department of Natural Resources, deals with stormwater and he will coordinate with Planning and Zoning staff. Fahrner stated his staff has been in contact with Brad Johnson. Pelky stated they usually require an as-built drawing to make sure things are done according to plan.

Scheider asked about an increase in employees and asked if there was an on-site management person. Fahrner replied they will have two on-site management personnel, 24 hours a day, seven days per week. Fahrner will increase his staff to three full-time employees and eight part-time employees.

Pelky stated BOA may want to show caution on giving approval for an exact number of sites. They may want to give approval up to a certain amount. There was discussion on the original approval from 1972 and it appears there is a question on the number of sites that were added after that approval. Fahrner stated his request is for adding 63 new sites, plus a group site, which holds up to six campers. Scheider asked Pelky if he anticipates the Planning and Zoning Department will give a recommendation of approval for more sites than requested by Fahrner. Pelky answered he does not anticipate that. BOA could set the upper limit on allowed sites and base it upon staff approval of stormwater.

Bachhuber asked about fire protection. Fahrner said although there is only one entrance to the campground, the fire chief expressed to him they could get through to the property, if needed. Scheider asked about roads and direction of travel. Fahrner replied that he will paint arrows to direct traffic flow after he has a better understanding of the plan and the needs. Roads will be user friendly and maintained by Fahrner at his expense.

Casey excused Fahrner and Styer. There being no members of the public wanting to testify, Casey closed the testimony portion of the hearing.

Deliberation and Decision

Potratz stated based on the limited information provided, he would like a maximum number of sites set. He would also like to see the water runoff study and septic system approval prior to making a decision. Casey said BOA can set the maximum number of sites allowed; however, the Planning and Zoning Department will make the final determination on the number of sites allowed based on their findings.

Bachhuber is satisfied with information provided by the Planning and Zoning Department and said they could make the findings part of BOA's conditions. She would like to see a set of campground rules on file with the Planning and Zoning Department. If rules are revised, those are to be submitted. Bachhuber wants Fahrner to work with the Planning and Zoning Department on signage. Bachhuber would like quiet time to be established as 11:00 pm to 8:00 am. If any lighting is put up, it must be directed inward and away from the interstate. An as-built drawing is to be on file with the Planning and Zoning Department.

Janowski inquired about stormwater and the impact on the river. Pelky explained and stated stormwater issues are reviewed in developments such as this even when the property is not located on the water.

Bachhuber questioned what laws are already on the books regarding noise and asked if this property is sold, do conditions go with the land or the owner. Pelky replied when BOA approves a request, conditions are for that specific piece of property and stay with that property. Pelky stated BOA could set conditions on noise, but it would be up to the Portage County Sheriff's Department to enforce according to the ordinances on the books. It was noted that Fahrner could plant trees in the future to help with noise abatement. Styer stated there cannot be ordinances just for campgrounds; they must be for the Township. Potratz stated it would be impossible to make restrictions on noise unless you set where to measure decibel levels. BOA cannot impose conditions on the bar because that is not part of this request. Fahrner stated he had discussions with the bar owner and the Township about music noise from the bar.

Janowski suggested to Fahrner that the sign on Casimir Road in the Town of Hull be improved.

Motion by Bachhuber to approve appeal A10-06 with the following conditions:

1. Septic evaluation to be provided to the Portage County Onsite Waste Section showing the existing septic system(s) ability to handle the proposed campground expansion.
2. Approval through the Portage County Health and Human Services Department, Gary Garske (715)345-5350, must be on file before a zoning permit is issued.

3. The total number of campsites for this expansion will be determined by Planning and Zoning Department staff, based on stormwater and onsite waste review. Stormwater runoff will also be approved by Brad Johnson, DNR Stormwater Management Specialist (715)359-2872. A maximum of 185 sites total is allowed for the entire campground.
4. An as-built drawing of stormwater facilities shall be submitted to the Planning and Zoning Department.
5. The campground rules are to be on file with the Planning and Zoning Department. Any changes or revisions in rules must be submitted to the Planning and Zoning Department.
6. Quiet time shall be from 11:00 pm to 8:00 am.
7. The owner shall work to bring down the decibel level on the fire truck and any other noise within the campground.
8. Any lighting shall be directed inward, not towards the interstate.
9. The owner will work with Planning and Zoning staff to determine the size, number, and placement thereof of signs.
10. There will be no fireworks allowed in the entire campground.

Motion seconded by Janowski. Motion passed unanimously by roll call vote.

Approval of Minutes

Janowski moved to approve the February 15, 2010 minutes as submitted, Potratz seconded. Motion passed by voice vote.

Correspondence/Updates

The next meeting is scheduled for Monday, April 19, 2010 with on-sites on Friday, April 16, 2010.

Schuler reminded BOA of the BOA/Appeals Workshop scheduled for April 12, 2010.

Adjournment

There being no further business to come before BOA, Bachhuber moved to adjourn the meeting, Scheider seconded, all in favor, meeting adjourned at 5:25 p.m.

Respectfully submitted,

Gayle Stewart, Recording Secretary

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
APRIL 19, 2010

Call to Order

Edward Rutta 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

Rutta led the Pledge.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider and Phil Janowski. Staff present included Jeff Schuler, Tracy Pelky, Chris Mrdutt and Gayle Stewart, Planning and Zoning Department. Marj Bachhuber was excused.

Public Notice

Members of the public who wish to address the Board on specific items must register their request at this time. Such comments are subject to the reasonable control of the Board Chairman as set forth in Robert's Rules of Order.

PUBLIC HEARINGS:

Jeffrey and Bonnie Vander Zanden, Owners (A10-07)

The Jeffrey and Bonnie Vander Zanden special exception request from the Portage County Zoning Ordinance to operate a kennel in the A4 General Agricultural Zoning District, Town of Eau Pleine, was opened by Rutta who read the public hearing notice.

Rutta informed BOA he was approached by a neighbor about this request. He informed the individual if they wanted to be heard on this matter, they should attend the meeting.

Pelky stated this special exception request is to operate a dog kennel for up to 16 dogs.

Rutta read the following letters into the record:

- A letter addressed to the Portage County Board of Adjustment from the Town of Eau Pleine Clerk, indicating the Eau Pleine Plan Commission and Eau Pleine Town Board voted to accept the proposal submitted by Jeff Vander Zanden.
- A letter addressed to Board of Adjustment from Chris Mrdutt, Zoning Technician, stating the Planning and Zoning Department supports the appeal as requested as long as the appellant obtains a commercial animal license prior to a zoning permit being issued.

Rutta swore in Jeffrey Vander Zanden and asked him to explain his request. Vander Zanden stated he wants to begin the process of starting a kennel. He is looking about seven years down the road and wants to spend the time building up the property and advertising. Vander Zanden intends to use the existing building in addition to adding fences and trees to help with noise. Vander Zanden stated he inflated the number of dogs because he does not want to limit himself in the future.

Potratz stated this appeal appears to be well thought out and illustrated. Casey asked where future expansion of the kennel would be located and how Vander Zanden would control barking. Vander Zanden replied he could probably get by with seven or eight dogs and could control barking through the use of electric collars and training. Scheider asked Vander Zanden if he intended to live on-site in the future and Vander Zanden answered yes. Scheider commented it appears there is already some form of a kennel on the property. Vander Zanden stated he has four kennels as he used to have dogs and he watches relatives' dogs occasionally. Vander Zanden stated his kennel is strictly for training and only uses the term "boarding" because the dogs would stay on-site during training. The dogs Vander Zanden would be training are competition and hunting dogs. Vander Zanden stated he also

trains in Marathon County, at the Mead Wildlife Area, at a friend's property, and at local cranberry marshes. The dogs will be chained in a fenced-in area while not training or if the kennel is being cleaned. Dogs currently stay in doghouses outside at night; however, Vander Zanden said the dogs could be in enclosed kennels at night. In the future, all dogs could be located inside kennels. Training is currently held only one to two hours per day due to his work schedule and no training is conducted on weekends.

Casey asked Vander Zanden about waste disposal and Vander Zanden replied he collects the waste by hand and spreads it on the property. Waste is sprayed and goes to the side of the slab. Vander Zanden stated in the future he will have a poured curb to catch the waste. He is unsure of the type of septic system he will have for the kennel area. Casey expressed concern with potential waste from 16 dogs. Mrdutt stated waste concerns could be addressed with the Land Conservation Division.

Scheider asked where on the property the dogs are staked out and chained. Vander Zanden replied they are wherever he is training other dogs. Rutta asked about a barrier to keep the dogs from running away. Vander Zanden stated he does not have fencing around his property and it is an obedience/training issue. Usually after a month, the dogs are collar conditioned and obedience is pretty good. Vander Zanden does not believe electrical fencing would work to contain the dogs. Vander Zanden stated when he has the dogs his main concern is keeping them under control and would never want to have to inform an owner that their dog has run away.

There being no further questions from BOA members, Rutta excused Vander Zanden. Rutta asked if any members of the public wanted to address this appeal. Rutta swore in Leif Erickson. Erickson knows Vander Zanden and stated he has no problems with this development. His concern would be future owners, if the property is sold. Erickson and his wife have no opposition to this request.

Margaret O'Donnell, citizen, was not sworn in. O'Donnell's concern is for her small grandchildren and she is concerned they may hear the dogs barking and wander onto the property. She would like some type of fencing along the south end of the property. Casey stated Vander Zanden will be training a gentle breed of dog. Rutta stated they are concerned about the safety of the people who live in the area. One problem is perimeter fencing around the property would be very expensive. Rutta stated they have to weigh the benefit of a fence versus the risk of not having a fence, and they must take into consideration the proximity of neighbors in the area. There being no other members of the public wanting to comment, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta stated the issues that need to be dealt with in this particular appeal are noise, control of animals, and ground pollution (waste). Land Conservation Division can address the waste issue.

Casey stated screening is the biggest issue. Rutta stated neighboring houses are quite a bit away from this property. Casey asked about signage and Vander Zanden stated if he has any, it will be off the road and on the driveway. He was informed that any signage must conform to County Ordinances. Scheider's biggest concern was waste removal and she would like the Land Conservation Division to set requirements.

Rutta stated he would entertain a motion for approval of appeal A10-07. Motion by Casey to approve the appeal with the following conditions:

1. All material presented is made a part of this decision.
2. Start date for the kennel is May 15, 2010; completion date of October 30, 2010.
3. Maximum number of dogs permitted on-site at one time is 16.
4. A sign, if any, is to be no more than six square feet in size.
5. Hours of operation are 7:00 am to 7:00 pm, seven days per week.
6. A commercial animal license is to be obtained from the Portage County Clerk, 346-1351.
7. A waste management plan shall be approved by the Portage County Land Conservation Division prior to issuance of a zoning permit.
8. Screening shall be installed around the fenced-in area of the kennel. Planning and Zoning Department staff shall approve the screening plan prior to issuance of a zoning permit.
9. If there is a problem with dogs creating noise, you are to utilize some form of noise control collar.

Secondary motion by Rutta to include the following condition:

1. Dogs are to be housed inside the kennels from 9:00 pm to 6:00 am to help alleviate noise during nighttime hours.

Secondary motion seconded by Janowski. Motion passes by voice vote.

Motion to approve appeal A10-07 seconded by Scheider. Motion passed unanimously by roll call vote.

Julie Western-Zuge and James Zuge, Owners (A10-08)

The Julie Western-Zuge and James Zuge special exception request from the Portage County Zoning Ordinance to operate a glass workshop as a home business in the A4 General Agricultural Zoning District, Town of Dewey, was opened by Rutta who read the public hearing notice.

Pelky stated this special exception request is for a home occupation where the individual wants to have a glass workshop.

Rutta read the following letters into the record:

- A letter from the Town of Dewey Chairman indicating the Dewey Plan Commission and Dewey Town Board voted in support of the special exception request by Julie Western-Zuge. Minutes from both meetings were attached.
- A letter addressed to Board of Adjustment from Chris Mrdutt, Zoning Technician, stating the Planning and Zoning Department supports the appeal and will require the appellant to obtain a Portage County Zoning Permit for the accessory building and the use of a glass workshop.

Rutta swore in Julie Western-Zuge and asked her to explain the request. Western-Zuge stated she wants to put in a workshop to make small glass beads. She does not have the room in her house to do this and it is not recommended this be done in a basement due to ventilation issues. Western-Zuge stated she will sell her product via the Internet so there will not be additional traffic. Western-Zuge distributed a picture of the proposed building to the Board. Western-Zuge stated she has worked out ventilation/fire protection issues.

Janowski stated traffic will not be an issue since the business will be Internet based. Potratz asked what makes the building portable. Western-Zuge explained the building is self-contained, can be moved, and will sit on a four inch gravel pad. Potratz commented on several other buildings that seem in disrepair and a semi-trailer on the property. Western-Zuge stated the trailer was used to store hay and will be removed. Mrdutt stated Planning and Zoning staff will allow time to empty the hay and get the trailer moved. Western-Zuge stated they have two older chicken coops that were there when they purchased the property, two relatively new pole barns, and a car port. Potratz asked if the porch is going to be enclosed and Western-Zuge replied no. Mrdutt stated the property is zoned General Agricultural and from a building standpoint, they are not concerned about size. This is to approve the use of a home occupation. Scheider asked Western-Zuge if she is taking precautionary measures due to the use of a kiln. Western-Zuge replied that is why she will be working in a separate area and will have tile floors and a stainless steel worktop. In addition, Western-Zuge will store supplies and gasses in a separate room.

Rutta inquired if Western-Zuge will work in the workshop seven days per week and Western-Zuge replied she has no set hours. Rutta stated Sam Solberg, Commercial Building Inspector, has not inspected the site, but has given an opinion on the principal of the building and its use. Western-Zuge said she has discussed storage of equipment and gasses with Solberg.

There being no further questions from BOA members, Rutta excused Julie Western-Zuge. Rutta asked if any members of the public wanted to address this appeal. Daryl Kurtenbach was sworn in by Rutta. Kurtenbach stated he owns adjacent land and encourages businesses in this area. Kurtenbach's concern is fire because there are many pine trees in the area. In addition, he has concerns about poisonous gasses that will be used. Western-Zuge explained she will use propane and only in small quantities. Kurtenbach asked where the building will be located on the property and Mrdutt showed the location on a property map.

Betty Kurtenbach asked about zoning on this property. Rutta stated this property is zoned General Agricultural and this activity is allowed under that zoning classification.

There being no other members of the public wanting to comment, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Casey asked if UPS would be delivering or picking up items. Western-Zuge replied she does not believe they will be out any more than they currently are. In addition, Western-Zuge will pick up her own tanks. Scheider asked how the building will be heated. Western-Zuge stated at this time she plans on using an electric space heater as she only needs to heat a small area. Janowski asked about wall coverings and fire safety. Western-Zuge stated the walls are already finished, but she may consider covering the walls with stainless. Rutta stated he understands the fire concerns. In addition, he sees no problem with this request. However, Rutta would like the semi-trailer removed and other items on the property cleaned up.

Rutta entertained a motion for approval of appeal A10-08. Motion by Casey to approve the appeal with the following conditions:

1. Approval is for operation of a glass workshop as a home occupation in a 24' x 16' building.
2. A semi-trailer located on the property is to be removed and the site is to be cleaned up where possible.
3. A sign, if any, is to be no more than six square feet in size.
4. All necessary permits shall be issued before start of operation.

Motion seconded by Janowski. Motion passed unanimously by roll call vote.

Kurt and Kay Ross, Owners (A10-04)

The Kurt and Kay Ross special exception request from the Portage County Zoning Ordinance to operate a commercial stable / riding arena, and to allow multiple irregular shaped ponds exceeding 30,000 square feet, in the A4 General Agricultural and Conservancy Zoning Districts, Town of Dewey, was opened by Rutta who read the public hearing notice.

Janowski asked to recuse himself because he is currently doing a job for the appellant and there may be a potential conflict of interest. At this point, he took a seat in the audience.

Pelky stated one part of this request is to allow the existing ponds that have been excavated on the property. The appellants are working with Department of Transportation on acquiring right-of-way for one of the ponds. The other part of the request is the commercial riding stable. Pelky stated this is more along the line of a home occupation business.

Rutta read the following letter into the record:

- A letter from the Town of Dewey dated March 10, 2010, stating the Town of Dewey Plan Commission and Town of Dewey Board voted to support both requests with conditions. Attached to the letter is a copy of the Town Board Meeting Minutes and the Dewey Plan Commission Meeting Minutes.

Rutta swore in Kurt and Kay Ross. Kurt Ross stated they want to open a riding stable, not an arena, and have a horse buggy, wagon and sleigh rides. In addition, they want to farm with the horses. Kay Ross added they would like to have the elderly come out to see the horses and eventually have handicapped people spend time with the horses as this could be good therapy.

Scheider stated it appears they currently have over 20 horses. Kurt and Kay Ross stated it is quite a process to get the proper horses for the stable. They have to go through a large number of horses. Scheider stated it appears they are already doing these types of activities. Kurt and Kay Ross stated they have been trying a test period since October to see if there is a demand for this type of service. Scheider asked which facility would be used as a stable and Kurt Ross replied the barn and a small addition on the outside will be used. Kay Ross added people will not be allowed into the barn. Scheider stated there is not enough room inside the barn for 20 horses. Kay Ross stated they will only bring horses into the barn that will be utilized that day.

Potratz asked who owns the property the trail rides will be held on. Kurt Ross answered the trail is on their property and two neighbors' property. Potratz asked if the ponds were for watering horses and stated they looked like open pit manure piles. Kurt Ross stated the horses water off all the ponds and, in addition, they are vet checked. Kay Ross stated they have fresh water all the time.

Casey asked if they serve liquor of any type on the premises. Kurt and Kay Ross stated they do not. Casey asked about restroom facilities. Kurt Ross stated they bought a portable toilet that will be cleaned and maintained by the seller.

Kurt Ross stated in the future they would like to have a saloon-type look, maybe offer alcohol, and have a cooking/meeting area. Kay Ross said if they had some type of grand opening, they would get a weekend liquor license, if needed. Kurt Ross stated because of the chuck wagons they hold, they are inspected by a State Inspector. Kay Ross stated in the future they would like to have buggy rides in downtown Stevens Point. Casey asked how they acquire their horses. Kurt Ross stated when they purchase from auctions, they do not necessarily know what they are getting. They do not want horses that run away, bite, or kick. They screen the horses and go through quite a few. In some cases, they end up selling horses and taking a loss. Kurt Ross stated all trail rides are guided and no one is allowed to ride alone.

Rutta asked how many horses can be kept in the facility they currently have. Kurt Ross replied they can have 22 in stalls, but they are normally kept outside and brought in for events. Rutta asked how many horses they hope to have and Kurt Ross replied that number is based on demand by the public, but he is hoping to have at least 30. Rutta asked if they have a formal agreement with their neighbors to allow the tours on their property. Kurt Ross answered yes. Kurt Ross stated he could provide this agreement in writing, if necessary for permits. Rutta asked how many visitors are anticipated, to which Kurt and Kay Ross stated they do not know. Rutta stated he is concerned about the absence of permanent restroom facilities. Kay Ross stated if business is going good, they would do something more. Rutta asked if the horses are defecating into the ponds and should they be concerned with groundwater contamination. Mrdutt stated he spoke with Dan O'Connell of the Land Conversation Division, who stated these are private ponds and the impact of that is nothing they could foresee an issue with. Mrdutt stated the manure issue would be addressed by permanent staff and a manure management plan would be looked at. Kurt Ross stated they rent approximately 60 acres down the road and they are hoping to continue renting another neighbor's land for crops. Kurt Ross stated they spread the manure everyday with a manure spreader. Rutta expressed concern about a low-lying power line running between two of the buildings and stated this power line should be buried.

Pelky stated Portage County Health and Human Services will need to address the food issue. This property is not zoned properly to have a restaurant on-site. Mrdutt stated a Commercial Animal License will need to be obtained from the Portage County Clerk before a zoning permit will be issued. Rutta asked how many horses would be needed at the present time to get started. Kurt Ross answered they have 10 to 12 good riding horses, one team of Belgian Horses, and one buggy horse.

Mrdutt stated there are two signs located along the Interstate that may need approval and possible down-sizing depending on their location. This issue will be addressed with permanent staff. Kurt Ross stated he wants more signs on the highway further to the south. Rutta asked about the hay. Kurt Ross stated they rent land to make all the hay they can in addition to having hay trucked in. Casey asked what type of experience Kurt and Kay Ross have with horses other than riding. Kurt Ross stated he has life-long experience riding, participating in rodeos, hitching and driving, and shoeing. Casey stated trail riding bothers him and using strange horses. Kay Ross reiterated they put the horses through tests and they would not use horses they would not ride themselves. Casey asked if they have liability insurance, to which Kurt and Kay Ross replied yes.

Regarding the ponds, Rutta stated the request is for approximately 54,000 square feet of ponds and asked if that is currently the size of the ponds. Mrdutt stated that is approximately the size of the ponds. Rutta asked if there has been any correspondence with Department of Transportation. Kay Ross stated they are hoping to purchase a piece of property back from the Department of Transportation. Rutta informed Kurt and Kay Ross if their attempt to purchase the property fails, they will have to request a variance or this cannot proceed further. Kay Ross stated when they originally put the pond in, it was located on their property.

Scheider asked if Kurt and Kay Ross live on site and if so, is their intention to continue living on-site. Kay Ross answered yes. Scheider asked the length of the trail ride. Kurt Ross answered the ride is just shy of an hour. Scheider asked how much of the trail ride is on neighbors' land. Kurt Ross stated one-quarter is on one neighbor's property and one-quarter is on the other neighbor's property. Kurt and Kay Ross currently rent this land and are hoping to continue renting. Kurt Ross stated they would find alternate land if need be to continue their business. Scheider stated they have to travel on a public road to get to adjacent land. Kurt Ross replied they only have to go about 100 feet, the length to cross the road, and they only cross the road one time. Rutta asked if they lost the contract with the neighbor, would they have enough land to complete a trail ride on their own land. Kurt Ross replied they could, but it would be shorter. Rutta asked the names of the property owners that Kurt Ross has contracts with. Kurt Ross stated the neighbors to the north are Frank and Nancy Serafin and the neighbor to the south is Tina Bristow.

There being no further questions, Rutta excused Kurt and Kay Ross.

There being no members of the public wanting to comment, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Scheider stated this is a lot of work, but is a delightful idea. Scheider is concerned about waste removal and stated the Land Conservation Division will have to develop a waste management plan, if this appeal is approved.

Potratz expressed concern about the ponds in the pasture area. He believes the water is an open pit manure pile. In addition, Potratz does not feel there is adequate space for the number of horses proposed. Rutta asked Potratz what he felt an adequate number would be and Potratz answered about half of the proposed number, about 15 horses. Potratz stated ponds take up a good portion of the available space and he is not convinced the stable is a feasible situation.

Casey had concerns about the ponds, but noted they are already there. Mrdutt stated these are private ponds, so the horses can be watered out of them. Casey stated the following:

- The Town of Dewey letter should be incorporated into the decision, if approved.
- The portable toilets, if used on premises, should be serviced by the seller as deemed necessary.
- A manure management plan is to be established by the Portage County Land Conservation Division.
- All signs to be no more than six square feet or worked out with Portage County Planning and Zoning Department.
- A copy of the continuous liability policy is to be on file with the Portage County Planning and Zoning Department.
- A written agreement between Kurt and Kay Ross and the neighbors whose property they cross is to be on file with the Portage County Planning and Zoning Department.
- The maximum number of horses allowed should be 20.

Rutta stated camping is not allowed. Rutta discussed safety issues and stated this property needs to be inspected by Sam Solberg, Commercial Building Inspector.

Mrdutt stated this property is zoned General Agricultural and there is nothing in the ordinance to dictate how they approach establishing a maximum number of horses. Mrdutt stated the number of horses allowed should be based on a manure management plan drafted by the Portage County Land Conservation Division. Potratz stated because this is a commercial endeavor, BOA should have the ability to place restrictions on the number of horses. Rutta was in agreement. Mrdutt stated BOA should not determine the number of horses on a ratio of one horse per 1.5 acres as done with a different zoning district. BOA should base their decision on data supplied by the Land Conservation Division after a waste management plan has been completed. Kurt Ross stated they rent approximately 100 acres that they spread manure on.

Rutta stated this appeal will be split into two parts. Part one will deal with multiple irregular shaped ponds exceeding 30,000 square feet. Rutta entertained a motion to approve appeal A10-04, specifically dealing with multiple ponds already on-site totaling approximately 54,000 square feet.

Motion by Casey to approve part one of appeal A10-04, specifically relating to four ponds, with the following conditions:

1. Ponds two, three and four are approved as submitted.
2. Approval of pond one will be contingent upon:
 - a) Property owners must attempt to purchase the needed property from Department of Transportation to bring the right-of-way setbacks for this pond into compliance.
 - b) If attempts to purchase property fail, owners must pursue a setback variance.
3. All pond slopes to be constructed with a minimum of 3 foot horizontal distance to 1 foot vertical height.
4. All slopes are to be reseeded after pond installation.

Motion seconded by Scheider. Motion fails by a 2-2 roll call vote with Potratz and Casey voting nay; Scheider and Rutta voting aye.

At this time, Casey stated he wanted to amend his vote and he would not have made the motion, if he did not intend to vote in favor of the appeal.

Motion by Casey to approve part one of appeal A10-04, specifically relating to four ponds, with the following conditions:

1. Ponds two, three and four are approved as submitted.
2. Approval of pond one will be contingent upon:
 - a) Property owners must attempt to purchase the needed property from Department of Transportation to bring the right-of-way setbacks for this pond into compliance.
 - b) If attempts to purchase property fail, owners must pursue a setback variance.
3. All pond slopes to be constructed with a minimum of 3 foot horizontal distance to 1 foot vertical height.
4. All slopes are to be reseeded after pond installation.

Motion seconded by Scheider. Motion passes by a 3-1 roll call vote with Potratz voting nay.

Rutta stated he would entertain a motion to approve part two of appeal A10-04, dealing specifically with the operation of a commercial riding stable. Motion by Casey to approve part two of appeal A10-04, dealing specifically with the operation of a commercial riding stable with the following conditions:

1. A manure management plan is to be developed with the Portage County Land Conservation Division.
2. Portable toilets on-site are to be serviced according to supplier.
3. Signs are to be no more than six square feet or worked out with the Portage County Planning and Zoning Department.
4. A copy of a continuous liability insurance policy is to be on file with the Portage County Planning and Zoning Department.
5. A written agreement with the neighbors whose property is being used is to be on file with the Portage County Planning and Zoning Department.
6. Sam Solberg, Commercial Building Inspector, is to inspect the property for any safety issues.
7. The Town of Dewey letter dated March 11, 2010 is to be made a part of this decision. Specifically:
 - a. That the commercial stable/riding area meets:
 - 1) All County and State regulations regarding food service, sanitary facilities, signs, overstay, and liquor laws.
 - 2) That the hours of operation will be by appointment.
8. The number of horses allowed for commercial purposes is 22. The reasoning for 22 horses is because there are 22 stalls in the existing barn.

Motion seconded by Rutta.

Scheider asked why we leave the removal of manure to a County Department, yet the decision on the number of horses, which is directly related to the amount of manure to be removed, is made by BOA. Scheider feels the motion should not include a number of horses and that the Land Conservation Division should make that

determination. Potratz disagreed and stated there could be a manure management plan, but a higher number of horses. Rutta stated in A4, any number of animals is permitted; however, he feels BOA should put a limit on the number of horses for the commercial operation. Mrdutt asked what defines which animals can be used for commercial purposes, and are the lead horses included in the number of horses allowed.

Secondary motion by Rutta to drop reference to the number of horses previously stated in the motion. Motion seconded by Scheider. Motion fails by a 2-2 roll call vote with Potratz and Casey voting nay; Scheider and Rutta voting aye.

Rutta stated the original motion by Casey will stand with the language originally proposed. Motion fails by a 2-2 roll call vote with Potratz and Scheider voting nay; Casey and Rutta vote aye.

Rutta stated he would entertain a motion to deny part two of appeal A10-04, dealing specifically with the operation of a commercial riding stable. No motion made. Rutta stated he would welcome discussion to come up with common ground. It appears the hang-up is with the number of horses. Potratz stated this operation as presented is not feasible to him. Casey stated the number of animals is important and believes the problem relates to the number of acres owned by Kurt and Kay Ross. Scheider stated she has a problem with relating the number of horses to the number of stalls in the barn and she does not think the criteria makes sense. Scheider stated if this appeal is postponed, there could be five voting members at a future meeting. Rutta again asked for a motion to deny. There was no motion.

Rutta stated he would entertain a motion to postpone this appeal until the May 2010 meeting. Motion by Scheider to postpone action on part two of appeal A10-04 until the May 2010 meeting. Motion seconded by Rutta. Motion passes by roll call vote. Casey, Scheider and Rutta vote aye; Potratz abstained.

Approval of Minutes

Janowski moved to approve the March 22, 2010 minutes as submitted, Scheider seconded. Motion passed by voice vote.

Correspondence/Updates

A special meeting is scheduled for Monday, April 26, 2010 with on-sites before the Business Meeting. There is another special meeting scheduled for Monday, May 3, 2010 with on-sites before the Business Meeting.

Adjournment

There being no further business to come before BOA, Scheider moved to adjourn the meeting, Janowski seconded, all in favor, meeting adjourned at 6:25 p.m.

Respectfully submitted,

Gayle Stewart, Recording Secretary

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
APRIL 26, 2010

Call to Order

Edward Rutta called the Portage County Board of Adjustment (BOA) to order at 3:45 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Pledge Allegiance to the Flag

Casey led the Pledge.

Roll Call

Members present included Edward Rutta, Patrick Casey, Joan Scheider, Marj Bachhuber and Phil Janowski. Staff present included Jeff Schuler, Tracy Pelky, Chris Mrdutt, Sarah Wallace, and Gayle Stewart, Planning and Zoning Department. James Potratz was excused.

Public Notice

Members of the public who wish to address the Board on specific items must register their request at this time. Such comments are subject to the reasonable control of the Board Chairman as set forth in Robert's Rules of Order.

REHEARING:

R & D Olsen, LLC / Ralph Olsen, Owner (A01-02)

The R & D Olsen, LLC / Ralph Olsen, Owner, special exception request from the Portage County Zoning Ordinance to excavate a pond exceeding 30,000 square feet in the Conservancy Zoning District, Town of Dewey, was opened by Rutta who read the public hearing notice. **It was noted this request is for an extension of time.**

Rutta swore in Ralph Olsen and asked him to explain his request. Olsen stated he received a permit ten years ago to excavate three ponds on a 40 acre parcel. This property is in a wetland and at the time of approval, he was required to remove all excavation materials from the wetland. Olsen has two of three ponds built; however, the third must be built during the winter time because the contractor has to scrape the marsh, freeze it down and then trucks and a backhoe can be brought in to excavate the materials. The past two winters were too warm and there was not sufficient frost in the ground to work on the third pond. This is the reason for the extension request. It was noted there has already been three extensions on this project.

Pelky stated this is regulated as non-metallic mining. In addition, Pelky stated the first two ponds look great and staff has no objections to how the first two ponds were constructed. Pelky stated BOA can grant an extension of two or three years or potentially until the project is complete, following all zoning requirements.

Casey asked if Army Corps of Engineers has been contacted and Olsen stated yes. Pelky stated conditions established by the Land Conservation Division in the past are being followed. Bachhuber stated the ponds look good and as long as steady progress is being made, she has no problems. Scheider asked if BOA should give a two year extension or leave the extension open-ended. Rutta stated a timeframe needs to be established so this does not drag on for years. Pelky stated Olsen pays an annual permit fee and added the weather has not been conducive. Janowski agreed the weather cannot be controlled.

Olsen stated he is unsure how much time he needs. If the weather cooperates, this project could be completed next winter. If not, it could be five years until completion. Rutta sees no problem with the extension and feels the ponds are coming along nicely.

There being no further questions from BOA members, Rutta excused Olsen. Rutta asked if any members of the public wanted to address this appeal. Bob Fenske, property owner to the south, wanted to ask Olsen a few questions. Fenske's concerns were spillage of materials from trucks along private property and on Golden Rod Lane. Fenske also expressed concern about piping along the routes and asked Olsen if he knew specifically which

route the trucks would be taking. Olsen stated the contractor, Roger Kluck, who is receiving the materials, is in touch with the Town of Dewey Board relative to movement of materials onto his property. Olsen stated if there are issues, he would plead with Roger Kluck to get in touch with Fenske to work out amicable arrangements. Fenske stated he has irrigation pipe there and the year before last, it was not damaged but was slopped up. His concern with the new easement is when snow is plowed off, the pipes could be hit. Fenske stated he would like to be issued a copy of the bond in case there is damage. Olsen stated he could contact the contractor to make sure Fenske receives a copy. Fenske continued to express concern about materials falling off trucks and damaging his property. Olsen stated he would like to deal with Fenske outside of this venue, but he feels this is a reasonable request and it will be worked out to Fenske's satisfaction. Rutta stated this would be a civil issue. Fenske wanted to make it clear, if there was damage to his property, he wants a copy of the bond to get reimbursement. Rutta clarified there is an easement for Olsen to cross Fenske's property. Rutta explained the presence of an easement between Fenske and Olsen would make this a civil matter between Fenske and Olsen.

Pelky discussed the water/muck issues and explained how materials need to be moved by truck. Pelky also said Roger Kluck may have to address these issues on a daily basis, if materials are spilled. Pelky stated BOA may make a condition that Roger Kluck work with the Town of Dewey to make sure the roads get cleaned up, as well as the access easement. Olsen stated the Town of Dewey has been copied on correspondence regarding extensions on this project. Mrdutt stated Roger Kluck has a bond for this reason to work with the Town of Dewey. Fenske reiterated all he wants is a copy of the bond.

There being no other members of the public wanting to comment, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta stated extensions have been granted three times and there has never been a problem. The Town of Dewey needs to be notified of the road issues.

Casey agrees with a three year extension on this pond with the same conditions. In addition, he stated issues need to be worked out with the bond and between Olsen and Fenske.

Rutta stated he would entertain a motion to approve an extension on appeal A01-02. This originally came before BOA in 2001 and has been extended every two years since then. Consensus is this extension could be extended three years or longer.

Casey discussed the bond issue and feels Fenske should get a copy of the bond. Rutta stated that could be a condition. Bachhuber stated the Town of Dewey needs to be notified of concerns raised by Fenske. Rutta stated another condition could be Roger Kluck must provide a letter to permanent staff indicating the Town of Dewey is aware of the situation and any concerns should be addressed.

Motion by Casey to approve an extension on appeal A01-02 with the following conditions:

1. A three year extension is granted for the third pond.
2. All conditions set at the original and reconsidered requests must be adhered to.
3. Evidence of a bond for Roger Kluck Trucking, Inc. must be furnished to Bob Fenske.
4. All spoils are to be stored out of the wetlands.
5. A letter from the Town of Dewey regarding the conditions of the road used for hauling materials must be on file with the Planning and Zoning Department.

Motion seconded by Bachhuber. Motion passed unanimously by roll call vote.

PUBLIC HEARING AND DECISION:

Dennis Dawiedczyk, Owner / Mike Polencheck, Agent (A10-09)

The Dennis Dawiedczyk, Owner / Mike Polencheck, Agent, special exception request from the Portage County Zoning Ordinance to exceed 2,000 square feet of total accessory building space, and a Variance from the Portage County Shoreland Zoning Ordinance to construct an addition within the 100 foot setback from Lake DuBay, in the

R1 Rural & Urban Fringe Residence Zoning District, Town of Eau Pleine, was opened by Rutta who read the public hearing notice.

Mrdutt stated the property is zoned R1 and when exceeding 2,000 square feet of accessory building space, a special exception must be granted. The applicants plan to remove two structures and a large amount of cement and then construct an attached garage. The variance is requested for a proposed kitchen addition on the end of the house furthest from the lake, which does fall within the 100 foot setback of Lake DuBay.

Rutta read the following letters into the record:

- A letter addressed to the Portage County Board of Adjustment from the Town of Eau Pleine Clerk, indicating the Eau Pleine Plan Commission and Eau Pleine Town Board passed a motion to approve appeal A10-09 submitted by Dennis Dawiedczyk, owner / Mike Polencheck, agent.
- A letter addressed to the Planning and Zoning Department from Michael Downs and Kathi Leach, adjacent property owners, objecting to appeal A10-09.
- A letter addressed to Board of Adjustment from Chris Mrdutt, Zoning Technician, stating the Planning and Zoning Department supports the appeal for a variance and a special exception, and will require the Land Conservation Division to review and approve storm water control on the site prior to issuing a zoning permit.

Rutta swore in Mike Polencheck and asked him to explain the request. Polencheck stated the first thing to be done is installation of a new septic system. In addition, an existing garage, driveway including cement work, and shed will be removed and the area will be restored back to original vegetation. Polencheck stated they want to build an attached garage outside of the 100 foot setback and add a 6 foot by 28 foot 5 inch addition on the front of the house, which is opposite of the lake. Polencheck said the structure will be redesigned with a steeper roof, which will take into consideration keeping storm water out of the lake. The goal is to make this a more natural structure than what currently exists.

Rutta stated two structures that currently exist in the Shoreland setback will be removed and the new structure will not be located in the 100 foot setback. Mrdutt noted a lot of concrete will be removed. Rutta asked Polencheck the square footage of the porch to be removed and Polencheck replied it is approximately 108 square feet. Rutta noted the proposed addition is further away from the Lake than the house and will not change the view from the lake.

Scheider asked what type of materials will be used for a new driveway. Polencheck answered granite and said he anticipates no changes in the future. Polencheck also stated 122 square feet of patio slab/walkway will be removed from the lake side. Bachhuber noted there is no walkout on the back side of the home. Polencheck stated they will keep the patio area at its current size and a patio door will be installed. Polencheck reiterated the goal is to return the property to a more natural state.

Janowski asked about the soil. Polencheck answered it appears to be a variety of materials but mostly sand. Bachhuber asked if the perk test was okay and Polencheck replied yes. Polencheck stated they do not want to destroy any trees and the new system is designed around keeping trees.

There being no further questions from BOA members, Rutta excused Polencheck. Rutta asked if any members of the public wanted to address this appeal. There being no members of the public wanting to comment, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta explained the issues that need to be addressed in this request and stated the requests for a special exception and variance are so different he would like to deal with them separately. The special exception will be dealt with first.

Casey discussed the garage addition and stated two garages within the 100 foot setback will be removed. After removal of the two garages, only 179 square feet will be added with the new garage. Casey also stated the garage is well concealed and not very visible from the water.

Bachhuber discussed the possibility of a driveway being constructed in the future. Rutta stated it would be unreasonable to state there should never be a paved surface on this property and the new NR115, when adopted, will address the issue of impervious surfaces.

Scheider discussed the letter received from Michael Downs and Kathi Leach. She asked if they were objecting to the addition on the house or the issue of the garage. Rutta again read the letter and stated he does not know which item they are objecting to. Rutta feels this will be improving the shoreline. Scheider stated they used the words special exception so her interpretation is they are referring to the shed more than the house. Janowski feels the neighbors don't understand what will transpire here and this is an improvement versus detracting. Rutta stated the new garage is only 179 square feet bigger than the combination old garage and shed, which are to be removed and the new building will be removed from the 100 foot setback. This is a very desirable situation. For that reason, he supports this proposal. Rutta summarized with the following:

- Can safe and healthful conditions be maintained? Yes.
- Will this use affect existing or future roads and development? No.
- Will the surrounding neighborhood be adversely affected by this project? He doesn't think so. If anything, it will be improved from a number of standpoints.
- Are there alternative sites that would be better suited for this? No.
- Is this project located in a floodway or a floodplain? No.
- Are there topographical features affected? Rutta does not believe so. If anything, the topographical features will remain exactly as they are now. There should not be any increase in erosion potential. If anything, erosion potential should be abated somewhat by the removal of a building from the 100 foot setback.
- Will there be issues of water pollution? If anything, the new septic system is going to solve that problem.

BOA was in agreement with the above statements by Rutta.

Rutta entertained a motion to approve appeal A10-09, specifically relating to the special exception request. Motion by Bachhuber to approve the special exception portion of appeal A10-09 with the following condition:

1. Approval is to exceed 2,000 feet accessory building space as submitted in the application packet.

Motion seconded by Janowski. Motion passed unanimously by roll call vote.

Rutta read and discussed the issues that need to be addressed in a variance request. Rutta stated 108 square feet of porch will be removed and a 179 square foot addition will be added; for a net gain of 81 square feet within the 100 foot setback.

Casey stated there is no additional home being built in the 75 foot setback. Everything will be added on the side of the home furthest from the lake. The garage will be located outside of the setback and the footprint on the lake side will remain the same. Casey also stated the Planning and Zoning Department must be involved in erosion and water control.

Bachhuber cited the staff memo submitted by Mrdutt and feels this is an improvement.

Rutta summarized the position of BOA with the following:

- The proposal is not contrary to State Law Administrative Code. It is permitted in this zoning district.
- There are no alternatives to the request.
- This request is not detrimental to nearby property owners.
- This request is in the spirit of the ordinance.
- This request does contain substantial justice for the owners.
- This appeal is not contrary to the public interest because the granting of the addition is far outweighed by those things which will improve the site.

- There are unique property limitations. Additions will all be within setbacks; however there is minimal intrusion into the 100 foot setback.
- Does this proposal meet the unnecessary hardship test? This is a complete remodel of a home and it would be difficult to do this without having the additional space necessary for the kitchen and bathroom. That could be unnecessarily burdensome.

Rutta feels it would be proper for BOA to grant the variance in this particular case. Rutta entertained a motion to approve appeal A10-09, specifically relating to the variance request. Motion by Casey to approve the variance request with the following conditions:

1. The existing porch, located furthest away from the water, must be removed.
2. Approval is for a 6' x 28' 5" addition, located on the portion of the house furthest away from the water.
3. A septic system plan must be on file with the Planning and Zoning Department prior to issuance of a zoning permit.
4. The letter from the Planning and Zoning Department referencing the variance request is to be made part of this decision.
5. The footprint on the lakeside is to remain the same.
6. The walkway in front of the house is to be removed.
7. All plans submitted are to be made part of this decision.
8. The Land Conservation Division is to review storm water control prior to issuance of a permit.

Motion seconded by Janowski. Motion passed unanimously by roll call vote.

Correspondence/Updates

A special meeting scheduled for Monday, May 3, 2010 with on-sites before the Business Meeting.

Adjournment

There being no further business to come before BOA, Janowski moved to adjourn the meeting, Scheider seconded, all in favor, meeting adjourned at 4:55 p.m.

Respectfully submitted,

Gayle Stewart, Recording Secretary

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
MAY 3, 2010

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:05 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider and Marj Bachhuber. Staff present included Jeff Schuler, Tracy Pelky, Chris Mrdutt and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

TM & LA Haroldson Trust, Owner / Greg Blum, Agent (A10-10)

The TM & LA Haroldson Trust, Owner / Greg Blum, Agent, special exception request from the Portage County Zoning Ordinance to operate a business service as an electric utility headquarters in the C4 Highway Commercial Zoning District, Town of Alban, was opened by Rutta, who read the public hearing notice.

Pelky explained the special exception request before BOA is to operate a business service as an electric utility. The property was recently rezoned by the County Board of Supervisors to C4, Highway Commercial Zoning District.

Rutta read the following letter into the record:

- A memo from Chris Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports this appeal for a special exception with conditions:
 - Fuel that is stored on site must be in a container 150 percent larger than the amount of fuel, to be approved by the Planning and Zoning Department prior to installation.
 - A list of all hazardous materials must be on file with the Portage County Sheriff's Department, Rosholt Fire Department and the Portage County Planning and Zoning Department.
 - The Land Conservation Division is to review and approve storm water control on the site prior to issuing a zoning permit.
 - Wisconsin Department of Transportation must be contacted to discuss truck traffic concerns regarding ingress and egress for State Highway 49.

Rutta swore in Greg Blum and asked him to explain the request. Blum stated this is an electric cooperative serving several counties in Wisconsin. The headquarters is currently located in Iola, with another office located in Wittenberg. Blum said they have outgrown the facilities in Iola and he wants to combine all operations into one facility. Rosholt is centrally located and the area was very appealing to Blum.

Potratz asked how much of the parking area would be paved. Blum showed the Board what areas he intended to pave and also stated there will be areas that are gravel, including the storage area. Casey asked if fuel tanks will be stored above ground, to which Blum replied yes. Casey asked if this is with a State approved fuel storage system and Blum answered yes. Blum stated all hazardous material information is on file. Casey asked if Blum will have adequate storage space for materials and Blum stated yes. Casey asked if the septic system is State approved and Blum replied yes. Blum stated there is a Certified Survey Map and Pelky stated it is awaiting his signature. Blum stated he has a storm water runoff plan completed. Blum also noted the State has all the plans.

Rutta discussed traffic concerns and asked if Blum has addressed these issues. Blum stated he has been in contact with the Department of Transportation and they will most likely be putting in a turn lane on State Highway 49. Rutta inquired about lighting and Blum stated the parking area will be lit, as well as the building and pole storage area. Rutta asked about vegetation to buffer along State Highway 49 and Lystul Road. Blum stated there will be grass and landscaping around the building. Any extra land not being utilized will be farmed by an area farmer.

Rutta excused Bloom. There being no members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta explained the issues that need to be addressed in a special exception request.

Bachhuber stated Blum has done everything asked of his company and there is not likely an issue with water runoff due to the fact this is flat land. Scheider stated her concerns about fuel and oil storage have already been addressed. Casey stated he had no additional concerns. Potratz asked if signage would be lighted. Blum stated there will be a sign with stonework and lighting. Potratz had a concern with glare from the lighting. Any signage and lighting issues will be worked out with the Planning and Zoning Department staff. Rutta discussed fuel storage. Mrdutt explained storage tanks will be State approved. Rutta expressed concern with the wording of fuel and oil, and stated he would prefer these be labeled as hazardous materials.

Rutta summarized the appeal with the following:

- This proposal is not contrary to public interest.
- This plan can be carried out in a safe and healthy manner.
- The surrounding neighborhood will not be adversely affected.
- This property is not located in a floodplain.
- There is unlikely potential for erosion.
- This business is important to the community.
- This plan is consistent with the Town and County land use plans.

Rutta stated he would entertain a motion for approval of appeal A10-10. Motion by Casey to approve the appeal with the following conditions:

1. Approval is for an approximately 49,000 square foot facility; 16,000 square feet is office space and 32,000 square feet is garage and storage space.
2. State approved building plans are to be on file with the Planning and Zoning Department.
3. A certified survey map is to be on file with the Planning and Zoning Department.
4. An approved septic plan is to be on file with the Planning and Zoning Department.
5. A storm water plan is to be on file with the Planning and Zoning Department.
6. All hazardous materials are to be stored in State approved, 150 percent capacity, storage tanks.
7. A list of all hazardous materials stored on-site is to be on file with the Planning and Zoning Department, the Portage County Sheriff's Department and the Rosholt Fire Department.
8. Lighting is to be directed inward.
9. Signage is to be worked out with the Planning and Zoning Department.
10. The Department of Transportation is to be contacted regarding truck traffic on State Highway 49.
11. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Motion seconded by Scheider. Motion passed unanimously by roll call vote.

Correspondence/Updates

The next meeting is scheduled for Monday, May 17, 2010, with on-sites Friday, May 14, 2010.

Rutta asked that the Kurt and Kay Ross appeal (A10-04) be placed on the May 17, 2010 agenda. The following was discussed:

- Bachhuber asked if on-site inspections are necessary for every appeal. The Board agreed on-site inspections are necessary to gather as much information as possible to help make informed decisions.

- Bachhuber and Scheider asked about deed restrictions and if Planning and Zoning Staff check to be sure they are dealing with actual owners of properties. Schuler assured the Board that Planning and Zoning Staff review files and documents to prepare and present accurate information to the Board.

An update was given regarding appeal A01-02 and wording of one of the conditions. If the appellant wishes to bring action in the future, Board of Adjustment will act at that time.

Adjournment

There being no further business to come before BOA, Potratz moved to adjourn the meeting, Scheider seconded, all in favor, meeting adjourned at 5:10 p.m.

Respectfully submitted,

Gayle Stewart, Recording Sec.

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
MAY 17, 2010

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:05 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider and Marj Bachhuber. Staff present included Tracy Pelky, Christopher Mrdutt and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

A.M. and Gay Alinea, Owners (A10-11)

The A.M. and Gay Alinea special exception request from the Portage County Zoning Ordinance to construct a 30 foot by 52 foot storage shed exceeding 2,000 square feet of total accessory building space in the R5 Waterfront Residence Zoning District, Town of Dewey, was opened by Rutta who read the public hearing notice.

Pelky explained the request is to construct a storage shed which would exceed 2,000 square feet of accessory space on the property. Sidewall height of 10 feet meets requirements of the Ordinance and the Town of Dewey sent a letter supporting the request.

Rutta read the following letters into the record:

- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports this appeal for a special exception.
- A letter dated May 6, 2010 from the Town of Dewey, stating the Dewey Plan Commission and Dewey Town Board both voted to support the request. Minutes from both meetings are attached to the letter.

Rutta swore in Augusto Alinea and asked him to explain the request. Alinea stated due to recent thefts in his neighborhood, including one where he was the victim, he wants to build a storage shed to store various items under lock and key.

Potratz asked if Alinea will have heat and electricity, to which Alinea answered electricity, but no heat or plumbing. Casey asked about the floor, frame, shingles, and siding. Alinea stated the floor will be a slab, the construction is frame, the roof will be shingles, and the siding will be similar to the home. Casey asked if the carport will be removed. Alinea was not planning to remove it, but will if BOA requests. Pelky asked the size of the carport, but Alinea did not know exact dimensions. Casey estimated it to be 26' x 32'. Bachhuber asked how much square footage exists in the current garage and Alinea answered about 1,700 square feet. Pelky stated Alinea is very close to 2,000 square feet of accessory space. Bachhuber asked about lighting and Alinea responded lighting will be on the building only. Bachhuber asked if the building was located far enough away that a separate fire number would be required. Pelky stated this would be a Township or Emergency Management decision. Mrdutt stated sometimes that is determined by how the structure is accessed and if it has its own driveway. Alinea stated he will use the same driveway he uses now. Casey asked if there is adequate space for a replacement septic, if necessary. Alinea replied yes. Rutta asked if this building would be for personal use only and Alinea replied yes. Rutta asked if there would be a floor drain and Alinea stated he would if necessary, but he didn't have any intention of putting one in. Alinea stated he would work with Portage County Planning and Zoning permanent staff on a storm water plan. Rutta asked Alinea when he intends to have the building completed and Alinea stated one year would be adequate. Scheider stated if a floor drain is installed, Alinea must work with Planning and Zoning staff.

Rutta excused Alinea. Rutta asked if any members of the public wanted to address this appeal. Tim Goskowicz, surrounding property owner, asked to comment, but was not sworn in. Goskowicz stated he supports Alinea's request, and feels there is a need for this due to thefts in the area.

Rutta asked Alinea if this will be a one-story building, to which Alinea replied yes.

There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta explained the issues that need to be addressed in a special exception request.

Bachhuber feels this is a good idea and stated Alinea must work with Portage County Planning and Zoning staff, if he intends to install a floor drain and also to develop a storm water management plan. Bachhuber also feels Alinea should check with the Town of Dewey about a fire number.

Scheider is concerned with the degree to which lighting will be used as a deterrent for future vandalism. Will lighting be visible from neighboring properties? Potratz does not believe lighting is an issue because it likely will not be visible from the house.

Casey stated the existing carport should be removed, the building should be for personal use only, and should be located out of the wetlands.

Rutta stated he would entertain a motion for approval of appeal A10-11. Motion by Casey to approve the appeal with the following conditions:

1. Approval is for a 52' x 30' building with 10' sidewalls and a 5:12 pitch roof.
2. Roofing and siding are to be compatible with that of the home.
3. Security lighting is to be directed inward.
4. Building is to be located out of the wetlands.
5. Building is for personal use only.
6. No floor drain may be installed.
7. A storm water management plan is to be on file with Portage County Planning and Zoning Department prior to issuance of a zoning permit.
8. The existing carport is to be removed.

Secondary motion by Rutta to amend the wording of the condition regarding no floor drain to state "No floor drain may be installed unless approved by Portage County Planning and Zoning Department permanent staff." Motion seconded by Bachhuber. Motion passes by voice vote.

Motion to approve appeal A10-11 as amended was seconded by Scheider. Motion passed unanimously by roll call vote.

Christopher Daniels, Owner (A10-12)

The Christopher Daniels variance request from the Portage County Zoning Ordinance to construct an entryway addition within the road setbacks of County Road Z in the C4 Highway Commercial Zoning District, Town of Sharon, was opened by Rutta who read the public hearing notice.

Rutta discussed the different criteria that must be met with a variance.

Pelky stated this request is to construct a 5' x 19' enclosed entryway to an existing building. This would be 24' from the road right-of-way. The setback requirement is 42 feet from the road right-of-way.

Rutta read the following into the record:

- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports this appeal for a variance.
- Excerpts from the Town of Sharon Plan Commission Minutes from April 5, 2010, and excerpts from the Town of Sharon Board Meeting minutes from April 13, 2010; both recommending approval for the request.

Rutta swore in Christopher Daniels and asked him to explain the request. Daniels wants to remove the current stairs and build new stairs and enclose them. This would make the stairs more even and improve safety for his customers. Rutta stated Daniels has addressed the three issues of a variance in his appeal. Daniels said the existing stonework will be removed, which will reduce encroachment into the road right-of-way. Rutta asked if Daniels intends to remove the rock structure located in the front of the building. Daniels answered he does not want to. Potratz understands what Daniels wants to do and approves of the method he is using. Casey stated the Township addressed handicapped accessibility and asked if Daniels is able to address this. Scheider asked if Daniels thought about what can be done with handicapped access in his building. Daniels replied he has, but the height of the building is an issue. There is no handicapped access at this time. In a conversation with Sam Solberg, Commercial Building Inspector, Daniels noted he is replacing stairs only and trying to make the entryway better. He is not required to add a handicapped ramp. Scheider inquired about lighting in the enclosed stairway. Daniels will have lighting on the building facing the stairway and handrails on both sides. Bachhuber wanted to be sure stonework and material from the steps will be moved offsite. Scheider asked about a downspout and Daniels stated it will be connected to another one.

There being no further questions from BOA members, Rutta excused Daniels. Rutta asked if any members of the public wanted to address this appeal. Patrick Wanserski, Town of Sharon Chairman, was sworn in by Rutta. Wanserski stated he supports the request, and added the following:

- The enclosure will benefit Daniels during summer and winter relating to energy savings.
- Recent highway upgrades have not affected access to the building.
- This is a good business for the neighborhood.
- The current steps are treacherous and this is a necessity for the business.
- Wanserski is asking BOA to support this appeal.

Rutta excused Wanserski. There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Bachhuber does not believe Daniels has any other choice. This is a safety issue and an enclosed entryway creates a safer situation. Scheider's only concern is a lack of handicapped access. Potratz feels this plan is less intrusive on the highway and is an improvement. Casey stated the new entryway will be moved further back from the road right-of-way. The steps are deteriorating at this time and the entrance is not very safe. Rutta discussed the stone structure that sits close to the road. He believes it is in the road right-of-way. Wanserski stated he does not believe this structure is in the right-of-way. Pelky stated by looking at the photo, it does not appear to be in the road right-of-way. Potratz stated it may have been there prior to the ordinance. Mrdutt stated a permit should be obtained for the sign already there and the sign may not flash.

Rutta summarized with the following:

- This proposal is not contrary to State Law or Administrative Code.
- There are no alternatives to the variance request.
- The variance would not be detrimental to nearby property owners.
- Substantial justice would be done by granting the variance.
- This appeal is not contrary to public interest. It is beneficial to public interest because of the safety issues involved.
- There are unique property limitations. There is no other place to locate the entrance.
- The unnecessary hardship test is met. There is no other place to locate the entrance and it is beneficial to everyone concerned.
- This is the minimum amount of variance required to relieve the situation.

Rutta feels BOA should approve the variance. Rutta stated he would entertain a motion for approval of appeal A10-12. Motion by Bachhuber to approve the appeal with the following conditions:

1. Approval is to construct a 5' x 19' enclosed entryway.
2. Start date is June 1, 2010, and completion date is July 1, 2011.
3. The current stairway and stone wall are to be removed and the materials must be properly disposed off-site.
4. Lighting is to be directed inward towards the property.
5. The current sign permit must be updated and no flashing lights are permitted.

Secondary motion by Casey to amend the wording of condition one to state "The entryway must run parallel to the building." Motion seconded by Scheider. Motion passes by voice vote.

Motion to approve appeal A10-12 as amended was seconded by Potratz. Motion passed unanimously by roll call vote.

Thomas W. Clinton, Owner (A10-13)

The Thomas W. Clinton special exception request from the Portage County Zoning Ordinance to expand a home occupation in the A4 General Agricultural Zoning District, Town of Lanark, was opened by Rutta who read the public hearing notice.

Pelky stated this request is to expand an existing business. This came before BOA in April 1996.

Rutta read the following into the record:

- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports this appeal for a special exception.
- A letter from the Town of Lanark Clerk stating the Town of Lanark Board and Plan Commission both recommend approval of the special exception request.

Rutta swore in Thomas Clinton and asked him to explain his request. Clinton stated this is an old building and the roof, windows, and doors are shot. He is fortunate his business is doing well. He wants to change the building shape and increase square footage from 730 to 1,290 square feet.

Casey asked if Clinton would have the same number of employees. Clinton replied at one time he had family members helping out, but now he uses teenagers as part-time help. He would need more non-family employees. Rutta noted the ordinance states a maximum of two non-family employees. Pelky read the ordinance and Rutta asked if BOA could increase the number. Pelky stated BOA could increase the number of employees allowed. Rutta stated this was not requested in the appeal.

Casey asked Clinton about combining the business parcel with the residential parcel as recommended in the memo from Mrdutt. Clinton stated he would prefer not to, but would do it to avoid any hurdles. Mrdutt explained the reasoning for combining the parcels is because a home occupation must be on a parcel with a home on it. Pelky explained the criteria for a home occupation. Potratz asked if Clinton could apply for a conditional use permit. Mrdutt stated because this property is zoned Agricultural, it must be a home occupation. The property would have to be rezoned and this would not be consistent with the Town's Comprehensive Plan. Rutta asked if this could be accomplished with a variance and Mrdutt answered yes. Zoning could be kept at A4 to allow the business. The other options are rezoning or combining parcels. Clinton asked if he left it as a separate parcel and got a variance, would the number of employees still be an issue. Pelky stated this is still considered a home occupation. Pelky believes BOA has the power to grant a condition of the special exception which allows more non-family employees. Clinton stated the plan is to expand the business which would mean he needs more employees. Without more employees, he would not have enough income to pay for the building.

There being no further questions from BOA members, Rutta excused Clinton. Rutta asked if any members of the public wanted to address this appeal. Mike Pagel, Town of Lanark Board, stated the Town of Lanark Board supports this request.

There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta stated he believes this is a very worthwhile improvement. He has a problem with a condition placed on previous appeal A96-16, which states no more than two employees, other than family members, are allowed. He is also concerned this particular appeal does not ask for additional employees. Rutta has a problem with condition number six from the previous appeal regarding finding a correct zoning district to move to should the business grow in the future. Rutta believes the condition should be removed as a part of this BOA's decision.

Scheider states this appeal is a good idea. Scheider has a problem with verbiage of the ordinance that restricts the number of non-family employees allowed.

Bachhuber believes the parcels should be combined prior to issuance of a zoning permit. She suggested BOA allow additional non-family employees.

Potratz asked if BOA has the authority to set the ordinance aside whether it was requested or not. Rutta reiterated that according to Pelky, BOA has the authority to change, by special exception, the number of employees allowed for a home occupation. Rutta stated he is uncomfortable addressing this issue until Corporation Counsel is able to give legal clarification to permanent staff. Mrdutt suggested BOA specify how many workers can be in the building at a time. Casey agreed BOA needs clarification from Corporation Counsel as to the number of employees and what is the difference between full-time and part-time employees. Potratz stated this should be a conditional use issue. Mrdutt explained because the property is zoned A4, the only commercial use allowed is a home occupation.

Motion by Bachhuber, second by Casey, to postpone this appeal until the June 2010 meeting, and in the interim, to obtain legal clarification from Portage County Corporation Counsel as to how the number of employees can be increased from the current two that are allowed. Motion passed unanimously by roll call vote.

Motion by Potratz and second by Casey to take a five minute recess. Motion passed by voice vote. Meeting recessed at 5:30 p.m.

Rutta called the meeting back to order at 5:37 p.m.

Andy Filtz, Owner (A10-14)

The Andy Filtz special exception request from the Portage County Zoning Ordinance to construct and operate a 38 foot by 42 foot contractor storage yard in the A4 General Agricultural Zoning District, Town of Hull, was opened by Rutta who read the public hearing notice.

Pelky stated this special exception is requested to construct a contractor storage yard.

Rutta read the following into the record:

- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports this appeal for a special exception with the following condition:
 - A storm water plan must be approved by the Portage County Planning and Zoning Department prior to the issuance of a zoning permit.

Rutta swore in Andrew J. Filtz and asked him to explain his request. Filtz wants to construct a shed to store materials for his business. His intention is to build his residence on this same property.

Bachhuber questioned ownership of the parcel and Filtz answered he is the only owner. Bachhuber also questioned why Filtz is not building the residence first. Filtz answered he wants to move items into the shed first and then build the residence. Casey asked if Filtz currently has a storage shed in the area now. Filtz stated he previously owned a storage shed in the area; however, it was recently sold to Badger Heating. Rutta asked if the siding and roof will match the home and Filtz answered yes. Rutta also asked if this was for personal use only and Filtz answered yes. Filtz said he will provide a set of plans to the Portage County Planning and Zoning Department.

Bachhuber asked if there will be electricity and plumbing in the building. Filtz answered he will have heat, electricity, and water. Rutta asked if there will be bathrooms and Filtz replied no. Filtz stated he will have one floor drain. Rutta informed Filtz those issues will need to be addressed with permanent staff. Filtz is currently waiting for a sale of property to go through, but he is hoping to have this completed by the end of the year.

Bachhuber asked about screening and read the ordinance that pertains to screening. Filtz stated once he moves into the house and has water available, he will begin planting trees. His goal is to begin next spring. There being no further questions from BOA members, Rutta excused Filtz. Rutta asked if any members of the public wanted to address this appeal. Donald Peel and Janet Peel were sworn in by Rutta. The Peels state they were the first people to reside in the area and they are happy with Filtz's work; however, they are unhappy with the loss of value of their house due to the placement of the contractor's storage yard. The original intent was to have a house built after the storage yard, but that was never done and the property has now been sold. Peel wants to make sure history does not repeat itself. Peel is apprehensive about the shed going up before the house and wants to know exactly what Filtz is going to do and when he is going to do it. Janet Peel stated another problem is screening, which is to be done within a certain period of time. Peel noted there was no screening put up with the first storage building Filtz built. Peel is concerned there will be another storage building with no residence built in a residential area. Rutta stated this property is zoned Agricultural and Mrdutt explained property zoned Agricultural

does not require a house to be built on the property. Rutta stated BOA usually does specify screening be installed in these situations and they will check to see if they required it with Filtz's first storage building. There being no further questions for the Peels by BOA, Rutta excused them.

Rutta asked if any other members of the public wanted to address this appeal. Sandra Miltimore was sworn in by Rutta. Miltimore stated she moved to the area in 2008 and agreed to the building of the garage because Filtz stated he was going to build a home; however, Filtz never did. Miltimore is concerned whether a contract was signed with the new owners stating they must build a home. Rutta reiterated that in an Agricultural zoning district, there is no requirement to build a house. In addition, BOA does not deal with covenants. Rutta explained to Miltimore some of the different uses allowed in an Agricultural zoning district. Miltimore asked if anyone could apply for a permit to build a storage building and start a business. Mrdutt stated the only business that would have to come before BOA for approval is a contractor's storage yard. Miltimore stated Filtz said he would plant screening around the existing storage building and that has never been done. Miltimore also stated she would never have built a home at this location, if she knew what would happen.

Bachhuber asked Miltimore to clarify her statement of people coming and going to that contractor's storage yard. Is the contractor coming and going or are there other people? Miltimore replied she has no idea. Bachhuber asked if business is being conducted out of the storage building and Miltimore answered she has seen a truck with Badger Plumbing and Heating in addition to other trucks. Miltimore is concerned about the sheds being built with no proof that a home will be built. Bachhuber informed Miltimore that covenants can be enforced by the residents. Mrdutt stated it is up to Planning and Zoning to enforce conditions on a previous appeal; however, the previous appeal does not apply to the appeal being heard at this time.

Rutta asked Filtz when he sold the property and Filtz stated December 2009. Rutta asked when he intended on installing screening for his previous storage building and Filtz answered when he had water available and was living there. Rutta asked if that would be Filtz's intention with this storage building and Filtz replied no. He will begin to install screening as soon as he gets trees in the spring and has water.

Rutta told Miltimore he sympathizes with her, but there is not a lot that can be done. Mrdutt stated BOA should not dictate when someone should build a house in Agricultural zoning as it is contrary to the ordinance. Scheider asked Rutta if a contractor's storage yard is considered personal storage. Mrdutt stated it is usually for a business. Mrdutt reminded BOA they must apply the issues to the appeal before them at this time, and they can consider appropriate conditions for this appeal. There being no further questions for Miltimore by BOA, Rutta excused Miltimore.

There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta explained the issues that need to be addressed with this special exception.

Scheider discussed traffic issues and materials being brought in and out from the storage yard and not being stored properly. Excessive traffic could be a problem. Compatibility with development is also an issue. To start a development and sell lots for residential purposes and then build contractor storage yards appears less than compatible to her. Scheider also stated screening is essential and it is possible to move trees in and keep them watered without having water on-site.

Bachhuber is disappointed with conditions and results of the last contractor's storage yard built by Filtz. She feels there should be screening installed immediately.

Potratz agreed, but stated we cannot act on what was done before. This appeal is to be dealt with separately. Potratz wants to see plantings on this appeal and wants them to be started prior to construction.

Casey expressed concerns with the screening and stated conditions were not followed last time.

Rutta understands the neighbors' concerns, but stated this property is not zoned Residential. The contractor's storage yard is permitted with a special exception. Rutta also understands BOA's concerns with the previous contractor's storage yard being built and then sold without a home being built. Rutta stated BOA cannot require Filtz's current home to be sold before construction of the contractor's storage yard. Scheider read ordinance 7.1.2.2 which pertains to screening of contractor's storage yards and states it is equal to that required for mobile home parks. Rutta stated the ordinance does not state the screening must be in place first. Scheider suggested they make a condition that planting must come first.

Rutta stated he would entertain a motion to approve the appeal, and if there is no motion to approve, he will ask for a motion to deny.

Bachhuber asked Pelky to read the ordinance pertaining to screening for mobile home parks.

Rutta again asked for a motion to approve the appeal. There being no motion to approve, Rutta asked for a motion to deny the appeal. No motion was made. Bachhuber stated since this is an allowable use, BOA must come up with reasons for denial. Rutta stated this is an allowable use and believes this appeal should be approved with conditions that screening is in place prior to construction of the shed. Bachhuber asked if they can set hours of operation. Rutta replied yes, and they can set days of the week. Rutta pointed out there has been no objection from neighbors regarding hours of operation. The main issue appears to be screening and previous witnesses testified to that. Bachhuber asked what type of building this will be and Filtz answered stick built.

Motion by Bachhuber to approve appeal A10-14 with the following conditions.

1. Approval is for a 38' x 42' contractor storage yard to be stick built.
2. Sidewalls are to be 12'.
3. Roofing and siding are to match that of the proposed residence.
4. Start date is June 1, 2010 and completion date is May 31, 2011.
5. Electric, water, and heat are allowed.
6. Storm water drainage issues are to be addressed by Portage County Land Conservation Division.
7. No signage is allowed.
8. External lighting must be directed inward.
9. Screening will be that required for mobile home parks as stated in ordinance 7.1.2.2 and screening shall be completed before construction begins.

Motion seconded by Scheider.

Rutta questioned the timing of screening. He asked Bachhuber if her intention was the contractor's storage yard cannot be built until all requirements of that part of the ordinance stating the contractor's storage yard cannot be visible from anyone's house. Bachhuber replied that was the intent of her motion, and explained how trees were planted by DOT within weeks on the Highway 10 project.

Motion by Rutta to amend condition 9 regarding screening to state the appellant must work with the Portage County Planning and Zoning Department and a Portage County Forester so proper plantings are made to ensure conditions will be met sometime in the future. The plantings must take place before a zoning permit can be issued.

Rutta explained his intention is to get plantings in place, and plantings have to be of such type and variety as recommended by permanent staff and foresters so when completed, there will be a permanent screen that must be maintained.

Scheider is concerned there is nothing to prevent Filtz from planting seedlings. Scheider believes there is the ability to use tree spades to bring in trees that are significantly larger. Scheider again discussed the ordinance related to screening of mobile home parks. Rutta is concerned the condition will be so restrictive they will essentially deny the appeal.

Rutta withdrew his motion to amend condition 9.

Bachhuber stated she made reference to ordinance 7.1.2.2 in her motion, which states screening must be capable of reaching 15 feet. Bachhuber suggested an amendment state how large the trees should be when they are planted. Scheider stated they need to make reference to stages of growth introduced that would give partial screening within a relatively short period of time.

Secondary motion by Scheider to amend condition 9 to state the process of screening must begin prior to the start of construction and must be according to County Ordinance 7.1.2.2. Plantings must be of a quality and size so as to assure screening will be completed in the near future. Motion to amend condition 9 seconded by Casey. Motion passed unanimously by roll call vote.

Motion to approve appeal A10-14 as amended was seconded by Scheider. Motion passes by roll call vote with Casey voting no.

Kurt and Kay Ross, Owners (A10-04)

The Kurt and Kay Ross special exception request from the Portage County Zoning Ordinance to operate a commercial stable / riding arena in the A4 General Agricultural and Conservancy Zoning Districts, Town of Dewey, was opened by Rutta who read the public hearing notice.

Rutta read the following into the record:

- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports this appeal for a special exception as long as the following items are addressed:
 - The applicants have presented evidence they have 96.5 acres of crop land the horse manure can be applied on. Using 2 acres per horse, no more than 48 horses should be allowed.
 - The applicants will have to obtain a Commercial Animal License Permit from the Portage County Clerk.
 - A letter from WI-DOT indicating the right-of-way land along the front pond will be purchased shall be on file with Portage County Planning and Zoning prior to issuance of a zoning permit.
 - No tourist rooming house (cabin rental) can be used until changes are made to the Portage County Zoning Ordinance.

Rutta asked Mrdutt why any food issues were not addressed. Mrdutt replied food issues will be addressed by Portage County Health and Human Services. Rutta stated the main issue is the number of horses allowed.

Rutta informed Kurt and Kay Ross they are still considered sworn in from the last meeting.

Potratz asked if the 96 acres of land is leased and if it includes the 30 acres owned by Ross, to which Kurt Ross answered yes. Ross stated he mentioned at the previous meeting they lease land from neighbors. Potratz understood it to be an arrangement. Ross clarified they rent the land on a yearly basis.

Rutta asked how they will gather the horse manure. Ross answered they will scrape the areas with their end loader.

Scheider asked if the 30 acres Ross is claiming as his land includes the ten acres where the buildings are located. Ross replied no. Mrdutt explained the breakdown submitted through the FSA Office was specifically by field; the ponds and woods are not taken into consideration. Of the acreage on the forty, there are 11.2 acres of spreadable land. Scheider asked how frequently manure is spread and Ross answered every week except in winter when manure freezes and the horses are out in pasture.

Scheider asked where the horses are fed their hay. Ross answered in the pasture. Scheider stated she has not seen evidence at either of her on-site visits that the horses are getting hay. Ross reiterated the horses are fed hay everyday. Scheider stated she has issues with this venture.

Bachhuber stated she likes what Ross has done at the location and believes it will be a nice commercial venture. Bachhuber will accept staff recommendations on the manure issue; however, she has concerns there is no written contract for the property they will spread manure on. What if land is not available to spread manure on? Bachhuber would like more formal arrangements. Ross stated they have been using this land for some time. Bachhuber asked Ross what he would do if the horse population had to be maintained according to the number of acres available at any given time. Ross believes having the extra land for spreading manure will allow him to have a greater number of horses.

Rutta asked if Ross is required to keep horses that are boarded in a stable. Ross stated they only board four horses and they are not required to keep them in a stable; however, they do have shelter for the horses.

Casey stated he has an issue with allowing 48 horses. He only saw a small amount of hay and all the horses were in the barnyard. Ross stated the horses are healthy and taken care of. Casey asked about other animals on the property. Mrdutt stated they could use "animal units" to cover all animals allowed. Rutta does not believe BOA should specify how many animals, but should leave that to permanent staff to determine. Rutta stated BOA should be concerned with the safety of the public.

Scheider asked permanent staff what they thought of the conditions of the ponds. Mrdutt stated Dan O'Connell, Land Conservation Division, had no concerns. Mrdutt stated Portage County Planning and Zoning and Land Conservation department are very capable of determining the number of animals allowed and could conduct on-site visits to check compliance.

Pelky stated Gary Garske, Health and Human Services, has been in contact with Ross regarding food issues. In addition, Pelky stated the "tourist rooming house" use is not allowed. Rutta stated this is not part of this request. Ross stated this is not currently done. They use the cabin as a warming house.

There being no further questions from BOA members, Rutta excused Kurt and Kay Ross. Rutta asked if any other members of the public wanted to address this appeal. Phil Janowski was sworn in by Rutta. Janowski believes the intent of the operation is very good. This is another facet of the tourism industry and can help Portage County. Janowski stated he has had phone calls from others requesting he speak in favor of this appeal. Janowski was excused by Rutta.

There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Bachhuber asked if Ross is already running a riding stable. Ross has had requests; however, at this time they are at a standstill. They had sleigh rides in the winter. Mrdutt stated this was prior to the knowledge they needed to bring this matter before BOA. Bachhuber stated there is no need for start or completion dates, and there are no lighting issues. Mrdutt stated signage will be taken care of by permanent staff during the permit process. Bachhuber said the only issue appears to be acreage issues and the number of animals allowed.

Rutta stated he would entertain a motion for approval of appeal A10-04. Motion by Casey to approve the appeal with the following conditions:

1. Portable toilets are to be located on-site and serviced by the supplier.
2. A manure management plan is to be developed with Dan O'Connell of the Portage County Land Conservation Division, 346-1334, prior to issuance of a zoning permit.
3. Signage is to be worked out with the Portage County Planning and Zoning Department.
4. A copy of the liability insurance policy is to be on file with the Portage County Planning and Zoning Department.
5. A written agreement with the neighbors to allow the trails on their property and regarding the manure spreading area is to be on file with the Portage County Planning and Zoning Department.
6. Sam Solberg, Commercial Building Inspector, is to inspect the property for safety issues.
7. The Town of Dewey letter dated March 11, 2010 is to be made part of this decision.
8. No overnight campers or guests permitted in the outbuildings.
9. Food and liquor licenses required by State/County Ordinance are to be obtained.
10. A commercial animal license is to be obtained from the Portage County Clerk prior to issuance of a zoning permit.
11. Applications have been evidenced that there is 96.5 acres of land. Using 2 acres per animal, 48 animals are allowed.

Motion seconded by Rutta.

Mrdutt discussed overnight stays and said this issue was not discussed because they are looking at changing the text to potentially allow something like this. Making this a condition could be prohibitive in the future.

Secondary motion by Bachhuber to amend the wording of condition 8 regarding no overnight campers or guests, to add the wording "Until such time as approved by County Ordinance." Motion seconded by Casey. Motion passes by roll call vote with Scheider voting no.

Secondary motion by Rutta to amend condition 11, which refers to the number of horses allowed, to state the number of animal units allowed shall be determined by Portage County Planning and Zoning Department permanent staff to reflect the amount of land that is available for manure spreading in any given year. Motion seconded by Casey. Motion passes by roll call vote with Scheider voting no.

Motion to approve appeal A10-04 as amended passes by roll call vote with Potratz and Scheider voting no.

Correspondence/Updates

The next meeting is scheduled for Monday, June 21, 2010, with on-sites Friday, June 18, 2010.

Rutta discussed start and completion dates and issuance of permits. There was discussion amongst BOA and permanent staff about setting shorter time frames for projects. Pelky and Mrdutt stated permits must be applied for within a certain amount of time and BOA Bylaws state how long permits are valid.

Pelky and Mrdutt also informed BOA there are many conditions they attach to appeals that are not needed as they are already addressed with permanent staff.

Adjournment

There being no further business to come before BOA, Casey moved to adjourn the meeting, Rutta seconded, all in favor, meeting adjourned at 7:34 p.m.

Respectfully submitted,

Gayle Stewart, Recording Sec.

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
JUNE 8, 2010

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 9:10 am in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider and Marj Bachhuber. Staff present included Tracy Pelky, Christopher Mrdutt and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

McCain Foods USA, Inc. Owner / Pearl Engineering, Agent (A10-15)

The McCain Foods USA, Inc. Owner / Pearl Engineering, Agent, variance request from the Portage County Zoning Ordinance to construct an addition within the side property line setbacks in the Industrial Zoning District, Town of Plover, was opened by Rutta who read the public hearing notice.

Pelky stated this request is to construct a 30' x 56' addition. The variance is requested because the setback requires six feet from the property line and the appellant is looking to construct the addition up to the property line. This will connect the McCain Foods building with the AmeriCold building. Pelky gave a brief history on construction of the buildings. At the time of original construction and expansion, the Town of Plover was not under Portage County Zoning so there was no review at the County level at that time. Pelky stated stormwater will need to be reviewed in this case.

Rutta read the following letters into the record:

- A letter dated June 3, 2010, from the Town of Plover Clerk, stating the Plover Town Board approved the request as presented by Jeff Pearl and Andrew Green.
- A memo from Tracy Pelky, Assistant Zoning Administrator, stating the Portage County Planning and Zoning Department supports this appeal for a variance.

Rutta swore in Jeff Pearl, Pearl Engineering, and asked him to explain the request. Pearl directed BOA's attention to three diagrams and explained their plan. The goal is to utilize unused property between the McCain building and AmeriCold building to connect the two buildings and expand the packaging line. Pearl gave a brief history on construction of the buildings. Pearl stated existing walls would be used and the east wall would be removed. A new south wall will be put in to close it off and expand the packaging area. There is an existing well house in the area that will remain as an enclosed and locked well house. This well will be sealed and not exposed to the process. Pearl stated they received a letter of support from the neighbor, AmeriCold. Pearl added the expansion is meeting all building codes and requirements, and they are working with the Town of Plover's Building Inspector, Mike Bembenek, who has given approval to proceed with the interior work that is not affecting the expansion.

Rutta read the following letter into the record:

- A letter from Ronald Hutchison, CFO & EVP, AmeriCold Logistics, stating they do not oppose the requested setback variance.

Potratz stated stormwater runoff from the building will be addressed by a ten-inch drain pipe.

Casey stated the expansion is needed for the processing plant.

Rutta asked if it is possible to place the expansion somewhere other than where it is located now. Pearl replied it would be cost prohibitive to run the line somewhere else. Pearl explained there are three different processing lines in the plant and each one is lined up. The material flow goes from east to west through processing, packaging, and into the AmeriCold Building for cold storage and shipping. This is why there is no other place to go for the line expansion.

Scheider asked if McCain is expanding their existing crops. Andrew Green, Engineering Manager, stated this expansion is for the packaging area only. In the future, they hope to add additional types of products. As of now, this is an upgrade on existing packaging equipment and is only an upgrade of efficiencies, not capacity.

Bachhuber inquired about future expansion as Green had mentioned adding products in the future. Green stated at this time, there are no plans to expand in that area.

There being no further questions from BOA, Rutta excused Pearl. Rutta asked if any members of the public wanted to address this appeal. There being no members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta read and explained the criteria for a variance request. Rutta stated this situation is different from a normal variance request because the existing building has been there for many years. None of the situations they are trying to protect against would apply in this case because these two buildings are fundamentally married and have been for many years. Rutta stated it would not be cost efficient to move the proposed expansion to another location because this is an extension of the line. The system is designed for a natural progression in which the packaging department is the end result. Because of the difficulties and costs involved in redesigning the processing line, Rutta stated the unnecessary hardship requirement is met. There are unique property limitations because of the way the building was constructed. Rutta does not believe this project is contrary to the public interest in any way. Rutta stated the stormwater issue will be referred to Dan O'Connell, Land Conservation Division.

Casey stated this makes sense and to interrupt the product flow would not make sense.

Scheider noted these buildings were built continuous to each other with that specific design in mind and have operated together for many years. When the buildings were constructed, the zoning was permissive to this idea.

Bachhuber believes, from a security standpoint, this is the best thing to do.

Rutta summarized the position of BOA with the following:

- The proposal is not contrary to State Law Administrative Code. The proposal is permitted in this zoning district.
- There are no alternatives to the variance request. Alternatives would be inefficient and cost excessive.
- This request is not detrimental to nearby property owners. AmeriCold submitted a letter stating they are not opposed to this request.
- The spirit of the ordinance can be maintained.
- This appeal is not contrary to public interest.
- There are unique property limitations. This space is the only location where a logical extension of the product line can be located.
- Does this proposal meet the unnecessary hardship test? Practical difficulties of doing this in a form which would comply with the ordinance would be cost prohibitive and would not be logical from a systemic point-of-view.
- The hardship is not self imposed. This is an ordinary growth of business.
- The intent of the ordinance is to provide for public safety. This does not appear to be a problem in this case.

Rutta stated he would entertain a motion for approval of appeal A10-15. Motion by Bachhuber to approve the appeal with the following conditions:

1. Approval is for a 30' X 56' pre-cast concrete construction addition to the existing plant for expansion of packaging facilities.
2. Building is to be type 1A construction and factory F1 occupancy.
3. The entire application packet is to be made part of this decision.
4. The existing well house is allowed to remain in the new addition.
5. DNR and other approvals are to be on file with the Portage County Planning and Zoning Department.
6. Dan O'Connell, Land Conservation Division, is to review all stormwater requirements.

Motion to approve appeal A10-15 seconded by Scheider. Motion passed unanimously by roll call vote.

Approval of Minutes

Casey moved to approve the April 19, 2010 minutes as submitted, Potratz seconded. Motion passed by voice vote.

Scheider moved to approve the April 26, 2010 minutes as submitted, Casey seconded. Motion passed by voice vote.

Casey moved to approve the May 3, 2010 minutes as submitted, Potratz seconded. Motion passed by voice vote.

Correspondence/Updates

The next meeting is scheduled for Monday, June 21, 2010, with on-sites Friday, June 18, 2010.

Adjournment

There being no further business to come before BOA, Scheider moved to adjourn the meeting, Casey seconded, all in favor, meeting adjourned at 9:48 am.

Respectfully submitted,

Gayle Stewart, Recording Sec.

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
JUNE 21, 2010

Call to Order

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

Roll Call

Members present included Edward Rutta, Patrick Casey, James Potratz, Joan Scheider and Marj Bachhuber. Staff present included Tracy Pelky, Christopher Mrdutt, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Thomas W. Clinton, Owner (A10-13)

The Thomas W. Clinton, Owner, special exception request from the Portage County Zoning Ordinance to expand a home occupation, and variance request from provisions of the Portage County Zoning Ordinance to have more than two non-family employees, in the A4 General Agricultural Zoning District, Town of Lanark, was opened by Rutta who read the public hearing notice.

Pelky stated this is a continuation from last month's hearing. The appellant wants to expand his home occupation. Pelky stated, after conferring with Portage County Corporation Counsel, this appeal was republished with a variance request to address the increase in number of employees allowed. The special exception request is to expand the home occupation and the variance is requested to exceed more than two non-family employees.

Rutta swore in Thomas Clinton and asked him for a brief synopsis. Clinton wants to put an addition onto the building and dismantle much of the old building. The roof trusses will be removed and the building will be enlarged to approximately 1,200 square feet. Clinton wants to create one roofline and match the expanded building to his current home. Clinton reiterated he needs the extra room, but if he cannot add more employees, he will not be able to make extra money to pay for the new building.

Potratz asked how this qualifies as a home occupation, if it is located on a different parcel. Clinton reminded BOA this was discussed at the last meeting. He would prefer to keep the parcels separate for tax purposes because of the business; however, he will combine the parcels, if required by BOA. Mrdutt stated the parcels must be combined, and Clinton replied he will.

Rutta asked if Clinton works out of his home at all. Clinton answered occasionally at night he will take things up to the house and work at his kitchen table. Rutta stated the way the ordinance reads, the condition of not more than two non-family employees may not apply because business is not conducted out of the residence. He realizes this is not the intent of the ordinance. Pelky and Rutta both cited the ordinance. Rutta believes it applies; however, we must accept the ordinance as it reads. Pelky asked how many non-family employees Clinton wants and Clinton answered he wants four non-family employees. Rutta stated per previous testimony, Clinton stated if he cannot get four non-family employees, he does not want to expand.

Rutta stated BOA will act on the variance first; that being the request to exceed two employees that are not members of the resident family; Clinton is requesting four. Rutta stated he would entertain a motion to approve the variance request to employ four non-family employees in the A4 General Agriculture Zoning District.

There being no further questions from BOA, Rutta excused Clinton. Rutta asked if any members of the public wanted to address this appeal. Phillip R. Klismith asked to comment. Klismith is familiar with Clinton and his building, and he agrees that it is small and old and feels there is a need for a bigger building. There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta again entertained a motion to approve the variance request portion of Appeal A10-13. Motion by Casey to approve the appeal for a variance with the following condition:

1. Approval is to allow four non-family, fulltime employees, in addition to family employees.

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

Rutta asked BOA if there were any questions regarding the special exception request. Scheider stated when the original special exception was granted by BOA in 1996, there was to be no retail business conducted on-site, only wholesale. Scheider asked if that is still true today. Clinton replied he does not promote his business, but if someone comes in asking to purchase something, he would sell it. It would be pretty rare if he sells retail at all, but he cannot say he has never sold anything retail out of the building. Rutta noticed there will be an office in the new addition and Clinton replied that is where he will be conducting his business.

Rutta referenced the decision from Appeal A96-16 and stated the third condition, which reads, "No more than two employees other than family members are allowed," will have to be changed. Rutta stated he has a problem with condition number six that references finding a correct zoning district, if the business is to grow. He stated this may have to be addressed in the future.

Bachhuber asked if this new appeal would take the place of the old appeal. Pelky replied BOA could eliminate certain conditions or carry conditions forward. If old conditions are not addressed or changed by BOA, they will stay in effect.

For discussion purposes, Casey noted the following:

- Approximate size will be 33' x 40', approximately 1,290 square feet.
- Additional square footage is 560 square feet.
- A stormwater plan should be established.
- The lots should be combined.
- A septic evaluation should be completed.
- Siding and roof should match the existing home.
- Signage, if any, is to remain six square feet.
- Conditions of the previous decision are to remain. Condition three needs to be stricken.

Rutta entertained a motion to approve the special exception request portion of Appeal A10-13. Motion by Casey to approve the appeal for a special exception with the following conditions:

1. Approval is for a building approximately 33' x 40', when completed. This will increase the square footage by approximately 560 for a total of approximately 1,290 square feet.
2. A stormwater management plan is to be developed with the Portage County Land Conservation Division.
3. The two parcels, 022-22-1008-09.01 and 022-22-1008-09.02, are to be combined.
4. An evaluation of the current septic system is to be conducted.
5. Siding and roof are to match those of the existing home.
6. All conditions from appeal A96-16, with the exception of condition 3, are to remain part of this decision.

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

Phillip and Carol Klismith, Owners / Linda Chapin, Agent, (A10-16)

The Phillip and Carol Klismith, Owners / Linda Chapin, Agent, variance request from provisions of the Portage County Shoreland Ordinance to allow or relocate an existing carport located within the 100 foot setback of Spring Creek in the Conservancy Zoning District, Town of Lanark, was opened by Rutta who read the public hearing notice.

Pelky stated this variance is to allow an existing carport to remain on the property. The carport was built approximately nine years ago and no permit was ever granted. There are two options being looked at; allowing the carport to stay in the existing location, or an alternate plan of building a 16' x 20' garage elsewhere on the property.

Rutta read the following letters into the record:

- A letter dated June 18, 2010, from the Town of Lanark Clerk, stating the Town of Lanark Board reviewed the request and voted 1 for, 1 against, and the Town of Lanark Plan Commission reviewed the request and voted to deny the request 0-3-0.
- An e-mail dated June 18, 2010 from the Town of Lanark Clerk, with an attachment giving more detail on the Board's decision.

(Pelky explained the above two items were read out of order and the second letter dated June 18, 2010 should have been read first.)

- A letter dated June 11, 2010, from the Town of Lanark Clerk, stating the Town of Lanark Board supports the Plan Commission's recommendation.

Bachhuber asked if anyone from the Town of Lanark was present and Bill McKee, Supervisor, Town of Lanark, spoke and stated he is an adjacent land owner. Rutta asked if the Town of Lanark Board acted on both the location of the current structure and the proposed alternate location. McKee replied he initially thought they acted on allowing the current structure to stay. There was no alternate location discussed at that point in time. Mrdutt stated the Town of Lanark Board probably received their packet after the Plan Commission meeting. Rutta stated we can say the Town of Lanark Plan Commission was not in favor of leaving the structure where it is. Mrdutt stated he spoke with Mike Pagel, Supervisor, Town of Lanark, prior to this meeting and Pagel stated he did not like the proposal of an alternate location and bringing fill into a potential wetland site. He likes the idea of having vehicles covered in that close proximity to a stream due to runoff from vehicles. Pagel told Mrdutt he preferred the structure stay in the current space because at least the vehicles would be covered. Rutta asked McKee to share the vote from the meeting. McKee stated this is the first time he has voted contrary to the Plan Commission. He believes the current scenario is the best scenario for the property and environment. McKee stated he voted in favor and Pagel voted against.

- A note from surrounding property owner, Dennis Valcq, stating he is okay with the proposal. He believes the shed was an improvement to the property.
- A memo from Tracy Pelky, Assistant Zoning Administrator, stating the Portage County Planning and Zoning Department supports both requests with considerations.

Rutta swore in Phillip Klismith and Linda Chapin, and asked them to explain the request. Klismith wants to keep the carport where it sits. He put it up about nine years ago. The area was already hardened and he did not have to remove any trees or haul any fill in. He is selling the property to Linda Chapin and wants to get the variance so the carport can remain as is.

Chapin clarified that at the Town of Lanark Board meeting, the original alternate site was actually closer to the wetlands and would require a lot more fill than what the newer proposal would need. Chapin stated at the time of the Town of Lanark Board meeting, she had not met with Pelky to discuss the third option.

Mrdutt informed Rutta the house was built before the zoning ordinance took effect. Rutta stated the house and the cabin are both grandfathered. The only issue before BOA is the carport. Rutta asked Klismith if the building he uses as a cabin was originally built as a cabin or a garage. Klismith answered he believes it started as a garage and was remodeled prior to him purchasing the home. Klismith stated he wanted to have a roof over the vehicles to keep them out of the weather. Klismith is aware people are not allowed to reside in the studio as it is not big enough. Rutta asked Chapin what she plans on using the cabin for. She answered she wants to use it as a place to write and do computer work. She wants to have a place to go to relax and have a pleasant environment. Rutta asked if they knew when the holding tanks were put in. Klismith stated 1993 or 1994. Pelky stated it appears they were installed in 1993.

Potratz said there is a storage shed on the property and asked if it was put up without a permit. Klismith stated it was a shed he had relocated from the trailer park he lived in and he believes it was in the fall of 1999. Mrdutt stated structures over 100 square feet did not need a permit until 2005.

Casey asked if there was a previous appeal on this property for the garage that is now a cabin. Pelky replied there was an appeal to have a home occupation. Casey asked what the conditions were at that time. Casey asked Chapin if she purchases the property, does she intend to put up a garage or move the carport, if possible. Chapin stated she also has concerns and wants to protect the stream, and she would like shelter for the vehicle. She would like to either keep the carport as it is or build a smaller garage.

Casey asked Pelky about wetlands in the area. He asked if runoff from County Road A exits into the creek in the area or is it a ditch. Pelky replied they are mapped wetlands, but is unsure which direction the water flows. Rutta added the further east you go, the higher the property runs. McKee stated there is a culvert that carries water all year round from property across the road to a feeder stream, which goes to Spring Creek.

Rutta read the decision and conditions from Appeal A93-15.

Rutta asked Chapin if she considered converting the former garage back to a garage. Chapin stated the appraisal on the property was based on that building being considered a studio and a place that was usable. Rutta said they are talking about financial considerations. Chapin agreed and added the studio has a lot of appeal as it is. It is a nice retreat and she would hate to see it turned back into a garage. Scheider asked if there is heat in the studio and Chapin replied yes.

There being no further questions from BOA, Rutta excused Klismith and Chapin. Rutta asked if any members of the public wanted to address this appeal. Thomas W. Clinton was sworn in by Rutta. Clinton stated he lives approximately one mile from Klismith and was Town Chairman for eight years. Previous to Klismith purchasing the property, there were numerous problems with the property relating to gray water and septic. Clinton feels Klismith has done an excellent job of pumping on time and making sure reports were sent in on time, and has improved the property a lot. Clinton wants to emphasize the importance of maintaining the septic due to the proximity to the creek. Bachhuber asked Clinton if he is saying there are problems with the stream due to the holding tanks. Clinton answered no, but there is the possibility, if they are not properly maintained. There being no further questions for Clinton by BOA, Rutta excused him.

Bill McKee was sworn in by Rutta. McKee wanted to reiterate earlier statements. He disagrees with the Town of Lanark Plan Commission, and believes the carport is a value to the environment and property, and that status quo is ideal. Any other expansion enhances the potential for problems on the stream. Bachhuber asked McKee if he believes the Town of Lanark Plan Commission had all the information prior to making their decision. McKee believes they did not consider alternatives and may have received their information before this was brought to the County. Rutta excused McKee.

Rutta asked Mrdutt to explain hydric soils and wetlands as they apply to this property. Mrdutt stated there are two different types of wetland maps. One is done by the DNR and the other shows hydric soils the Army Corps of Engineers (ACOE) uses. Hydric soils have a lot of indications of wetlands. It's a high organic material and is prone to having a lot of moisture. The ACOE gets more in-depth with hydric soils than the DNR and that is why they use both layers on maps. Rutta asked what the water elevation would be for these buildings from the level of Spring Creek and Mrdutt estimated a range of a couple feet. Rutta asked Klismith if his property has ever flooded and Klismith answered no. McKee stated he thinks the fact there is a dam upstream may affect this. There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta stated he has issues with the way the garage was built and then converted to a shop/studio with a special exception. It does not appear to him, with the testimony given, the building is being used as a shop or studio. He also has a problem with the fact that shortly after the building was converted, storage for a vehicle was needed and a structure was put up without a permit. The land is extremely low and soils are described as hydric and wetlands. There is no place on this site to build anything without a variance. Rutta stated the carport is not a normal garage where you could install gutters. Water is not collected and runs off into Spring Creek. Rutta stated testimony has been given there is a financial consideration. Rutta said alternatives to the proposal need to be considered and one of those could be converting the building back to a garage.

Bachhuber believes a lot of what was said is not pertinent to the request. BOA needs to address the issue of allowing the carport to remain or allow building of a new garage in a different location. Bachhuber stated the problems with the septic were addressed in 1993 and have been taken care of. There has been testimony the property has been improved and the stream is pristine. The potential new owner wants the property to remain as a private studio, not for retail or any other reason. BOA must decide what is the least amount of damage that would

be done to the property. Bachhuber agrees with staff observations that bringing in extra fill for an alternate location would be damaging to the environment and the least amount of damage would be done by allowing the carport to stay.

Scheider believes anything done would disrupt the environment. Leaving the carport as is would be the best alternative. If the garage were relocated to the area suggested, and something happens to the holding tanks, there is little space or possibility for recovery. Scheider has concerns with the current structure and the water running off; however, if it was a building with gutters, the water would have to drain someplace and would end up in the creek.

Casey asked permanent staff what has happened since the decision in 1993. There was to be no further additions on the property, but there is now an additional 500+ square feet of buildings. Pelky stated they just became aware of the carport and are dealing with it now. That may be a tough issue to enforce. Pelky stated BOA could impose conditions such as having the plumbing removed to prevent people from living in the studio and possibly impose deed restrictions. Casey stated if anything is done, there should be a garage built, the smaller building should be eliminated, and the roof designed so water runoff would drain back toward the hydric soils to give more filtration before getting to the creek. Casey stated the current building is 58 feet from the creek and a new building would be located 76 feet from the creek. This would create a setback greater than 75 feet. In addition, there could be a deed restriction with the three buildings that will remain.

Potratz agreed with Casey and believes they should get rid of the carport, get rid of the smaller shed, and put up a new structure further away from the creek. There should be some allowance for minimal runoff.

Rutta asked permanent staff if this appeal, as published, would allow a new building to be built. The notice stated to allow or relocate a carport. Would this have to be republished and a new hearing be held to allow a new garage? Pelky stated the building of a new garage was reviewed after publication. Rutta stated this would require another variance. There was nothing in the original application requesting a new garage. Pelky stated they were not asking to convert the existing studio into a garage either; Rutta agreed. Rutta stated there are many questions needing to be answered with a variance. In this case, the issue is should they allow the carport to stay where currently located.

Rutta summarized with the following:

- Is the appeal contrary to public interest? He said BOA will have to determine this.
- Does the property have enough unique property limitations, and are the limitations adequate to satisfy the requirements for a variance.
- Does the proposal meet the unnecessary hardship test? Is the absence of a carport or garage an unnecessary hardship?
- Can a minimum variance be granted for reasonable use?
- Is the hardship self imposed?
- Are economic conditions a factor? There has been testimony that economic conditions seem to be a factor.
- Are there any alternatives?

Casey asked if the carport is left in its current location, and a drain system installed to move water away from the creek side, could the carport be allowed to remain until the life of the carport is over?

Rutta added if the carport was removed and a garage placed in the exact location with drains for water runoff, it would be a more desirable situation. However, Rutta stated they are not dealing with that issue at this time.

Rutta stated he would entertain a motion to approve Appeal A10-16. Motion by Bachhuber to approve the appeal for a variance to allow the existing carport erected in September 2000 to remain as is, with the following condition:

1. Dan O'Connell, Land Conservation Division, must evaluate the possibility of creating better drainage from the existing site.

Motion seconded by Scheider.

Subsidiary motion by Rutta to amend the main motion to specify this variance, if approved, would be only for the projected life of the existing carport. It cannot be replaced with another carport and would have to return before BOA for re-approval. Subsidiary motion seconded by Scheider. Subsidiary motion passed unanimously by roll call vote.

Roll call vote on main motion as amended. Motion fails 3-2 with Potratz, Casey, and Rutta voting nay; Bachhuber and Scheider voting aye.

Motion by Casey and second by Scheider to take a five minute recess. Motion passed by voice vote. Meeting recessed at approximately 5:29 p.m.

Rutta called the meeting back to order at approximately 5:36 p.m.

David Zaborowski, Owner (A10-17)

The David Zaborowski, Owner, special exception request from the Portage County Zoning Ordinance to operate an automobile salvage yard to have 20 hobby/restoration tractors, and request for reconsideration of conditions 6, 7, and 13 of appeal A03-31, in the A4 General Agricultural Zoning District, Town of Alban, was opened by Rutta who read the public hearing notice.

Mrduitt explained the appellant is here to change conditions 6, 7, and 13 from appeal A03-31 so he may keep 20 hobby tractors outside. This appeal (A10-17) was published under automobile storage/salvage yard. Mrduitt stated in 2003 when BOA acted on this variance, per the meeting minutes, condition numbers 6 and 7 read there is to be no outside storage of any parts, machinery, vehicles, etc., and there is to be a maximum of five vehicles (units) on the site at one time to be worked on. Mrduitt stated in reviewing the minutes of that meeting, the Board was not concerned with the amount of vehicles that were inside the premises of the building. In looking at conditions of the Decision, it refers to five units and does not specify inside or outside storage. Mrduitt stated he would like Zaborowski to speak on condition 13, which references sales on the site.

Rutta clarified the tractors are a personal hobby. When tractors are brought in for repair, those are part of the vehicle units. Mrduitt asked the Board to make a clear distinction between the business and Zaborowski's personal implements used for his agricultural operations.

Rutta read the following letters into the record:

- A letter dated May 11, 2010, from the Town of Alban Clerk, listing recommendations they would like Zaborowski to follow and recommending condition 6 be amended to say there should be no outside storage of any parts for the business.
- A memo from Christopher Mrduitt, Zoning Technician, stating the Portage County Planning and Zoning Department supports amending the conditions from Petition A03-31 and the special exception to allow up to 20 hobby tractors under an automobile salvage yard with a list of items to be addressed.

For discussion purposes, Rutta stated the fenced in area refers to Zaborowski's hobby and the designated area refers to the commercial operation. Rutta asked about vehicles and parts being considered units. Mrduitt stated according to their definition, if there is a large part, such as a transmission or front-end of a tractor, it will count by ordinance as a vehicle unit. In addition, the Town of Alban listed conditions regarding buildings; Mrduitt stated those are timelines established with issuance of permits so there is no need for discussion by BOA on those issues.

Rutta swore in David Zaborowski and asked him to explain his request. Zaborowski wants BOA to reconsider conditions 6 and 7 to allow him to have five units to be worked on outside. Zaborowski stated if someone brings their car for service and he is unable to work on it that day, he wants to have the ability to park cars outside until he is able to work on them. In addition, Zaborowski wants BOA to reconsider outside storage of parts, machinery, vehicles, etc. Zaborowski is asking BOA to reconsider condition 13 and stated if he is working on a vehicle and needs a part or materials, if he is not permitted to sell the part, he must call the customer and have them run and purchase the part. Zaborowski asked how he can fix something, if he is unable to sell the necessary parts. Zaborowski said he wants to be able to store his non-running collector tractors outside until he gets them running. It does not pay for him to have a tractor that is running stored outside and non-running tractors inside.

Rutta asked if the tractors Zaborowski has as a hobby are considered part of his agricultural activity, or is he a citizen who has a bunch of tractors, and is he permitted to have these tractors? Mrduitt answered just like any farmer, he can have tractors. If he has more than one inoperable, per ordinance, it is technically an automobile salvage yard because the ordinance does not make a distinction between a car and a tractor. Zaborowski feeds steer and has fields, so there is an agricultural element. He also desires to have hobby tractors. Rutta asked if the request for an automobile salvage yard is granted, what would prevent Zaborowski from having a salvage yard. Mrduitt stated BOA can prevent this by setting specific conditions. Rutta asked Zaborowski if he sells any of the

tractors he collects and Zaborowski answered no. Rutta asked if he collects them only for himself and if they're involved in his business. Zaborowski answered at this time, no. Zaborowski said if someone drops off an implement to be worked on, he will test drive those machines by using them in his fields. Zaborowski stated he does not sell parts off the tractors. He purchases the tractors to fix up and restore for himself.

Potratz asked Zaborowski if the non-running tractors will be enclosed in a fenced in area in the back of the livestock barn and Zaborowski answered yes. Potratz asked if the other 30' x 50' area will be adjacent to the shop building and Zaborowski replied correct. Zaborowski stated the recommendation by the Town of Alban that he should have the area fenced in was not what they had talked about. He said they had talked about putting screening on the east side toward the Karch property and not building a fence. It was supposed to be a designated area, but was written incorrectly by the Town Secretary. Zaborowski stated he was informed that just because the Town of Alban recommended something, does not mean BOA has to follow the recommendations. Potratz informed Zaborowski they take into consideration any recommendations made. Zaborowski stated he spoke with the Town of Alban regarding the minutes not accurately reflecting what was decided upon at their meeting. Zaborowski's concern was the difficulty for trailers to drop off vehicles in a fenced in area.

Rutta asked Zaborowski if he repairs automobiles, trucks, and tractors in his commercial operation. Zaborowski stated yes, in addition to ATV's and snowmobiles. Rutta asked Mrdutt if snowmobiles and ATV's would be considered units and Mrdutt stated according to the ordinance, they would.

Scheider asked if Zaborowski refurbishes tractors for his hobby only. Zaborowski stated he uses them for his agricultural use after he fixes them. Scheider asked how many running tractors Zaborowski has and he answered 15. Scheider asked how many acres he farms and Zaborowski replied it depends on what you consider farming. He runs quite a bit of hay ground and would estimate about 90 to 100 acres, of which only nine acres are crops.

Bachhuber said it appears there are three separate activities going on. He has a hobby in which he collects tractors, and he has tractors for his hobby that are stored outside waiting to be restored. Zaborowski stated he stores tractors and parts meant for his hobby in an area behind the cattle shed. When they are running, he will use them for his personal use. Bachhuber stated it appears Zaborowski is crossing over between his hobby and business activity. Zaborowski explained he considers all of his tractors to be in his collection. Agricultural history means a lot to him, so it doesn't matter if it is a tractor or an old piece of junk machinery that he thinks should be saved from the salvage yard. Zaborowski uses as much as he can in his agricultural business, as he believes even if something is old, it can be used.

Casey asked Zaborowski the dimensions of the current fenced in area and Zaborowski replied approximately 30' x 70'. Rutta stated it is just large enough to cover the hobby collector tractors so they cannot be seen by adjacent properties. Casey stated he has a problem with parts being considered units and also believes all inoperable units should be in the designated area. Casey asked if a combine, corn picker, and pickup truck are each considered units. Zaborowski answered yes, and they are stored outside. Casey asked about wood piles and Rutta stated BOA is only here to address the variance conditions granted in 2003. Any other issues can be dealt with under the special exception.

Bachhuber asked for a definition of parts, and asked exactly what type of parts Zaborowski sells. She also asked Zaborowski to describe his business. Zaborowski answered he repairs whatever is broke. If a person has any problem with their automobile, he will try to repair it. He is able to get any part needed for a vehicle. On tractors, he fixes tires, transmissions, rear ends, motors, or anything that needs to be done. Bachhuber asked about storage of parts. Zaborowski stated he does not normally store parts; he orders parts when needed. He does not keep a business inventory for automobiles. Zaborowski stated he may have three cases of oil and some filters on hand. Bachhuber asked what other parts he would keep on-site and Zaborowski answered he may have hobby parts or tractor parts kept on-site. If there are large pieces of a tractor to be stored, they would be kept out back. Rutta stated there needs to be separation between business and hobby aspects. There was discussion of Zaborowski's hobby tractors. The issue is whether he has one or more that are inoperable.

Mrdutt stated he agrees with the idea of a designated area and what can fit in it, can fit in it. Rutta stated BOA needs to completely understand the difference between the hobby and commercial business aspects.

Scheider stated condition 6 is specific to the commercial business. She asked Zaborowski what the outside needs are for his commercial business, other than vehicles being picked up or dropped off or waiting for parts. Zaborowski answered that is all he needs; storage for five units (machinery, tractors, or vehicles) outside until he can work on them. Scheider stated the verbiage relating to parts is misleading and Zaborowski agreed.

Casey believes the original thought was if there were, for example, three combines, they did not want three combines tore apart sitting outside his building for parts. If it is a combine to be repaired and has to sit there for a week waiting for parts, that would be okay. They did not want a bunch of old items stored outside for long periods of time. Zaborowski added if there is a designated area and he is working on a piece of machinery, he will not work on it in the designated area. It would either be pulled into his shop or in front of it. If it is a big piece of equipment and takes a week to get parts, it will have to stay where it is. He cannot drag it out every day.

Scheider asked Zaborowski if he had a problem with the previous decision as it related to storage of parts, and Zaborowski answered yes. He stated if you went over the minutes of the meeting in 2003, they are not written the way it was discussed. This is the reason Zaborowski was informed he should come before BOA; to see if changes could be made. Rutta stated the problem with condition 6 is the wording of parts. Casey stated he believes the intent of that specific condition was to prevent salvage parts/junk from lying around outside the building. Casey stated the verbiage can be cleaned up to properly reflect BOA's decision.

There being no further questions from BOA, Rutta excused Zaborowski. Rutta asked if any members of the public wanted to address this appeal. Rutta swore in Richard M. Zdroik. Zdroik is an adjacent homeowner to the west of the property, and stated up until now, as it sits, he believes this has had a negative affect on the value of his property. Zdroik stated he put his house on the market and half of the people looking at his house did not care for the view. Zdroik also believes when he was reassessed last year, his property was specifically devalued twice because of the view. He was told if his house would have faced north, he would not have this problem. He wants the property kept clean.

Casey asked Zdroik if he felt the screening between his property and Zaborowski's was adequate, and Zdroik answered he does not think so. Rutta referred to Zdroik's driveway, which runs through Zaborowski's property, and asked if there was an easement, and Zdroik answered yes. Rutta understands Zdroik's house sits quite high and his view is looking down onto the operation. Zdroik is familiar with agricultural operations, but the accumulation of parts through the years is what he is concerned with.

Bachhuber asked Zdroik if he objects to any outside storage. Zdroik replied his is okay with it if there is a designated area for storage and all conditions are followed and enforced. Bachhuber asked Zdroik if the property looked the same a month ago as it does now, and Zdroik answered no. He stated it is the cleanest it has been in years.

There being no further questions from BOA, Rutta excused Zdroik. Rutta asked if any other members of the public wanted to address this appeal. Rutta swore in Richard A. Wagner. Wagner lives directly across the street from Zaborowski's shop. Wagner states every farming operation has machinery and not all of it is parked in machine sheds. He does not have a problem with the farming or Zaborowski's business. Wagner believes Richard Zdroik may have a problem with Zaborowski because of a land issue many years ago. Wagner agrees a person would not want salvaged junk stored outside, but there are a lot of tractors, discs, and plows that are used in his agricultural operation.

Scheider asked if the buildings there now were there years ago at the time of the possible land sale. Wagner stated the big red pole shed has been there for many years. There was a lot of equipment stored in a machine shed at that location for many years. The other building has since been added. Wagner does not feel his property is devalued because of Zaborowski's business. He feels the economy has had more of an impact than anything else on devaluing property.

There being no further questions from BOA, Rutta excused Wagner. Rutta asked if any other members of the public wanted to address this appeal. Kim M. Karch asked to comment. Karch has lived there six years and has no problem with Zaborowski's business. She understands Zdroik's concerns, but feels Zaborowski has done a good job keeping his property in order. Scott Schara wanted to comment. Schara has no problem with Zaborowski making a living; however, there are responsibilities that go along with it. BOA needs to consider the impact and conditions should be appropriate and match the responsibility.

Deliberation and Decision

Rutta stated there are two issues to be dealt with; the special exception and modifying conditions for the variance.

For discussion purposes, Rutta read condition 6 of Appeal A03-31 which reads, "There is to be no outside storage of any parts, machinery, or vehicles." Rutta stated if BOA allows outside storage of vehicles, this condition is not needed anymore.

Casey would like to leave condition number 6, but change the wording to reflect no outside storage of junk parts; meaning salvage parts from any vehicle or unit. Rutta stated they would have to eliminate the words "machinery and vehicles," if they allow the storage of five units. Casey is referring to parts and not units. His intent is to get rid of junk or salvaged parts that come off vehicles or machinery. He would change condition 6 to read, "There should be no outside storage of junk or salvage parts." Rutta asked about machinery and vehicles. Casey stated he would allow outside storage and that would be covered under changing condition 7 to reflect the number of units and where they are stored. Casey suggested there could be five units and they must be stored east of the shop. A unit would consist of one truck or one piece of farm machinery. Rutta asked if the ordinance defines unit. Casey added a unit would be a pickup truck, a combine, bailer; any piece of farm machinery is a unit. Mrdutt read the ordinance relating to units, which read, "A self-propelled vehicle and/or associated parts thereof, which are stored in the open." Casey said combines would not necessarily be included, if it is a pull-behind. Potratz asked what if a combine had two heads; a corn head and grain head. Would that be two units? Mrdutt stated they could use implements. Bachhuber said BOA should give some examples and say vehicles or implements. Casey's intent is to get the condition worded to say units, and a unit would either be a piece of farm machinery or a vehicle. Rutta said a maximum of five units on the site at one time to be worked on, and located east of the shop. A unit shall consist of a vehicle or a piece of farm machinery. Bachhuber added they could not possibly list all the items that could be considered units.

Regarding condition 13, Casey stated it should be changed to reflect sales of items for repair of units should be allowed. Rutta stated condition 13 should be replaced with the only sales to be allowed are items necessary for the repair of vehicles or units. Potratz asked about selling of pieces of machinery from Zaborowski's farm equipment; would this be allowed? Mrdutt stated that could apply to anyone selling any of their property. Rutta stated BOA is getting too technical on this. Rutta added this variance applies only to the commercial business. This does not apply to Zaborowski's personal business at all. Rutta stated the only sales to be allowed are those necessary for repairs of units listed in condition 7.

Rutta stated he would entertain a motion to approve Appeal A10-17; a reconsideration of conditions 6, 7, and 13 of Appeal A03-31. Motion by Casey to approve the request with the following conditions:

1. Condition number 6 will be changed to read no outside storage of junk or salvage parts.
2. Condition number 7 will be changed to read maximum of five units on the site at one time to be worked on. A unit will consist of one piece of machinery, one truck, one trailer, etc. Each unit will need to be stored east of the building.
3. Condition number 13 will be stricken and changed to say sales of items for repairs of units to be allowed.

Motion seconded by Scheider.

Subsidiary motion by Rutta to amend condition 3 of Casey's motion to state, "The only sales to be allowed are those necessary for repair of the units specified in condition 7." Subsidiary motion seconded by Scheider. Motion passed unanimously by voice vote.

Rutta asked if the site dimensions were specified in the motion. Casey stated he only specified five units to be stored east of the building.

Roll call vote on the main motion as amended. Motion passed unanimously by roll call vote.

Rutta asked for discussion on the special exception request to operate an automobile salvage yard to have 20 hobby/restoration tractors. Rutta believes a 30' x 70' fence is a good idea so Zaborowski can put whatever hobby equipment he wants in there. Mrdutt stated staff would agree with the recommendation; however, he does not know the specific size. Rutta suggested they use the width of the calf barn and 30' out. Mrdutt suggested they describe the current fenced-in area, even though they don't have specific measurements. Rutta asked Zaborowski

if he knew the exact dimensions of the fenced in area and Zaborowski answered approximately 88' x 30'. Rutta stated they are limiting it to 20 tractors and 30' x 88'.

James Zdroik, resident, stated his concern is BOA should review this after one year. He stated BOA has done a lot of manipulating on the old package and has a lot of different verbiage. He wants this reviewed in one year because he believes corrections will need to be made. He feels this appeal should be left open for review because there are a lot of different topics being discussed between hobby, repair, and agriculture. Rutta said he asked for public comment earlier and James Zdroik did not come forward. Zdroik stated that was on the first matter. Rutta stated he would take that under advisement.

Scheider agreed with the dimension of 30' x 88' and limiting to 20 units.

Bachhuber expressed concern that Zaborowski did not live up to conditions set in 2003, and says this should be reviewed in a year or two. Mrdutt reiterated the reason this is before BOA is because the original conditions were vague. Regarding enforcement, BOA can set clear conditions to enforce. Potratz stated the enforcement of conditions is not within the realm of BOA; enforcement is up to permanent staff. Rutta believes there should be a condition limiting storage to tractors and farm machinery only.

Rutta stated he would entertain a motion to approve Appeal A10-17, relating to the operation of an automobile salvage yard to have 20 hobby/restoration tractors. Motion by Casey to approve the request with the following conditions:

1. Approval is for an enclosed 30' x 88' area for 20 tractors.
2. Tractors/machinery are to be restoration type only.

Motion seconded by Potratz. Motion passed unanimously by roll call vote.

Correspondence/Updates

The next meeting is scheduled for Monday, July 19, 2010, with on-sites Friday, July 16, 2010.

Rutta thanked Patrick Casey for his many years of service to BOA.

Adjournment

There being no further business to come before BOA, Potratz moved to adjourn the meeting, Casey seconded, all in favor, meeting adjourned at 6:55 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
JULY 19, 2010

Call to Order

Chairman Rutta called the Portage County Board of Adjustment (BOA) to order at 4:05 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Members present included Edward Rutta, James Potratz, Joan Scheider, and Marj Bachhuber. Staff present included Tracy Pelky, Jeff Schuler, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Potratz led the Pledge.

Board of Adjustment Procedures

Rutta explained the meeting was properly noted 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The appellant will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Two Lakes Properties LLP, Owner / Jeff, Julie, and Mike Jagielo, Agents (P10-18)

The Two Lakes Properties LLP, Owner / Jeff, Julie, and Mike Jagielo, Agents, variance request from the Portage County Shoreland Zoning Ordinance to build a structure within the 100 foot setback from Bass Lake, in the C3 Commercial Zoning District, Town of Almond, was opened by Rutta, who read the public hearing notice.

Pelky stated this request is to construct a 16' x 20' deck with an option to install a pergola. This requires a variance. The existing building sits 74' from the Ordinary High Water Mark (OHWM) of Bass Lake, and with the deck, would require a 58' setback.

Rutta read the following into the record:

- A letter dated July 14, 2010, from the Town of Almond, stating the Town of Almond Board recommends approval of the requested variance.

Rutta swore in Mike Jagielo and Julie Jagielo, and asked them to explain their request. Mike Jagielo stated what brought this request about was the State mandated smoking ban, which recently took effect. They want to comply with all necessary codes and go through proper procedures to add a deck to accommodate their smoking patrons.

Bachhuber asked if there would only be an entrance from the inside of the building, and Mike Jagielo answered yes. Bachhuber asked how they would control this. Julie Jagielo stated they did not want access from outside, especially for underage people, and to help secure furniture located on the deck. Pelky asked if they are aware of fire codes they need to follow. Mike Jagielo answered he is not aware of that, but he knows the deck will meet all codes. Bachhuber asked if they want this deck because of the State mandated smoking ban, and Mike Jagielo stated that is pretty much what started this. He added all patrons are welcome on the deck, not just smoking patrons.

Scheider stated the distance from the OHWM differs according to permanent staff and the Jagielos. Permanent staff measured 74', and the Jagielos measured 85'. Rutta asked Pelky how the OHWM is determined on a body of land that once was a lake and now has no water in it. Pelky stated they looked at the lake and the drop-off that was wet below. What they typically look at is the point where land and water meet. Pelky admitted it is a bit tougher on a lake like this, but they could see where the lake did flatten out and there was a distinct drop-off. Pelky stated the measurement was 74' from that location to the building. Bachhuber asked how many years it has been since there was water in the lake. Mike Jagielo answered it has been at least 15 years.

Scheider stated wherever they were establishing the OHWM, there is an irregular line. One section could be 85' or more from high water; it depends on where you measure from. Julie Jagielo pointed out they are not planning on having the deck go beyond the existing building and stated, in fact, a different part of the building is closer to the OHWM than the deck will be.

Potratz asked when they would begin building and Mike Jagielo answered as soon as they get approval and all the proper permits are in place. Potratz asked when this would be completed. Mike Jagielo answered it depends on the builder. They want to be able to utilize the deck as soon as possible. They should be done by December 31, 2010, as their business is only open through October.

Bachhuber informed Mike and Julie Jagielo if they wanted a permanent roof over the deck in the future, they would need to come before BOA for another variance. Mike Jagielo stated they are interested in possibly putting up a pergola over the deck. They would like the approval for a pergola included with this request. Potratz stated it should be included in this request and not held open. Pelky stated it depends on the time frame set by BOA.

Rutta asked if there is any way an outdoor area can be constructed that would not require a variance. For example, could a floating concrete slab be built? Pelky stated this alternative was discussed earlier, and would have to be an extension of the parking lot located south of the building. Julie Jagielo stated they want a secure environment as far as access to people going out. Julie Jagielo also added the heat from the parking lot would be a factor; it can be extremely warm in the afternoon. Mike Jagielo stated this would eliminate three handicapped parking spaces right in front of the building. They studied traffic flow throughout the building and decided the outdoor deck would be a more logical solution. Pelky stated other options were discussed and the preferred end result was the deck.

Rutta stated the proposed deck would run to the southeast corner of the building and proceed out 20 feet. Bachhuber asked if the sidewalk on the east side would be removed and rebuilt adjacent to the deck. Mike Jagielo answered yes. Rutta asked if the only access to the deck would be through the bar, and Mike Jagielo answered yes. Rutta asked if they have given consideration to putting a solid roof over the deck instead of pergola. Julie Jagielo answered she does not want to do that. They are trying to be as cost effective as possible. Mike Jagielo added they have practically no runoff with their current roof. Rutta stated runoff would not be an issue with a pergola.

Scheider inquired about lighting. Julie Jagielo stated she has not made a final decision, but it will most likely be lighting on the posts. Scheider's concern is safety of the individuals sitting on the deck, and asked about a railing on the deck. Mike and Julie Jagielo stated everything will be built to code. Pelky stated Department of Commerce (COMM) will be the department to enforce such codes. Julie Jagielo stated they had conversations with Sam Solberg (COMM).

There being no further questions from BOA, Rutta excused Mike and Julie Jagielo. Rutta asked if any members of the public wanted to address this appeal. There being no members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta explained the three main criteria for a variance.

- The appeal cannot be contrary to the public interest.
- The property must have a unique property limitation.
- The property must have an unnecessarily burdensome hardship.

For discussion purposes, Rutta summarized his opinion with the following:

- Is the proposal contrary to State Law or Administrative Code? It is not.
- Is the proposal permitted in this zoning district? Yes.
- Are there any alternatives to the variance request? There are. One of the alternatives is to build a deck or structure in the parking lot area. Rutta can understand why the appellants are reluctant to do that just by looking at the property.
- Would this variance be detrimental to nearby property owners? No.
- Can the spirit of the ordinance be maintained? Yes.
- Would substantial justice be done by granting this variance? Yes.

- Is this appeal contrary to public interest? No. The addition is not visible from the road. According to documents, the structure would be 85' from any wetlands, and it is questionable whether that area is really a wetland. The lake has been dry for quite a few years.
- Are there unique property limitations? Probably. The site is narrow and long. Putting a deck on the north side would not fit in with the way the business is operated. This building was built many years ago and precedes the ordinance.
- Does the proposal meet the unnecessary hardship test? Rutta believes it does. The narrowness of the lot makes any addition to this property non-compliant. This particular intrusion into the setback would be a small intrusion given the fact this "lake" does not have any water visible in it.
- Does this appeal meet the minimum variance needed for reasonable use? Yes. A smaller structure would not be consistent with the use of the building.
- Is the hardship self-imposed? No. The State mandated smoking ban is the reason for this request.
- Are the circumstances of the appellant a factor? Yes.
- Are economic losses or financial hardships to the appellant a factor? Rutta believes they are. The reason they are building this is because they have to comply with the new State law that says there is no smoking in their business. The restaurant has been there for many years with no problem until the new State law. BOA will need to decide if this is a factor.
- Are nearby violations a factor? No.

Rutta believes, given the positives versus the single negative, this request should be approved.

Bachhuber believes there is a bigger issue that needs to be addressed and not just particularly for this appeal. Bachhuber asked permanent staff how long is a lake without water considered a lake? If this is not a lake, if it has not had water, if it's not classified as a lake, this issue would not come before BOA because it would only be an addition to a building. Bachhuber questioned why this has to be so many feet from a lake that is non-existent. Pelky stated that is a decision DNR would have to make. DNR would evaluate the situation and see whether that land was held under public interest. Bachhuber asked how this would be accomplished and Pelky stated the DNR would have to be contacted. Rutta stated this is not up to BOA to do. Pelky stated if the variance was denied, the appellant could ask the DNR to look at the issue.

Scheider and Potratz stated they agreed with Rutta's summary. Potratz feels the variance should be granted, and a one-year time limit on deciding if they want the pergola is reasonable. If the pergola is not installed within one year and they decide at a later date they want the pergola or a permanent roof, appellant would have to come before BOA for a new approval.

Rutta stated he would entertain a motion to approve Appeal P10-18. Motion by Bachhuber to approve the appeal for a variance with the following conditions:

1. Approval is for a variance from Bass Lake, to build a deck, 58' from the Ordinary High Water Mark.
2. Approval is for a 16' x 20' deck with no roof.
3. A railing is to be installed on three sides of the deck.
4. There will be no outside steps or entrance to the deck.
5. Entrance to the deck will be from the inside bar area only.
6. A lattice-type pergola may be built within one year from date of permit issuance.
7. The entire packet is to be made part of this action.
8. The old sidewalk may remain on the south side of the building. The new sidewalk on the east side is to be added after completion of the deck.

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

Motion by Rutta and second by Scheider to take a two minute recess. Motion passed by voice vote. Meeting recessed at 4:45 p.m.

Rutta called the meeting back to order at 4:48 p.m.

Richard and Jacqueline Bengert, Owners (P10-19)

The Richard and Jacqueline Bengert, Owners, special exception request from the Portage County Zoning Ordinance to exceed a side wall height of 10 feet for accessory buildings, in the R1 Rural and Urban Fringe Residence Zoning District, Town of Plover, was opened by Rutta, who read the public hearing notice.

Pelky stated this special exception request is for a 48' x 48' building that was recently remodeled increasing the side wall height to approximately 17'. The request is to exceed the 10' side wall height. Pelky added this is an after-the-fact request.

Rutta read the following into the record:

- A letter dated July 9, 2010, from the Town of Plover, with a summary from the minutes of the July 7, 2010 meeting, which states the Town of Plover Board recommends approval for the requested special exception.

Rutta swore in Richard and Jacqueline Bengert and asked them to explain what they've done. Richard Bengert stated they have a motor home that sits in the yard. They wanted to store the motor home inside and clean up their lot. They had a lean-to on the side of a pole building and squared it up so the motor home would fit in the building. Richard Bengert stated they took off the siding and replaced the rafters and doors. Jacqueline Bengert explained they had an insurance claim from hail damage to the building three or four years ago. The roof was damaged and leaking, and they did not get around to repairs at the time. The Bengerts were under the impression you did not have to get a permit, if you did not change the footprint. At the time, they did not know about the height issue.

Potratz stated the paperwork indicates they replaced the side walls and roof, and he believes that is basically a new structure. Richard Bengert disagreed, and added they did not take off any of the pillars or beams on the sides. The rafters were replaced and the metal on the side walls was changed. Rutta asked how they extended the poles to get higher, and Richard Bengert answered they split them in half. Potratz commented in reality, they did build the side walls. Rutta asked how tall the walls were previously and Richard Bengert replied 10'.

Rutta asked if there was BOA approval on the original structure. Pelky stated at the time it was built, there was no square footage or side wall height maximum. The ordinance was enacted after the original structure was built.

Potratz asked if the building has to be in compliance as it was rebuilt. Pelky answered not if it is looked at as a rebuild. Pelky asked Richard Bengert if he put in new poles and he answered no. Richard Bengert stated he cut the poles to get up to 16' and to line some of the doors. Richard Bengert presented before and after pictures of the building to BOA. Pelky stated his understanding from speaking with the applicant, the height of the building has increased, but the square footage has not. Rutta stated the square footage is not increasing, if you include the lean-to with the building.

Rutta stated his concern is the message BOA is sending; claim ignorance and you don't have to worry about it.

Scheider asked who the contractor was and Richard Bengert stated Meyer Builders out of Curtiss, Wisconsin, and the materials came from Dorchester. Scheider would have expected the contractor to be aware that permits were needed. Jacqueline Bengert stated she called the building inspector for the Town of Plover in April and asked if a permit was needed to replace the roof and sides. She said she was told only if she is changing the footprint or major remodeling to increase the size. Scheider asked if the building inspector knew they were increasing the height and Jacqueline Bengert stated she did not know at the time they were planning to do that. Scheider reiterated Rutta's concern about the message being sent in a case like this and stated somebody's hands should be slapped. Scheider believes the side walls are a lot more than 16'. Richard Bengert disagreed and said the doors are 16' x 14' with 2' above.

Rutta asked permanent staff what the penalty is for a property owner that chooses to use this method of expanding his building vertically. Pelky answered there are a couple ways to handle this situation; a double permit fee if/when approved by BOA, or legal action could be pursued. This may consist of seeking forfeiture through small claims action. This could take place even if approved by BOA. Pelky

stated BOA does not deal with enforcement. Pelky stated BOA needs to take into consideration what should be allowed versus the issue of penalizing because it is precedent setting. Pelky also stated the one positive thing with this case is the building is located in a wooded area and is not visible from the water or the road. Pelky agrees the permits should have been obtained prior; however, this is something BOA has to look at individually. Richard Bengert stated he is under the impression the requirements are changing and 2,800 square feet would now be allowed. Pelky stated with the changes, this building would still be in violation and there is a height cap of 20'.

Rutta asked if this is a one or two story building, and Richard Bengert answered it is a one story building. Rutta asked if there is any intention of building a loft, and Richard Bengert replied not at this time. Bachhuber asked if there is the capability of having a loft, and Richard Bengert stated this is not part of his plan.

Scheider asked Richard Bengert if anyone from the Town of Plover visited the site, and he replied not that he is aware. The Bengerts saw cars stopped, but have no idea if it was anyone from the Town of Plover. Scheider asked if the criteria for the building changed after they originally spoke with the building inspector, and they replied yes.

Bachhuber asked if there is heat in the building, and Richard Bengert answered no. Bachhuber noted there is a propane tank. Richard Bengert stated there was previously heat in the building, but the tank is not used. Richard Bengert stated there is electric, but there is no septic or water.

There being no further questions from BOA, Rutta excused Richard and Jacqueline Bengert. Rutta asked if any members of the public wanted to address this appeal. Peter Erpelding lives east of the building and stated the building looks better now than before the rebuild. Tom Cahill lives to the west of the Bengert property and stated the new building is a marked improvement over what was previously there. Cahill stated the building is invisible to the neighbors and he supports this request. There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta stated if this request had come before BOA prior to construction, he believes they would have tried to control the height somewhat, but they would have allowed the building. Rutta expressed concern with the square footage of this building, the garage, and woodshed, which totals approximately 3,100 square feet. Pelky stated BOA has options regarding the square footage and number of buildings, such as removal of the woodshed or maintain screening. Rutta's concern is not the building, but the way it was done and how it is after-the-fact. There is no penalty for doing things this way. Pelky stated staff will have to decide if this matter is worth pursuing legally.

Bachhuber asked why something after-the-fact comes before BOA because it appears the only issue would be enforcement. What conditions can be placed on something already there? Would BOA ask the appellant to tear the structure down because they did not get a permit? Bachhuber questioned what would happen if this building impeded a neighbor's view. Bachhuber believes the appellants acted on incomplete information by their contractor, and feels the fault lies more with their contractor. Rutta stated all BOA can do is make the building a legal building, or they can ask them to tear down or modify the building. Scheider does not want to see the building torn down, and feels the contractor has a role and responsibility. Potratz believes if a building is rebuilt, it must be in compliance. Rutta stated that is what the appellants are looking for.

Rutta summarized with the following:

- Is the proposal contrary to the Zoning Ordinance, State Law, or Administrative Code? Yes, by exceeding the side wall height.
- If approved, can safe and healthful conditions be maintained? Yes.
- Would it affect existing or future roads for development? No.
- Will the surrounding neighborhood be adversely affected? No. (Testimony from neighbors supporting the request.)
- Are there any alternative sites that would have been better for the project? No.
- Does it have a more preferred use? No.
- Is the proposed project located in a floodway or floodplain? Is there probability of flooding? No.
- Is on-site vegetation adversely affected? No.

Rutta stated the only thing he can find that is a detriment is the fact that it is contrary to the Zoning Ordinance. If a special exception is allowed, this would not be contrary and would be in compliance. Rutta is in favor of approving the special exception; however, he wishes there was a better vehicle in the Ordinances to inflict more severe punishment. He does not like the pattern and message this sends. Rutta stated he would entertain a motion to approve appeal P10-19.

Bachhuber asked if the special exception is not approved, will the appellants have to tear down the building or side walls. Pelky stated if that were to happen, it would become an enforcement issue with permanent staff. If not approved, the appellants would have 30 days to appeal the decision. Permanent staff would wait 30 days after the decision is signed, and if no appeal is filed, legal action would start through Corporation Counsel.

Rutta strongly believes this building should be permitted to stay in place. It meets all requirements and probably would have passed had it come before BOA. Scheider inquired about being in compliance relating to the square foot issue. Rutta stated the original building was built before the current Ordinance was in effect. Exceeding the number of square feet is not an issue. Bachhuber noted only the side wall height was noticed in the public hearing notice; therefore, the square footage cannot be acted on. Pelky suggested BOA could enter conditions such as a deed restriction, if the building gets destroyed or damaged, and conditions relating to vegetation and screening. Rutta stated they could place conditions they normally would on this type of structure had it gone through the proper procedure. Scheider asked if the structure is used for personal storage only, and Richard Bengert answered yes.

Motion by Bachhuber to approve the appeal for a special exception with the following conditions:

1. Approval is to allow the existing 48' x 48' building with an increased side wall height up to its current height.
2. The entire packet is to be made a part of this decision.
3. There is to be a deed restriction recorded which states, if this building is damaged over 50%, a new action must be brought to Board of Adjustment before a new structure may be built.
4. The building is to be for personal storage only.
5. There is to be no septic in the building.
6. There is to be no heat in the building.
7. There is to be no water/plumbing in the building.
8. Electricity is allowed in the building.

Motion to approve seconded by Scheider.

Subsidiary motion by Rutta to add the following conditions:

1. The building is to be a single story structure with no loft.
2. A complete set of plans is to be on file with the Portage County Planning and Zoning Department.

Subsidiary motion seconded by Scheider. Motion passed 3-1 by roll call vote with Potratz voting nay, and Scheider, Bachhuber, and Rutta voting aye.

Motion to approve main motion as amended was seconded by Scheider. Motion passed 3-1 by roll call vote with Potratz voting nay, Bachhuber, Scheider, and Rutta voting aye.

Bachhuber wanted to go on record stating she did not make this motion because she is in favor of what has happened, but only because she believes there is confusion as to what the law was at the time and what information was given.

Pelky discussed precedence setting in this situation and stated BOA has denied after-the-fact activities. He said BOA would have to take into consideration justifications and costs of these types of actions.

Approval of Minutes

Bachhuber moved to approve the May 17, 2010 minutes as submitted, Scheider seconded. Motion passed by voice vote.

Scheider moved to approve the June 8, 2010 minutes as submitted, Bachhuber seconded. Motion passed by voice vote.

Correspondence/Updates

Election of new officers will take place at next month's meeting.

The next meeting date is tentatively scheduled for August 16, 2010.

Scheider asked Schuler if permanent staff from the Department would speak at the next meeting to give an update on the proposed text amendments and how they will affect BOA. Schuler stated if the changes are approved by the full County Board, he will have a summary prepared and have staff available to speak with BOA.

Adjournment

There being no further business to come before BOA, Potratz moved to adjourn the meeting, Scheider seconded, all in favor, meeting adjourned at 5:40 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

James Potratz, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
SEPTEMBER 20, 2010

Call to Order

Chairman Rutta 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

Potratz led the Pledge.

Introduction of New Member

Rutta introduced Ed Szachnit.

Roll Call

Members present included Edward Rutta, James Potratz, Joan Scheider, Marj Bachhuber, and Ed Szachnit. Staff present included Tracy Pelky, Christopher Mrdutt, and Gayle Stewart, Planning and Zoning Department.

Board of Adjustment Procedures

Rutta 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The petitioner will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Robert and Pamela Bendixen, Owners (P10-20)

The Robert and Pamela Bendixen, owners, variance and special exception requests from the Portage County Zoning Ordinance to convert semi-trailers into chicken coops and to exceed one commercial vehicle in the A1 Exclusive Agricultural Zoning District, Town of Buena Vista, were opened by Rutta, who read the public hearing notice.

Pelky stated the applicant owns 6.31 acres and is seeking two approvals. Applicant wants to exceed the allowed number of tractor/trailers and wants to keep two semi-trailers that were converted to chicken coops. Pelky stated a Zoning Permit was issued earlier in the year for the chicken coops; however, there was a misunderstanding as to the type of buildings used as chicken coops. Because semi trailers were converted to coops, this matter is before BOA.

Rutta read the following into the record:

- A letter dated September 9, 2010 from Carlyle and Ruth Scanlan stating they have no objections to these requests.
- A letter dated September 14, 2010 from Scott and Jodi Scanlan stating they approve this request.
- A letter dated August 9, 2010 from the Town of Buena Vista, stating the Town of Buena Vista Board recommends approval of the requested variance.
- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports the petition for a special exception and variance with the condition that a Zoning Permit be obtained.

Rutta swore in Pamela Bendixen and asked her to explain the request. Bendixen explained she recently moved to this location. Bendixen enjoys animals and was looking for a hobby as her husband is on the road quite a bit. She has an interest in rare breeds of chickens and wants to create safe housing for the chickens. Her goal is to go green and believes utilizing old trailers is a good means of accomplishing this.

Bendixen applied for and received a Zoning Permit to build the coops. She explained she misunderstood the ordinance and ceased building when she was asked. She was not aware she should have informed staff she was going to convert old semi-trailers into chicken coops. She is requesting two coops because she needs to separate the different breeds. Bendixen explained to BOA the different breeds and her plans for housing them.

Rutta clarified the variance is for chicken coops and the special exception is to allow additional semi-trailer/tractor units.

Potratz asked about the gravel road coming on the property and how that will be affected in the spring or when wet. Bendixen stated they come in and out on County Road JJ. Rutta stated according to the drawing, Bendixen does not own the access. Bendixen stated sometimes they use Bluff Road.

Potratz asked about site preparation for setting the trailers on gravel and Bendixen replied the trailers are setting on top of railroad ties. Potratz also reiterated the ordinance states the semi-trailers cannot be altered or used for any purpose other than what they were designed for. Rutta stated this is the reason for the variance request.

Bachhuber stated the ordinance allows two or more semi-tractor trailers or commercial vehicles per parcel and asked about the school bus located on the property. Bendixen replied the school bus is used for flea marketing by her husband. He does have flea market items in the bus. Bachhuber asked permanent staff if this is classified as a commercial vehicle and they replied yes. Bachhuber stated since this is considered a commercial vehicle, it must be counted.

Scheider asked how many trailers will be converted to chicken coops, and Bendixen answered two. Scheider asked about another small enclosed trailer and Bendixen replied it is used for hay.

Szachnit asked about the chicken coops being portable. He believes they are transportable, but not portable. Pelky stated we need to focus on the use of the trailers and not whether they are portable. Bendixen asked if there is no poured cement floor, are they considered portable. There was discussion about portable versus transportable. Mrdutt stated he would not consider the trailers portable at this point. The variance issue deals with the conversion to chicken coops. Szachnit stated there is an ordinance that states this vehicle cannot be used for other than its intended purposes, and he believes they have been converted to the point where they are no longer semi-trailers. Mrdutt stated the variance request addresses the use issue and BOA must weigh these issues.

Scheider inquired about the permit process. Pelky stated at the time the permit was issued in May, there was no questioning what type of new building would be used. There was no knowledge that trailers would be converted to coops. At a later date, a complaint was received and verified, and a letter sent to Bendixen. At that time, Bendixen did halt construction as requested.

Bendixen stated her husband was looking for something that would be safe for her to work on while he was gone.

Scheider asked Pelky the type of complaint received. Pelky stated he is unsure, but believes it may have been a town official calling and asking about the semi-trailers being converted.

Rutta asked about signs and Bendixen stated there will be no signs. Rutta asked if there is electricity in the coops and Bendixen answered yes. Rutta asked if there is water in the coops and Bendixen answered no. Rutta asked about a camper/motor home with an expired registration. Bendixen stated they do not currently use the motor home. Mrdutt stated he has no concerns with this as there is a residence on the parcel. Rutta asked whether Bendixen would be willing to move the bus, if requested, and Bendixen stated if requested, she would move it. Rutta stated the Town of Buena Vista Board asked for removal of the trailers when they cease to be used for chicken coops, and asked if Bendixen had a problem with that. Bendixen answered no. Rutta asked about a very old building and Bendixen stated that was on the property when they purchased it. Mrdutt stated because this property is zoned Agricultural, BOA should not be concerned with this building.

There being no further questions from BOA, Rutta excused Bendixen. Rutta asked if any members of the public wanted to address this petition. Kurt Helminiak was sworn in and stated he is the neighbor directly across the street on County Road JJ. Helminiak stated at first, he was apprehensive; however, the Bendixens have done a remarkable job in making the coops presentable. Regarding the semi-trailers, he has no objections because this is part of their livelihood. Helminiak was excused.

There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta stated the variance request for the chicken coops will be discussed first and the special exception for the semi-trailers will be discussed second.

Scheider asked how many chickens the Bendixens may end up having and how the housing would accommodate the chickens. Bendixen explained they researched what is best for the breeds and they would have four to six hens per rooster in each pen. Each pen would be approximately 5.5' x 6'. The larger trailer would have nine pens and the smaller trailer would have six pens. Scheider stated there could be 50 to 60 chickens in the larger trailer. Robert Bendixen stated there could be more roosters and hens in the trailers because with some breeds you can have two roosters and more hens. Bendixen stated at this time they do not know exactly how many or exactly what breeds they will have. Scheider asked if they have started the hatching process yet and Bendixen stated they have. Scheider is concerned with the business being enlarged in the future. Bendixen stated they may improve in the future, but not necessarily enlarge.

Potratz is concerned with the use of semi-trailers as coops. He believes approving this will set precedence and allow anyone to do this in the future.

Bachhuber stated anyone with this type of request would have to come before BOA. Bachhuber stated she understands the Bendixens have done a good job of converting the semi-trailers into chicken coops. Bachhuber agreed, if the semi-trailers are no longer being used as chicken coops, they must be removed.

Szachnit stated it appears to him the ordinance says you cannot use a semi-trailer for other than the intended use; yet it sounds like Bendixen has converted the semi-trailers to where they are no longer semi-trailers.

Mrdutt stated generally someone making this type of request to BOA would have stipulations and conditions to follow.

Rutta stated they are referring to a use variance in this case and these are difficult criteria to pass.

Rutta summarized with the following:

- This proposal is not contrary to State Law or Administrative Code.
- The proposal is permitted in this zoning district.
- There are no alternatives to the variance request in this case at this time.
- The variance would not be detrimental to nearby property owners. Testimony from neighbors is supportive.
- The spirit of the ordinance can be maintained.
- Substantial justice would be done by granting the variance.
- This appeal is not contrary to public interest.
- The minimum amount of variance required to relieve the situation does not apply in this case.

Rutta questioned the use. He believes a use variance is in order in this case with proper conditions. It is agreed by BOA that these conditions should include:

- If the chicken operation ends, the trailers must be removed from the site.
- If a new building is built and these coops are not needed, they must be removed.
- Only electricity should be allowed in the trailers.
- The approval is limited to the two trailers that have already been converted.

Bachhuber agreed with the above recommendations. Potratz stated he is against this request.

Rutta stated he would entertain a motion to approve the variance request portion of Appeal P10-20.

Motion by Bachhuber to approve the appeal for a variance with the following conditions:

1. A Portage County Zoning Permit must be obtained.
2. The converted trailers used as chicken coops will be removed if/when they are no longer used for this purpose, or if another structure is constructed to replace the coops.
3. Two converted trailers are permitted.
4. Any request for additional trailers must be brought before Board of Adjustment.
5. Electricity only is permitted in the chicken coops.
6. The size of the trailers are 8' x 40' and 8' x 50'.

Motion to approve seconded by Scheider. Motion passed 4-1 by roll call vote with Potratz voting nay.

Rutta stated the special exception request is to have more than one commercial vehicle on the property. Mrdutt said the petition states they are asking for two tractors and three semi-trailers; however during testimony, it was stated they want one tractor and two semi-trailers. Rutta stated these should be dealt with as units, and they should allow one more than what they currently have.

Potratz has concerns regarding access to the property. Rutta stated the petitioner has indicated they use Bluff Road as access.

Rutta asked how they turn the unit around in the yard. Robert Bendixen stated he drives in and backs out.

Bachhuber asked if they have two units and the motor home, will that be enough space. Bendixen answered yes. Bachhuber stated she wants a stipulation if one additional unit is allowed, the school bus must be removed.

Scheider wanted clarification on what a unit will consist of. Rutta stated the petitioner currently has a semi-tractor/trailer and would like a total of two semi-tractor/trailers. Each tractor/trailer would be considered one unit. Scheider has concerns with parking.

Szachnit stated as long as the limit is two units, the business is not run out of the house, and there are no signs, he has no objections.

Rutta agrees with allowing one additional unit; however, he has a concern with the egress on the property and Bendixen exiting through the neighbor's property. Rutta also would like the school bus removed.

Szachnit asked if there is a time limit for removal of the school bus. Rutta asked Bendixen when the bus could be removed and it was agreed the bus be removed by December 31, 2010.

Motion by Bachhuber to approve the appeal for a special exception with the following conditions:

1. Approval is for up to two (2) commercial units. A unit will consist of one tractor and one trailer.
2. The school bus must be removed from the premises by December 31, 2010.

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

Rutta asked for a five minute recess at 5:01 pm.

Rutta called the meeting back to order at 5:06 pm.

Jerome Kontney, Owner (P10-21)

The Jerome Kontney, owner, special exception request from the Portage County Zoning Ordinance to operate a contractor's storage yard and to exceed one commercial vehicle in the A4 General Agricultural Zoning District, Town of Sharon, was opened by Rutta, who read the public hearing notice.

Mrdutt stated Planning and Zoning has been working with Jerome Kontney for approximately five years to clean up this property and bring it into compliance and out of a solid waste disposal site and automobile wrecking yard. Kontney has done a lot of work and Mrdutt felt this was a good time for Kontney to make his request to BOA to operate a contractor's storage yard and to exceed one commercial vehicle. This will give Kontney the ability to operate his scrapping business without operating a solid waste disposal yard or automobile wrecking yard at that site. Mrdutt distributed photos that showed the original condition of the property. Rutta asked which vehicles Mrdutt is referring to and Mrdutt answered anything that is used in the business. Rutta stated his understanding is there will be no salvage allowed at the location, and Mrdutt agreed.

Rutta read the following into the record:

- A letter received September 15, 2010 from Mark and Mary Pionkowski stating they feel their property will lose value, and they vote no.

- An email dated September 14, 2010 from Alice Wierzba, Clerk/Treasurer, stating the Town of Sharon Board recommends approval of the request with conditions.
- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports the petition for a special exception with conditions.

Rutta swore in Jerome and Camille Kontney and asked them to explain the request. Kontney wants to bring his equipment home. He has a low-boy and pay-loader he will store behind his garage so it is not seen. He also has a goose-neck trailer, a car hauler/trailer, a roll bed used to haul cars, a 1977 plow truck, and another older truck he is working on. Kontney used a diagram to show BOA where his vehicles will be stored and stated all trailers are usually gone from the premises by the next day. Kontney added all vehicles are properly licensed.

Potratz stated it looks like this has been operating as a salvage yard for a long time and many things would have to be removed to make this into a contractor's storage yard. He believes this petition should have been for a salvage yard as opposed to a contractor's storage yard.

Bachhuber asked staff for the definition/difference between a contractor's storage yard and salvage yard. Mrdutt explained a contractor storage yard allows the ability to operate a business. A salvage yard or solid waste disposal site allows people to drop off washers, dryers, and whatever is defined as solid waste by ordinance. The difference is contractor's storage yard allows the ability and equipment to conduct a salvage operation. Unless the property is approved as a solid waste disposal site, those materials should not be dumped or placed on the property. Mrdutt stated this site has not been looked at favorably for approval as an automobile wrecking yard or solid waste disposal site. This site is more appropriate for a scrap business and is Kontney's livelihood. Kontney stated he is looking for approval for a contractor storage yard only. He has worked hard to clean up the site and wants to use it for his vehicles.

Scheider asked about the vehicles on-site. Kontney stated all the vehicles will be used. There was discussion between Scheider and Kontney regarding the types of vehicles he has and where they will be stored. Scheider asked about debris that needed to be removed by September 17th. Kontney stated a truckload of tires was removed on Friday. The other pile of tires in the yard belongs to his sons who use them for the demolition derby. Szachnit expressed concern about the tires, but was reassured by Kontney they were removed. Mrdutt stated an on-site would be conducted prior to issuance of a Zoning Permit.

Szachnit stated one of the letters from a neighbor expressed concern with a salvage yard; however, Kontney is not requesting a salvage yard. Szachnit asked about privacy fencing on the corner by the garage. Kontney said a fence would not help because items would still be visible. The fence would have to be 30 to 40 feet in height.

Bachhuber asked about piles of junk still there and Kontney stated those are tires that belong to his sons. There are also vehicle parts that Kontney says belong to vehicles he is fixing.

Rutta asked about tree planting on the northeast side. Camille Kontney stated trees are there already, which were planted by the neighbor about ten years ago and have not grown very much. Rutta stated they could plant a few rows of pine trees that would eventually grow and close visibility off from the road.

Scheider stated Kontney needs to stay sensitive to what can be seen from the highway and what is stored in that area to avoid problems.

Rutta asked if Kontney will have any signs and Kontney replied no. Kontney is agreeable to visits from Planning and Zoning Department staff.

There being no further questions from BOA, Rutta excused Jerome and Camille Kontney. Rutta asked if any members of the public wanted to address this petition. Patrick Wanserski, Town of Sharon Chairman, stated he has been working with the Kontneys for the last couple of years and with Planning and Zoning staff to clean up the site. Wanserski stated Town of Sharon residents are happy with progress made by Kontney. Wanserski would like yearly inspections, which allow observation and control of the situation. Wanserski stated Kontney has done an exceptional job of cleaning up the site. Bachhuber asked Wanserski if screening would be of any value in his opinion and Wanserski answered no.

Bachhuber asked permanent staff if BOA must determine how many units can be on-site. Mrdutt replied BOA can set a condition that says the vehicles must be linked to the salvage operation and are operational and licensed.

Rutta asked if any other members of the public wanted to address this petition. Barry Jacowski, District 19 County Board Supervisor and member of the Planning and Zoning Committee, stated it appears the Kontneys have worked very hard with permanent staff to bring the property into compliance, and he feels they should be rewarded for their hard work as long as conditions are followed.

Rutta asked if any other members of the public wanted to address this petition. Jeanne Dodge, District 24 Portage County Board Supervisor, stated this has been an ongoing issue, and the Kontneys have worked very hard. Dodge urges BOA to approve this request.

There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Scheider stated she supports this petition and would like to see a commitment to visual improvements and upkeep.

Potratz stated if this is going to be called a contractors storage yard, he would like to see more cleanup before a Zoning Permit is issued.

Bachhuber understands the desire to present a view to the public; however, she does not see how that is enforceable. BOA cannot require certain vehicles be parked in certain spaces. Bachhuber stated screening may not be of much value in this case. Bachhuber would like the area behind the garage cleaned up, and stated the Kontneys have done a good job.

Szachnit stated he sees a sincere effort on the part of the Kontneys. This site needs to be kept presentable. He believes they have done a good job and supports this request.

Rutta stated the staff memo from Mrdutt defines the problem and solution. The conditions listed in the staff memo should be incorporated into the decision.

Scheider stated Kontney should work on a stormwater management plan with Planning and Zoning staff and Brad Johnson from the DNR. Mrdutt stated the DNR is happy with how the site looks at this time. Mrdutt added there was concern over the years the site was impacting groundwater quality. Kontney paid for groundwater testing and it was determined the water was good quality.

Rutta entertained a motion to approve petition P10-21. Motion by Bachhuber to approve the special exception request with the following conditions:

1. A Portage County Zoning Permit must be obtained.
2. An approved stormwater management plan must be in place prior to issuance of a Zoning Permit.
3. The above site must be in compliance with all State stormwater regulations.
4. The above site must be in compliance with the Portage County Zoning Ordinance, cannot be a solid waste disposal site, or an automobile wrecking yard.
5. Scrap shall remain in the trailers and never be removed or set upon the property.
6. A list of hazardous waste (oil, gas, antifreeze, etc.) shall be on file with the Portage County Planning and Zoning Department, if repairs are done on the property.
7. All hazardous materials must be stored in 150 percent secondary storage containers.
8. No salvage may be brought to the property by others.
9. The Town of Sharon Plan Commission or Sharon Town Board will be allowed to make annual site inspections.
10. All vehicles must be operational and equipment must be compatible with the salvage business.
11. Two or more semi-tractors/trailers or commercial vehicles shall be allowed on the property, as long as they are connected to the business and are licensed.
12. Possible screening should be discussed with Portage County Planning and Zoning staff.

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

Rutta asked for a five minute recess at 5:53 pm.

Rutta called the meeting back to order at 5:58 pm.

Amherst Riverdance, LLC, Owner / Chuck Egle, Agent (P10-22)

The Amherst Riverdance, LLC, owner / Chuck Egle, agent, special exception request from the Portage County Zoning Ordinance to operate a tourist rooming house in the A4 General Agricultural Zoning District, Town of Amherst, was opened by Rutta, who read the public hearing notice.

Pelky stated this is a brand new request for a tourist rooming house. BOA has never had this type of request before.

Rutta read the following into the record:

- A letter dated June 7, 2010 from Tom Barrett, Executive Director of Stevens Point Area Convention and Visitors Bureau, stating he would like to see the Riverdance Cottage up and operational for the summer season.
- A Town of Amherst Plan Commission decision form dated September 2, 2010 recommending approval of this request.
- A letter dated September 9, 2010 from Shawn Lea, Town of Amherst Clerk, accepting the recommendation of the Town of Amherst Plan Commission to recommend approval of the request.
- A note received September 17, 2010 from Paul and Carolyn Chandler stating they have no objections to this request.
- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports the petition for a special exception with conditions.

Rutta swore in Chuck Egle and asked him to explain the request. Egle wants to operate the cottage as a tourist rooming house and rent it out on either a weekly or daily basis.

Potratz was originally concerned with the classification as a rooming house; however, after he read further, he realized tourist lodging falls in the same category as rooming house.

Bachhuber stated this is not a bed and breakfast because Egle does not live there. Bachhuber asked how often he intends to rent it out. Egle stated it is advertised currently; however, when they realized they were not to be doing this, they made the tourist rooming house unavailable. They will rent it out whenever their criteria are met and as soon as approved by BOA.

Bachhuber stated this came before the Town of Amherst Plan Commission and she abstained at that meeting. She presented information to both the Plan Commission and Town Board in regards to this. Bachhuber stated there is no need for a zoning change.

Scheider added Egle did a very good job with this.

Szachnit feels this structure is very well built and very attractive.

There being no further questions from BOA, Rutta excused Chuck Egle. Rutta asked if any members of the public wanted to address this petition. Debbie Kubisiak was sworn in. Kubisiak is the property owner at Keener Road and River Road. Kubisiak has no problems with renting the cabin; however, she is concerned there may be ramifications in the future if someone else wants to come in and change their zoning. She believes this would increase traffic on her road and she believes there is already too much traffic in the area. She feels this may open the door for other people to come in and build up the area, creating traffic concerns. Bachhuber asked if Kubisiak feels this establishment has increased traffic in the area, and Kubisiak answered no. Scheider asked Kubisiak how long she has lived there, and Kubisiak answered about 15 years. Rutta excused Kubisiak.

There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Scheider understands what Kubisiak is saying; however, Kubisiak did say she has no problems with this request. Her concern is what may happen in the future. Scheider informed Kubisiak this is not a zoning change request.

Bachhuber stated this request is permissible in the A4 Zoning District.

Rutta is impressed with this property and believes it is an admirable use. Rutta asked about signs and Egle stated the sign is very subtle and made with upright logs. Rutta does not see how this tourist rooming house will add much traffic to the area. Kubisiak stated she did not realize this was not a zoning change request.

Rutta entertained a motion to approve Appeal P10-22. Motion by Scheider to approve the special exception request with the following conditions:

1. All requirements of Portage County Health and Human Services must be met prior to issuance of a Zoning Permit, as noted in correspondence from Mrdutt.
2. Sam Solberg, Commercial Building Inspector, must be contacted prior to issuance of a Zoning Permit, as noted in correspondence from Mrdutt.
3. A Portage County Zoning Permit must be obtained.

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

Somers Management LLC, Owners / Nick and Dianne Somers, Agents (P10-23)

This hearing will provide the public a chance to discuss the Reclamation Plan for this project as per NR135 and the Portage County Nonmetallic Mining Reclamation Ordinance.

Rutta swore in Dianne Somers. Mrdutt explained the requirements of this hearing to BOA. Due to recent changes to the ordinance, BOA will no longer be handling ponds and excavations, etc. This matter is before BOA tonight to meet NR135 requirements of a public hearing to discuss the reclamation plan. This is to hear public input only. If the general public wants to appeal the reclamation plan as presented to the Planning and Zoning Committee, that appeal would come before BOA.

Rutta read the following into the record:

- An excerpt from the June 14, 2010 Town of Stockton Board meeting minutes, recommending approval of the special exception request.
- A letter dated June 16, 2010 from Marie Helminiak, Town of Stockton Clerk, stating the Town of Stockton Board approved the request for a special exception.
- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports this project and is open to comments regarding reclamation after the soil piles are removed.

Somers stated due to the D.O.T. project, there are several piles of sand and muck. They never expected the piles to be this high, and the original agreement was they would accept some sand and soil that was not used. Somers stated people that need sand and muck are asking to buy it and they want to get rid of it. Somers also stated the zoning will go back to A1 when the project is complete. Somers was excused by Rutta.

Rutta asked if there were any members of the public wanting to address the reclamation phase of this project. Jeanne Dodge, District 24 Portage County Board Supervisor, stated the reason the Town of Stockton wanted the property to go back to A1 Zoning is so the property will be used again as agriculture and no other purpose.

Barry Jacowski, District 19 Portage County Board Supervisor, stated this came before the Planning and Zoning Committee and he was surprised the piles were put there under the existing zoning ordinances, but it was not okay and there were no means of giving them the okay to remove those piles. There is great monetary value in the piles for the Somers and felt it was a good idea to allow them to remove the piles, especially since they will not be digging any holes. They will return the piles to their previous elevation. He sees no reason not to allow them to do this.

Potratz stated this is not really a reclamation. This is removal of a pile of dirt. He understands this is to satisfy NR135.

There being no other members of the public wanting to speak, Rutta closed this hearing.

Rutta entertained a motion to close the public hearing portion of petition P10-23. Motion by Scheider, second by Szachnit, to close the hearing portion. Motion passed unanimously by voice vote.

Approval of Minutes

Scheider moved to approve the June 21, 2010 minutes as submitted, Bachhuber seconded. Motion passed by voice vote.

Scheider moved to approve the July 19, 2010 minutes as submitted, Bachhuber seconded. Motion passed by voice vote.

Rutta discussed a motion to approve that did not pass at a previous meeting, which left this appeal hanging. He says BOA needs to keep in mind in the future, if a motion to approve is not passed, there must be a motion to deny.

Election of Officers

Rutta asked for nominations for the position of BOA Chair. Scheider nominated Edward Rutta. Rutta asked if there were any other nominations for Board Chair. There being no further nominations, Rutta closed the nomination for Board Chair.

Rutta asked for nominations for Vice-Chair. Rutta nominated James Potratz for Vice-Chair. Rutta asked if there were any other nominations for Vice-Chair. There being no further nominations, Rutta closed the nominations for Vice-Chair.

Rutta asked for nominations for BOA Secretary. Bachhuber nominated Joan Scheider for Secretary. Rutta asked if there were any other nominations. There being no further nominations, Rutta closed the nominations for Secretary.

Rutta asked for a motion confirming these people were nominated and approved by BOA. Bachhuber moved to elect three nominees with Rutta as Chair, Potratz as Vice-Chair, and Scheider as Secretary of the BOA. Szachnit seconded and the motion passed unanimously by voice vote.

Correspondence/Updates

At this time, there is nothing scheduled for next month.

Mrdutt informed BOA the Court case for Planton will be referred back by the Judge, so BOA can discuss how they define the term minimal relief. Mrdutt explained the process and will present information to BOA after he receives a signed order from the Judge.

Text amendment changes will be discussed at the next meeting.

Adjournment

There being no further business to come before BOA, Scheider moved to adjourn. Bachhuber seconded, all in favor, meeting adjourned at 6:45 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Joan Scheider, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
OCTOBER 18, 2010

Call to Order

Chairman Rutta 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

Potratz led the Pledge.

Roll Call

Members present included Edward Rutta, James Potratz, Joan Scheider, Marj Bachhuber, and Ed Szachnit. Staff present included Jeff Schuler, Tracy Pelky, Christopher Mrdutt, Charles Lucht, and Gayle Stewart, Planning and Zoning Department.

Rutta read into the record an email received today, October 18, 2010, by Tracy Pelky from Karl Pnazek, confirming that Pat Barlow is withdrawing his request for a permit to construct a commercial storage building on Old Wausau Road. Rutta stated Petition P10-26, Patrick D. Barlow, will not be discussed today.

Board of Adjustment Procedures

Rutta 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The petitioner will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS:

Scott Johnson and Laurie Handrich, Owners (P10-24)

The Scott Johnson and Laurie Handrich, owners, special exception request from provisions of the Portage County Zoning Ordinance to operate a beauty shop as a home occupation in the R1 Rural & Urban Fringe Residential Zoning District, Town of Amherst, was opened by Rutta, who read the public hearing notice.

Pelky stated the applicant is requesting a special exception to convert an attached garage into a beauty salon. In addition, a 24' x 24' attached garage will be built to replace the garage that is being converted.

Rutta read the following into the record:

- A letter dated September 9, 2010 from the Town of Amherst, stating the Town of Amherst Board recommends approval of the requested special exception.
- A Town of Amherst Plan Commission Decision Form stating no conditions are attached to the recommended approval by the Planning Commission.
- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports the petition for a special exception with conditions.

Rutta swore in Scott Johnson and asked him to explain the request. Johnson stated they want to convert a two car garage into a beauty shop. The beauty shop would be approximately 15' x 20'. There would be a hallway on the back side of the garage with a service door. The beauty shop would not be attached to the residence. They would also like to add a 24' x 24' attached garage to the garage currently there. The entrance to the new garage would be through the long hallway from the home.

Scheider asked about signage. Johnson stated the only sign will be an open sign in the window. This could change in the future; however, Johnson does not believe it will. Scheider informed Johnson they will have to work with the Portage County Planning and Zoning Department if they want a sign.

Potratz stated the petition looks straight forward and very well organized.

Rutta asked if there will be a restroom in the beauty shop. Johnson answered there must be a restroom and it must be handicapped accessible. Rutta asked if this will require updating the septic system and Johnson

answered no. Rutta asked about chemicals used in the beauty shop. Johnson replied there are chemicals used for hair coloring; however, he did not know the exact chemical. Rutta said any chemicals would be drained off into the septic system, and Johnson added they would be diluted.

Pelky asked if Handrich spoke with Ralph Loeffler, Portage County On-Site Waste Specialist, regarding chemicals and groundwater concerns, and Johnson answered he believes she has. Pelky suggested there be a condition that Loeffler affirm in writing he has no concerns with the chemicals and groundwater contamination.

Bachhuber asked if Handrich has to come under Wisconsin State Licensing provisions, and Johnson answered yes. Bachhuber says a lot of these issues get taken care of at the State level.

There being no further questions from BOA, Rutta excused Johnson. Rutta asked if any members of the public wanted to address this petition. There being no members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Scheider stated the State licensing process will address most issues BOA may be concerned with. However; it is wise to identify in BOA's process this needs to conform to County requirements.

Potratz stated he cannot imagine a one chair beauty shop would create any hazmat-type conditions.

Bachhuber commented the applicant was very thorough with the application and speaking with neighbors. Scheider agreed this was the best documented case she has seen before BOA.

Szachnit stated he has no problem with this petition.

Rutta stated it appears BOA is in favor of this petition and asked for a motion to approve Petition P10-24.

Motion by Szachnit to approve the petition for a special exception with the following conditions:

1. A Portage County Zoning Permit must be obtained.
2. Sam Solberg, Commercial Building Inspector, 715-345-5226, must be contacted prior to issuance of a Zoning Permit.
3. Jason Hansen, Vierbicher and Associates, 608-415-3759, must be contacted regarding a building permit.

Motion to approve seconded by Potratz.

Subsidiary motion by Bachhuber to add the following condition:

1. If signage is desired in the future, applicant must contact the Town of Amherst Plan Commission and the Portage County Planning and Zoning Department to come into compliance with all signage ordinances.

Subsidiary motion seconded by Scheider. Motion passed unanimously by roll call vote.

Second subsidiary motion by Rutta to add the following condition:

1. Chemicals used in the beauty shop must be cleared by Ralph Loeffler, Portage County On-Site Waste Specialist, to make sure there is no polluting of groundwater.

Second subsidiary motion seconded by Scheider. Motion passed unanimously by roll call vote.

Original motion to approve, with amendments, passed unanimously by roll call vote.

Christopher Firkus, Owner (P10-25)

The Christopher Firkus, owner, variance request from provisions of the Portage County Zoning Ordinance to allow a small portion of an accessory building within the Plover River Bluff Line setback, and special exception request from provisions of the Portage County Zoning Ordinance to exceed 2,800 square feet of accessory

building space, in the R2 Single Family Residential Zoning District, Town of Hull, was opened by Rutta, who read the public hearing notice.

The appellant began construction of a detached garage without first obtaining a zoning permit. Upon realizing his mistake, he came into Planning and Zoning, finding he needed Special Exception approval for the building size, and that he had placed the structure too close to the Plover River Bluff line. Rutta stated new information has come forward today.

Mrduitt explained in the early 1970's, the Plover River Bluff Line Survey was established by Resolution of the County Board, and they enacted a minimum setback off that line (50') for construction of structures. Mrduitt stated this petition was published for both a variance and special exception; however, BOA will act on the special exception only. BOA will be dealing with the Portage County Ordinance and County Board Resolution. Mrduitt spoke with Corporation Counsel to figure out how to move forward. Corporation Counsel determined it would be best to move forward with the special exception and discuss the Resolution and removal of 10' of the building to bring it into compliance with the Resolution, as well as what has been discussed and agreed to between the applicant and Portage County Planning and Zoning staff.

The Planning and Zoning Department is going to request BOA act on the special exception to exceed 2,800 square feet of accessory building space in the R2 Single Family Residential Zoning District. The total of all accessory buildings on the property is 6,778 square feet. This total includes removal of a 10' portion of the newly constructed accessory building. The reason for the high total of accessory building space is due to an old farmstead located on the property, and a zoning change to R2 when they went to County Zoning several decades ago.

Rutta read the following into the record:

- An email dated October 15, 2010 to Tracy Pelky from Bruce A. Keno and Brian Keno, stating they have no opposition to any variance granted to Firkus. Rutta stated this letter is moot as BOA will not be dealing with the variance request.

Mrduitt stated in the past when BOA has looked at residential properties with numerous utility buildings, BOA will discuss the condition of the buildings. Mrduitt added when he and Pelky looked at these building, they did look to be in solid condition. Mrduitt distributed pictures of miscellaneous items on the property that he recommends be removed.

Rutta read Resolution No. 251, dated November 27, 1973, into the record. Rutta stated his reasoning for reading this Resolution is because the basis of this request for a variance is covered in this particular Resolution. The Resolution explains why BOA will not deal with the variance request. Rutta asked if the Conservancy District was ever established. Mrduitt stated a portion of it has been; 40' of the 50' has been established. The remaining 10' is based on the Resolution. Rutta clarified the area was surveyed out 40' and should actually be 50' because of the Resolution. Rutta stated the remaining setback will be provided by setback provisions in the Portage County Zoning Ordinance. What we are dealing with is the fact they cannot have a variance simply because it is not in the ordinance. Mrduitt stated this is correct. Rutta stated the intent of this Resolution was to establish a 50' setback from the highest bluff along the Plover River. Mrduitt added there is 40 years of precedence.

Scheider asked about the 100' reference made by Pelky at the on-site. Pelky replied he may have made reference to 100' from the river. Pelky stated the river does not come into play at all and added the lot line/lot corner itself is where they were taking the 50' from.

Rutta again read the Resolution and stated he believes there are inconsistencies. Rutta also reiterated BOA will only be dealing with the special exception request.

Rutta swore in Chris Firkus and asked him to explain the situation. Firkus explained he started building the garage before obtaining a building permit. At the time he was going to build the garage, Firkus stated the Town of Hull was not giving out building permits. Firkus stated he built his house in 2001 and at that time, did not build a garage. He waited until he saved enough money to finance a garage. Firkus started building his garage and discovered from a contractor that he would still have to get a Zoning Permit. Firkus did not realize he needed a separate permit for the garage. When he realized he needed a permit, he contacted Portage County Planning and Zoning staff.

Rutta stated there is another issue regarding boundary posts for the Bluff Line set by a surveyor in 1974. Firkus stated he knew the marker was in the wooded area; however, he did not know exactly where the setback was located. Rutta asked if he knew where the 50' setback was that established the Conservancy District and Firkus said he could see where it was. Rutta asked Firkus why he didn't speak with someone about this if he was unsure.

Bachhuber asked if Firkus had a certified survey map (CSM) of his entire property, and Firkus answered no.

Rutta stated the line shot by surveyors in 1974 would not show up on a CSM because the CSM is not concerned with zoning. Rutta stated we have a situation in which a beautiful building is not in compliance with the intent of the law or with this Resolution. Bachhuber stated Firkus would not have known about the Resolution because BOA did not know about it. Mrdutt stated Planning and Zoning has known about it and has 40 years precedence of knowing and enforcing it. Rutta asked had Firkus come in and applied for a permit, would Planning and Zoning staff have known about this and Mrdutt answered yes. Rutta stated the fundamental problem here is Firkus did not apply for a permit and now they are looking for an after-the-fact fix. Rutta stated he understands Firkus has negotiated a solution with Planning and Zoning staff. Mrdutt stated this will include removing 10' off the back side of the construction, which will bring the building into compliance. Firkus stated he is in agreement with this.

Szachnit asked if 10' are removed, and there will still be a few feet across the line, would this become an issue. Rutta stated if, in fact, the land has been classified as Conservancy, Firkus should get a variance for being in a Conservancy district. Bachhuber added they are not to act on this today.

Rutta stated the problem is he does not see that the language of the Resolution has been incorporated into the Zoning Ordinance. BOA can act as if it was incorporated into the Zoning Ordinance, or BOA can act on the building and Planning and Zoning staff can deal with the 10' off the rear of the building. Mrdutt stated under their agreement and in the interest of the Resolution, the Planning and Zoning Department is comfortable taking 10' off the back of the building.

Potratz asked if BOA were to deny a variance request, what would that do to the agreement between Firkus and Planning and Zoning. Mrdutt stated BOA is not acting on a variance request, but he believes it is good for discussion purposes. Potratz stated at some point in time, BOA will have to act on a variance request. Rutta stated not necessarily because if it is not in the Ordinance, BOA does not deal with it. Technically, this is not in the Ordinance, as far as Rutta can see. Mrdutt reiterated the only thing BOA is acting on tonight is the special exception request to exceed 2,800 square feet of accessory building space. As a condition, through agreements of staff and to hold the interest of the County Board Resolution, the Planning and Zoning Department is asking as a condition of granting him approval to exceed 2,800 square feet, Firkus remove 10' off the rear of the structure.

Scheider asked Firkus if he is using all of his buildings. Firkus answered he uses them for storage of personal property and old farm equipment. He uses all of the buildings for some type of storage. Scheider asked who is responsible for the maintenance of the buildings and Firkus answered he is. Scheider asked if Firkus has ever considered removal of any of the structures and Firkus answered if it came to the point that he had to, he would. There was discussion amongst BOA, Mrdutt and Firkus about this being an old farmstead.

Szachnit asked when this property was rezoned to R2 from Agricultural, what was the stipulation about the buildings? Was there a stipulation or were they grandfathered? Pelky stated they were grandfathered in. Pelky explained they are only looking at the new building and any time a new building will be added, BOA will have to hear the matter because of exceeding 2,800 square feet accessory building space.

Regarding screening, Mrdutt stated due to the location of this building and the acreage, nobody knows it is back there, and screening will not be necessary in this case. In addition, Mrdutt distributed photos to BOA which shows a van, an old mobile home, and debris they would like removed. Rutta asked Firkus if he would be willing to remove these items from the site and Firkus answered if it would help, he would be willing.

Rutta asked how long it would take Firkus to remove the 10' section from the garage. Mrdutt stated the pending legal agreement revolves around that. Rutta asked if it was December 31, 2010 and Mrdutt stated the date is negotiable.

There being no further questions from BOA, Rutta excused Firkus. Rutta asked if any members of the public wanted to address this petition. Melvin Bembenek, Town of Hull Supervisor, was sworn in. Bembenek wanted to discuss removal of the 10' portion of the garage. Bembenek asked if this special exception could be taken care of with removal of the 10' and Mrdutt answered Planning and Zoning staff is recommending that as a condition. Mrdutt stated they are dealing with the intent of the Resolution because that Resolution is not part of the Ordinance. Bembenek asked if Firkus wanted to leave the 10' on the garage, would the special exception not go through with the 2,800 square feet. Mrdutt stated that would be the recommendation of Planning and Zoning staff. Mrdutt stated he cannot speak for BOA, but that would be the staff recommendation.

Bembenek stated he spoke with Phil Deffenbaugh, Town of Hull Assessor/Building Inspector, and Deffenbaugh looked at the garage. Bembenek distributed a memo addressed to BOA from Phil Deffenbaugh. Bembenek stated the memo basically says Deffenbaugh feels it would be nice if the 10' could stay. He does not believe this building is hurting anything because of the location and amount of land.

Bembenek stated regarding the permit situation, he believes Firkus checked with the Town of Hull and was told they did not give permits unless someone goes through Planning and Zoning for a house first. Then they are referred to Deffenbaugh for a building permit. Bembenek stated he assumes Firkus thought because it was years later and he had a permit for the house, it probably included the garage. Bembenek stated he believes Firkus went by the stake that is currently there and that is where he got his 50'. Bembenek stated there was a situation where the stake had been moved, but he was told the stake was moved years ago by a contractor that was digging and the contractor was off by 11' 7" when he replaced the stake. Bembenek stated Firkus did not intentionally do this. Bembenek stated he does not believe Planning and Zoning staff would have done anything differently, if a permit had been issued. They may not have even looked at the stakes.

Mrdutt explained when anyone comes in to apply for a permit, they look at the area and if it appears it is even close to setbacks, they will question it and conduct an on-site. This is how they found the error in this case. Bembenek again stated he believes Firkus made a mistake with the permit and it was not done intentionally.

Rutta discussed the intent of the Resolution. The County Board intended to have the 50' line as the start of the Conservancy District on toward the Plover River. Bembenek agreed. Rutta stated this Resolution also adopted a policy limiting new development to an area 100' back from the highest bluff. Rutta asked if this was ever established in the Zoning Ordinance. Is this area shown as Conservancy? Pelky stated there is language in the Ordinance. The line has been surveyed on both sides of the stream. They have been enforcing the 50' line for years.

Bachhuber asked if there is verbiage in the Zoning Ordinance dealing with this. Rutta stated it does not have to be. Pelky agreed the line has been established, but there is no verbiage in the Zoning Ordinance. There was discussion amongst the Board about the Resolution.

Rutta asked what this property is zoned on the official Town of Hull Zoning Map and Mrdutt answered Conservancy.

Bembenek distributed the memo from Deffenbaugh to BOA. There being no further questions for Bembenek, he was excused by Rutta.

Rutta stated had this request not been inclusive to state R2 Single Family Residential Zoning, and included Conservancy, if this portion is in Conservancy, a variance could have been granted for the Conservancy portion, to include the 10'. Rutta stated had Firkus requested to encroach onto the bluff line in the Conservancy District by 10', he may or may not have gotten a variance. Rutta stated probably not, because he has got so much other land he could build on without a variance. Rutta stated the main issue is this is after-the-fact.

Bachhuber stated BOA cannot deal with what-ifs. They can only deal with the law as it exists now. Bachhuber read a portion of Deffenbaugh's letter referencing obtaining a new CSM for his parent's house to include the old outbuildings. However, as the total square footage of garage and lean-to is 2,800 square feet, the only solution would be to rezone.

Rutta said BOA will deal with the Special Exception requesting to exceed 2,800 square feet accessory building space, and include as a condition the rear 10' of the building be removed. Rutta stated the appellant has agreed to this already. Rutta stated this would still leave approximately 14 square feet in the Conservancy District and will have to be handled another way. Mrdutt stated this issue is already covered.

Rutta asked if any other members of the public wanted to address this petition. Aaron Cordy was sworn in by Rutta. Cordy stated he is the neighbor to the west at 5563 Highway 66. Cordy looked at the project and feels it is a shame this beautiful garage has to be cut by 10'. Cordy has no problem with this project and has known Firkus approximately seven years. He does not believe this was done intentionally by Firkus. Cordy also stated he did not realize Firkus had already accepted a deal with Planning and Zoning. He asked if there were any other solutions. Rutta excused Cordy.

Rutta asked if any other members of the public wanted to address this petition. John Eickendorf was sworn in. Eickendorf stated he agrees with Cordy. Eickendorf stated has been in the area for 22 years and the way BOA is explaining things about Conservancy, is not the same way he was told 22 years ago when he built his house. Mrdutt asked how it was explained and Eickendorf stated he had to be off the Conservancy line by 75'.

Rutta explained how the Resolution states 50' from the Bluff Line be designated Conservancy. Eickendorf stated he was told he could not cut trees or build beyond the Conservancy lines. Mrdutt stated building is correct; however, the tree cutting issue has nothing to do with zoning. Mrdutt explained this issue to Eickendorf. Eickendorf stated beyond those monuments, nothing could be built and no trees could be cut. Pelky stated Eickendorf can discuss these issues with Planning and Zoning staff at another time. Eickendorf wanted to point out there are many inconsistencies. Rutta excused Eickendorf.

Rutta asked if any members of the public wanted to address this petition. Arlene Firkus, Christopher Firkus' mother, was not sworn in. Arlene Firkus stated her son would never do something wrong. He made a mistake and is paying for it dearly. She is in favor of anything he can do to save the 10' portion of the garage. There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Scheider asked if anyone had a ballpark idea of what it would cost to cut 10' off the building. Eickendorf estimated it would cost at least \$5,000. Scheider asked how Firkus can be penalized; with a fine? Scheider stated it is disheartening to see a nice building destroyed; however, a mistake was made and an ordinance ignored. She can understand a fine being assessed.

Rutta asked BOA how they feel about the request to exceed 2,800 square feet. Scheider says this is a moot point since Firkus has already exceeded 2,800 square feet. Scheider asked how many square feet are already in the new building. Mrdutt stated approximately 2,574 square feet.

Bachhuber stated she has no problem with exceeding 2,800 square feet. If an older building needs upkeep, Firkus could remove it. Bachhuber wants Firkus to clean up the other solid waste on the property. Bachhuber agrees this is a beautiful building, and it is unfortunate. Bachhuber also believes there should have been a CSM on this property.

Scheider stated in looking at the map of the property, it appears a few of the buildings are very close to the Conservancy line. Potratz stated maybe they were there before the line was established.

Potratz read from the Resolution where it pertains to 90' from the highest bluff along the Plover River. There was discussion amongst the Board as to when the line was established and when the survey was done to establish the meander line. Rutta interprets the Resolution to mean the survey was done for 50', but the intention was not to have any construction within 100'.

Scheider asked if it would be helpful for BOA to have Corporation Counsel present and Rutta answered no. He believes the intent was to protect 100' back from the highest bluff so they put a meander line 50' away from the highest bluff.

Szachnit stated there is a lot of discrepancy. There is a meander line establishing the boundary. The aerial shot shows the Plover River and existing bluffs meander a lot; however, the line does not. It almost seems to be a reference line.

Rutta again reiterated there was a survey and then they put monuments and mapped a meander line 50' back from the highest bluff. This portion was included in Conservancy Zoning. Scheider commented it appears the line does not follow the markers.

Rutta stated all this could have been avoided had Firkus simply applied for a Zoning Permit. In addition, a valid compromise has been negotiated. Rutta stated BOA could act on this special exception and Firkus could apply for a variance in the Conservancy District for the other 10'. Rutta stated Planning and Zoning staff has recommended the Special Exception include the condition in the agreement negotiated between Planning and Zoning staff and Firkus, be included. Scheider asked if this is the case, and Firkus later decides he wants to request a variance, has this limited the ability to come back and get a variance. Rutta explained all BOA would have to do is remove that condition. Scheider asked if BOA acted on the special exception and ignored the 10' and let Planning and Zoning staff and Firkus determine how they are going to deal with the 10', could they come back with another petition. Szachnit agreed this is how this matter should be handled.

Bachhuber agreed with Scheider's recommendation and stated this is a constant problem. Bachhuber stated BOA should vote on the special exception request and Firkus can make a separate request on a variance.

Mrduitt stated there is an agreement with Firkus to remove 10' from the garage and pay a forfeiture.

Bachhuber asked if the agreement takes place whether or not BOA includes it as a condition, and Pelky and Mrduitt stated not necessarily. Firkus has agreed to it, but the formality of running the paperwork through the Court system has not happened yet.

Rutta stated he will deal with the special exception only. Rutta stated the problems that would prevent the intent of the ordinance from being maintained are not applicable in this case. There appear to be no concerns regarding vegetative cover, flooding, road considerations, existing and future development, importance of the proposed service, and compliance with Wisconsin Law and Administrative Code. Rutta believes granting a special exception to exceed 2,800 square feet is appropriate, other than the fact he feels the rear 10' of the building should be removed and the accumulated material as specified should be removed.

Rutta asked for a motion to approve the special exception portion of Petition P10-25.

Motion by Rutta to approve the appeal for a special exception to exceed 2,800 square feet accessory building space up to 6,778 square feet, with the following conditions:

1. The rear 10' of the building must be removed by December 31, 2010.
2. The accumulated material at the front part of the lot, including a van, a camper, and a pile of miscellaneous material, must be removed prior to issuance of a Zoning Permit.

Motion to approve seconded by Potratz.

Subsidiary motion by Scheider to delete the reference to 6,778 square feet in the motion, and delete the condition that the rear 10' of the building be removed by December 31, 2010.

No second to the motion; subsidiary motion dies.

Second subsidiary motion by Bachhuber to amend the date of removal of the rear 10' of the building to May 31, 2011.

No second to the motion; subsidiary motion dies.

Original motion to approve passed 3-2 by roll call vote, with Scheider and Bachhuber voting no.

Bembenek asked if BOA expects Firkus to remove the 10' of the garage within two months in the winter time, and Rutta explained Firkus came before BOA and ask for an extension.

Schuler explained how an extension can be granted by Planning and Zoning or BOA. Scheider feels the time period given for removal is an unfair deadline. Firkus stated he felt he had no other options and that is why he agreed. Rutta read the appeal process to Firkus.

Scheider asked why the application date is July 26th, and the matter was not heard for three months. Mrduitt explained a new monument needed to be established because the original had been removed. The County Surveyor had to establish the monument so they could obtain correct measurements. This is the reason for the long timeframe.

Bachhuber stated there must be definite fines established by ordinance. Mrdutt stated there are already fines established.

Approval of Minutes

Scheider moved to approve the September 20, 2010 minutes as submitted, Bachhuber seconded. Rutta noted one change to be made: page 2, paragraph 10, line 6; Town of Hull should be changed to Town of Buena Vista.

Motion to approve the minutes, with the change noted above, passed unanimously by voice vote.

Correspondence/Updates

- There is one hearing scheduled for the November meeting.
- Nothing new on the Planton case yet.
- Pelky explained the Penalty section in the Ordinance.
- Rutta recommended, in situations like this, a map be included showing the districts and definitions.
- Scheider does not believe communication between the County and Building Inspector is very good.
- Bachhuber wants to address BOA policy.
- Bachhuber and Scheider would like policy discussions on the record.

Adjournment

There being no further business to come before BOA, Szachnit moved to adjourn. Potratz seconded, motion passes 3 to 2, with Bachhuber and Scheider voting nay. Meeting adjourned at 6:10 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Joan Scheider, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
NOVEMBER 15, 2010

Call to Order

Chairman Rutta 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

Scheider led the Pledge.

Roll Call

Members present included Edward Rutta, James Potratz, Joan Scheider, and Marj Bachhuber. Ed Szachnit was excused. Staff present included Jeff Schuler, Tracy Pelky, Christopher Mrdutt, and Gayle Stewart, Planning and Zoning Department.

Board of Adjustment Procedures

Rutta 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The petitioner will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS

Todd and Penny Borski, Owners (P10-27)

The Todd and Penny Borski, owners, special exception request from provisions of the Portage County Zoning Ordinance to have horses in the R1 Rural & Urban Fringe Residence Zoning District, Town of Hull, was opened by Rutta, who read the public hearing notice.

Mrdutt informed BOA the petitioners had seven acres rezoned in 2006 from R2 Single Family to R1 Rural & Urban Fringe. This was specifically for the purpose of having horses. Petitioners are now at the point where they need to request approval from BOA to have horses. Mrdutt stated the Borskis are not requesting more than the permitted amount of horses for seven acres.

Rutta read the following into the record:

- A letter received November 15, 2010 from Aleksandra Spott and Alicia Spott, adjacent property owners, stating they support the request.
- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department supports the petition for a special exception with conditions.

Rutta swore in Penny Borski and asked her to explain the request. Borski stated it has been a dream of hers to have horses. Now that she is grown and has children, she wants to have horses and have her children experience and grow up with them.

Scheider stated there is less than seven acres fenced off for the horses and asked how they apply the 1.5 acres per horse. Mrdutt explained they use the 1.5 acres per horse more to determine if there is adequate room to manage the manure. Mrdutt added the manure is going to be composted and used in gardens and flower beds. The Borskis actually have 15 acres, minus the pond, in addition to their neighboring residential property, on which to compost. Mrdutt feels even with the smaller fenced-in area, there is adequate room. This is also the reason for requesting approval up to four horses. This would eliminate the need for the petitioners to come before BOA to request additional horses.

Scheider asked where the Spott property is located and Borski showed Scheider on the map. Scheider asked if Borski had any reactions from other neighbors. Borski stated she spoke with surrounding property owners and presented to BOA a letter of support signed by 13 of her neighbors. Borski stated there are a few neighbors not on the list because she was unable to make contact.

Rutta read into the record the letter submitted by Borski with signatures of surrounding property owners stating they have no objections to the Borskis having horses on the property. Bachhuber read an excerpt from the letter.

Scheider asked Borski if she visited each of these people individually and Borski answered yes. Borski stated this is not something she kept quiet from her neighbors. Everyone that knows Borski knows that she has wanted horses and what her intentions are. Borski stated she has volunteered at a horse rescue for two years. Her intention, if this request is approved, is to adopt and bring home a horse currently at the shelter. The horse rescue is aware of the acreage she has fenced in and they have no objections to the size for the two horses. Scheider asked where the feed will come from and Borski answered hay from local farmers. Borski is aware she will be purchasing her feed and she understands the commitment she is making. Borski reiterated she has volunteered every week for two years and she is well aware of the financial responsibilities and commitment needed when owning horses.

Bachhuber asked where the composting will take place. Borski showed on the map the general area they will compost on. Manure will be composted outside of the fenced-in area. Bachhuber asked if the neighbors are aware Borski will be composting. Borski stated she did not discuss all of her plans with neighbors and added none of them had questions for her. Bachhuber asked what she would do over the course of the winter. Mrdutt stated this is something the Planning and Zoning Department will work on with the Borskis. Mrdutt has requested they work with the Land Conservation Division to come up with a manure management plan.

Rutta stated there are a lot of residences around the Borski's property and he does not want the groundwater to become polluted. Borski added she would also pay to have the manure removed to an agricultural area. Rutta asked when Borski adopts a horse, does she get a choice as to which horse is adopted and Borski answered yes, and plans on getting two geldings.

Scheider asked how the manure will be collected. Borski answered she will use a wheelbarrow, shovel, tractor, or whatever she needs to collect manure.

Rutta asked if Borski will be putting up a barbed-wire fence and Borski answered no; barbed-wire is not safe for horses. Borski stated the safest fence, and the one she plans to use, is a 3-strand electric tape fence. Rutta expressed concerns because of being in a residential area. Rutta asked if Borski would consider pig wire with a single strand of electric in it. Borski replied the horse rescue says the safest and most secure fence is the tape. Horses don't get hurt, if they get out. Horses can get tangled in wire and cut themselves. Borski added horses depend on their legs, and if they get cut bad enough, they could have to put the horse down. Rutta stated safety is an issue. Mrdutt stated there are a lot of woods in the area and they would get into trespassing issues. Todd Borski added he has lived there 35 years and he has only seen five people trespassing. Rutta again said this is a safety issue and liability would be the Borski's issue.

There being no further questions from BOA, Rutta excused Borski. Rutta asked if any members of the public wanted to address this petition. There being no members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Scheider stated a couple of horses in the area will draw interest from young people; however, this is the Borski's liability and responsibility.

Potratz stated there is nothing in the petition that would prohibit this use.

Rutta summarized with the following:

- This use is not contrary to the Zoning Ordinance, State Law, or Administrative Code.
- Safe and healthful conditions can be maintained. There is some concern about an electrical fence.
- This use will not affect existing or future roads or development.
- The surrounding neighborhood will not be adversely affected by this project.
- This project is not located in a floodway or floodplain.
- Topographical features are not affected.
- Drainage features are not affected.
- There is concern about waste. This will be handled by Planning and Zoning staff and the Land Conservation Division.

- This proposal is consistent with current Town and County land use plans.
- In summary, Rutta does not see any reason why the petitioner should not be able to move forward with this request.

Motion by Bachhuber to approve the petition for a special exception with the following conditions:

1. A Portage County Zoning Permit must be obtained.
2. Approval is for up to two horses on seven acres. If the petitioner wants to add more horses, the staff may review the petition to allow up to a total of four horses.
3. Approval is for a 24' x 12', 3-sided, movable shed for use of the horses. If the use of the horses ceases, the movable horse shelter shall be removed from the property.
4. The maximum number of horses shall be four.
5. A manure management plan must be on file with the Portage County Land Conservation Division.

Motion to approve, seconded by Scheider. Motion passed unanimously by roll call vote.

TIME EXTENSION REQUEST

Tracy Bemowski and Joe Polarek, Owners (A09-38)

The Tracy Bemowski and Joe Polarek, owners, extension request to meet condition number 8 from the Board of Adjustment decision dated December 29, 2009; "The present supper club building is to be removed before a permit is issued and final cleanup must be completed in spring of 2010," located in the Town of Carson, was opened by Rutta, who read condition 8 from the BOA decision.

Rutta swore in Joe Polarek and asked him what has been done regarding the present supper club building being removed. Polarek stated not much has been done. He was supposed to have the building down in the spring of 2010, but his family suffered a family loss that created a financial hardship. Because of this, the contract with the person removing the building was put on hold. Polarek has now arranged for people from the Amish community to tear down and recycle the byproducts. Polarek is looking for an extension into the spring of 2011 with an anticipated start date of December 2010 for tearing down the building.

Mrduitt stated instead of digging a hole and burning and burying the materials, it is preferable they be recycled. This is the most appropriate use for the materials. Mrduitt stated staff can ask BOA to extend the timeframe when it comes to issuing a permit. That also goes along with extending the conditions.

Scheider asked if the suggested timeframe is adequate and Polarek answered yes. Polarek has also contacted Veolia about having a dumpster available for shingles and other items that cannot be utilized.

Mrduitt stated the only condition needed is that a Zoning Permit must be obtained by June 1, 2011. Rutta stated they could extend that deadline to August 31, 2011.

There being no further questions from BOA, Rutta excused Polarek. Rutta asked if any members of the public wanted to address this petition. There being no members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta summarized with the following:

The original approval was granted in December 2009. The building is still there. If there is some way to get the condition met, he is in favor of granting an extension until August 31, 2011.

Scheider and Potratz stated they support this extension until August 31, 2011, as there could be a wet spring that could affect removal.

Rutta stated he would entertain a motion to approve the request for a time extension to Appeal A09-38. Motion by Bachhuber to approve the request with the following condition:

1. A Portage County Zoning Permit must be obtained by August 31, 2011.

Motion to approve seconded by Potratz.

Rutta asked if this was an extension for condition 8 only or an extension on the entire decision. Mrdutt replied staff is asking for an extension to get a zoning permit so the appellant can meet condition 8. Condition 8 is not being changed.

Motion to approve passed unanimously by roll call vote.

Approval of Minutes

Scheider moved to approve the October 18, 2010 minutes as submitted, Potratz seconded. Motion passed unanimously by voice vote.

Correspondence/Updates

- Next meeting is scheduled for December 20, 2010.
- Procedural discussion ensued.

Adjournment

There being no further business to come before BOA, Bachhuber moved to adjourn, Potratz seconded, motion passed unanimously. Meeting adjourned at 5:47 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Joan Scheider, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
DECEMBER 20, 2010

Call to Order

Chairman Rutta 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

Scheider led the Pledge.

Roll Call

Members present included Edward Rutta, James Potratz, Joan Scheider, Marj Bachhuber, and Ed Szachnit. Staff present included Jeff Schuler, Tracy Pelky, Christopher Mrdutt, and Gayle Stewart, Planning and Zoning Department.

Board of Adjustment Procedures

Rutta 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. BOA will take testimony, deliberate, and make their decision on a case-by-case basis. The petitioner will be sent notification of the decision during the week following the public hearing.

PUBLIC HEARINGS

A & A Living Trust, Owners/Alvin L. Warzynski, Agent (P10-28)

The A & A Living Trust, owners, Alvin L. Warzynski, agent, variance request from provisions of the Portage County Zoning Ordinance to allow a proposed lot line closer than the minimum 25 foot setback to a shed in the A3 Low Density Agricultural Zoning District, Town of Belmont, was opened by Rutta, who read the public hearing notice.

Pelky stated the petitioner's family wants to split family property. A 25 foot setback is required from a building; however, a pole building is located approximately 8 feet from the proposed property line.

Rutta read the following into the record:

- A letter from the Town of Belmont dated November 16, 2010, stating the Town Board and Town Plan Commission approved the Warzynski survey map.
- A memo from Christopher Mrdutt, Zoning Technician, stating the Portage County Planning and Zoning Department prefers maintaining setbacks from principal buildings over the setback from the shed, and requested the Board discuss attaching conditions, if approved.

Rutta swore in Alvin Warzynski, Jr., and asked him to explain the request. Warzynski stated he built the shed years ago, and after the property is split, wants that shed to be located on his 40 acres. Warzynski used a photo as reference while showing BOA the shed he was referring to. Warzynski stated he wants the shed only and can create another driveway to access the shed, if needed.

Rutta asked if the driveway near the shed will remain in place, and Warzynski answered yes. Rutta asked if there is another driveway further to the west that goes to the road, and Warzynski answered yes. Rutta added the driveway adjacent to the shed will not be affected because the 8 feet will not extend into the driveway.

Potratz asked how old the building/shed is, and Warzynski answered approximately ten years. Potratz asked if the proposed property split has been approved yet, and Warzynski answered yes. Pelky clarified BOA needs to approve this variance in order for the CSM to be approved as is.

Szachnit asked if the parcel were to be sold, would it have to be sold in one parcel or could it be split. Pelky stated the property would be sold with the building where it is located. If the building is damaged or

destroyed at a later date, all setback requirements would have to be met. There is no restriction on selling the property as a complete parcel.

Scheider inquired about access to the building and asked if the only access is the driveway between the house and shed. Warzynski replied yes, at this time. However, Warzynski added he can put a driveway in at a few different locations. Warzynski stated his sister, who owns the other parcel, says he can use the existing driveway.

Rutta asked if sole access to this building is the sliding doors on the front, and Warzynski answered yes. Rutta asked if equipment can be turned in the shed without adding another driveway on the road, and Warzynski answered yes.

Potratz asked if the building has a slab or foundation, and Warzynski answered no. This is a pole building. Potratz said it would not be impossible to relocate this building.

Rutta asked Warzynski if he understood the conditions recommended by permanent staff, and Warzynski answered yes.

Szachnit asked the size of the pole building, and it was noted the building is 30' x 50'.

There being no further questions from BOA, Rutta excused Warzynski. Rutta asked if any members of the public wanted to address this petition. Barry Jacowski, District 19 Supervisor for Portage County and member of the Portage County Planning and Zoning Committee, was sworn in. Jacowski stated these are family members trying to split up their parents' estate. There has been no opposition from the Town of Belmont or any neighbors of the parcel. Jacowski urged BOA to vote in favor of granting the variance.

Rutta asked if any other members of the public wanted to address this petition. Pat Kreier, Surveyor, informed BOA it was his suggestion to maintain the 25' setback for the principal building. Kreier stated if BOA has any questions, he is available. Pelky stated he prefers maintaining the 25' setback for the house as well.

There being no other members of the public wanting to testify, Rutta closed the testimony portion of the hearing.

Deliberation and Decision

Rutta summarized with the following:

- This use is not contrary to the Zoning Ordinance, State Law, or Administrative Code.
- The property must have a unique limitation. This is as unique a limitation as you will find anywhere, and the idea of moving the structure does not make sense.
- This property has an unnecessarily burdensome hardship.
- There are no alternatives to the variance request.
- Substantial justice will be done by granting the variance.
- This request is not contrary to public interests.
- The entire parcel must be considered when applying the hardship test.

Rutta stated it is the general consensus of BOA that this petition meets requirements for a variance.

Motion by Bachhuber to approve the petition for a variance with the following conditions:

1. Approval is to allow a proposed lot line closer than the minimum 25 foot setback to an existing 30' x 50' shed. The CSM as presented shall be evidence of the lot line granted, which is approximately 8 feet from the shed.
2. If the shed becomes damaged over 50 percent, the owner will not be able to rebuild the structure unless it meets all setbacks.
3. Any addition to the shed must meet all applicable building setbacks.

Motion to approve, seconded by Scheider. Motion passed unanimously by roll call vote.

Approval of Minutes

Scheider moved to approve the November 15, 2010 minutes as submitted, Potratz seconded. Motion passed unanimously by voice vote.

Correspondence/Updates

Next meeting is tentatively scheduled for January 17, 2011.

Adjournment

There being no further business to come before BOA, Szachnit moved to adjourn, Potratz seconded, motion passed unanimously. Meeting adjourned at 4:34 pm.

Respectfully submitted,

Gayle Stewart, Recording Sec.

Joan Scheider, BOA Secretary

Date of Approval