



**LAPORTE COUNTY
BOARD OF ZONING APPEALS**

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**ANNEMARIE POLAN
Building Commissioner**

October 16, 2012

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, October 16, 2012, at 6:00 p.m. in the Assembly Room of the County Complex.

MEMBERS PRESENT: Dwayne Hogan William Eaton
 Glen Minich Melissa Mullins Mischke
 Paul Zona

OTHERS PRESENT: Annemarie Polan, Recoding Secretary, Attorney Doug Biege; Darlene Pavey, Secretary

The Pledge of Allegiance.

Dwayne Hogan entertained a Motion for the approval of meeting minutes from September 18, 2012.

Melissa Mullins Mischke made a Motion to approve the meeting minutes as presented. William Eaton seconded.

All approved. Motion carried 5-0.

- 1. The Petition for Donald Jr. & Charlotte Blint** to operate an auto repair business and possibly sell used cars. This property is located at 6226 E. Bootjack Road, Rolling Prairie, IN, Wills Twp, zone B1. (This matter was tabled from the August 21, 2012 meeting to give Mr. Blint time to clean up some of the cars on this property.)

Legal work complete. No remonstrators present.

Don Blint, Jr., 6226 E. Bootjack Road, Rolling Prairie, Indiana. Mr. Blint said that he will not be selling used cars.

Dwayne Hogan asked Mr. Blint what he wants to do this evening.

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Mr. Blint said that he wants to do auto repair. Mr. Blint said that there were some used cars sitting there that he has cleaned up and Annemarie came out and took pictures.

Dwayne Hogan asked if there were any questions or comments from the board.

Glen Minich said that he would like to review the hours of business.

Mr. Blint said that it would be 8:00 a.m. to 5:30 p.m. Mr. Blint said that if he works late he shuts the doors and he doesn't use any air tools to disturb the neighbors.

Melissa Mullins Mischke asked if that would be Monday through Friday.

Mr. Blint said that he works on Saturdays.

Melissa Mullins Mischke asked if it would be 8:00 a.m. to 5:30 p.m. Monday through Saturday.

Mr. Blint said that sometimes he works late and sometimes he kicks off a little early on Saturday.

Dwayne Hogan asked if there is anything on Sunday.

Mr. Blint stated no.

Melissa Mullins Mischke asked Mr. Blint if he was going to have a sign.

Mr. Blint said that if he does a sign it would be 25x25.

Paul Zona told Mr. Blint that the county allows 2x3.

Mr. Blint said that is fine.

Dwayne Hogan asked if there were any remonstrators here this evening for Petition No. 1.

Paul Zona asked Mr. Blint if he is going to be able to maintain all the parts and tires in the pole building.

Mr. Blint said that the only tires that he has are off his vintage cars. Mr. Blint said that he got rid of all the tires outside. Mr. Blint said as far as the equipment goes he can keep that in the building.

Paul Zona said that if the board so chooses to allow this, they're going to want it to be kept up like this. Paul said that there should be a minimum of three or four cars to be kept outside while they're waiting to be worked on.

Mr. Blint said that after the meeting on August 21st he had five cars on the property that he couldn't get people to pick up. Mr. Blint said that he has four daughters and three of them drive; he and his wife drive and also his father. Mr. Blint said that there is going to be personal cars parked there.

Melissa Mullins Mischke asked if those cars are plated, registered and in good working order.

Mr. Blint stated yes.

Melissa Mullins Mischke told Mr. Blint that she thinks Mr. Zona is talking about the debris associated with the cars that you're repairing and also the cars that are just sitting there.

Dwayne Hogan asked the pleasure of the board.

Paul Zona made a Motion that the Petition for Donald Jr. and Charlotte Blint be granted for a period of one year renewable, with the hours of operation being 8:00 a.m. to 5:30 p.m. Monday through Saturday with a sign of two foot by three foot and a maximum of four to five cars on the outside waiting to be repaired with no outside storage whatsoever.

Dwayne Hogan told Mr. Blint that he's not selling them.

Dwayne Hogan asked for a second.

Dwayne Hogan asked if there were any questions, comments or clarifications.

William Eaton seconded. All approved. Motion carried 5-0.

- 2. The Petition for Midwest Development, LLC and Indiana Limited Liability Company, by its attorney Ralph Howes** to construct an addition to the present structure that would include a crematory. The Petitioner, Lakeview Funeral Home was previously granted a variance for the use of the above described real estate as a mortuary/funeral home. The described real estate is situated on the North side of Johnson Road approximately 1000 feet West of the intersection of US Highway #35, and has a common street address of 247 W. Johnson Road, La Porte, Indiana, Center, Twp., zoned RB1.

Legal work complete. No remonstrators present.

Shane Watson, said that he's representing Midwest Development, LLC and Lakeview Funeral Home.

Dwayne Hogan asked Mr. Watson what he would like to do this evening.

Mr. Watson said that his client would like to add a crematorium to his pre-existing funeral home located at 247 W. Johnson Road. Mr. Watson said that he believes that it would comply with Section 14.08 and he's been operating this funeral home for quite some time.

Dwayne Hogan asked Mr. Watson to approach and show them on the site plan where the addition would be.

Mr. Watson up at the bench going over the site plan.

Casmir Pulaski said that Plan A shows an "X" where the crematory will be relocated. Mr. Pulaski said that presently they are operating there crematory in Kingsbury, Indiana and they want to relocate that. Mr. Pulaski said that their other option is to put a garage and a second building where the crematory would be located. Mr. Pulaski said that they have determined this is Plan A. Mr. Pulaski said that he had all his neighbors look over this and sign this petition and everyone is in agreement.

Paul Zona asked Mr. Pulaski how far away from the present building is the crematory going to be roughly.

Casmir Pulaski said that because of fire codes and things of that nature, they're going to have a block wall separating the garage and the crematory and he thinks that it is about forty five feet from the present building. Mr. Pulaski said that there is going to be a breezeway so it will be about fifty five feet away from the present building.

Dwayne Hogan asked Mr. Pulaski if that would be a three stall car garage.

Mr. Pulaski stated yes. Mr. Pulaski said that he has a drawing that he could hold up.

Dwayne Hogan asked if it would be the same outside motif that is there now.

Mr. Pulaski said that it is going to have the cedar with a stone front on it. Mr. Pulaski said that it will blend nicely.

Paul Zona asked Mr. Pulaski if he is planning on shutting down the Kingsbury location.

Mr. Pulaski stated yes. Mr. Pulaski said that they plan on relocating. Mr. Pulaski said that what they've come up against with cremation, a lot of families want to witness; wanting to see the crematory and they found it very inconvenient to bring them down to Kingsbury. Mr.

Pulaski said that they're very busy so they have decided to grow their business it would be better serving to the families would be more convenient to be there.

Paul Zona told Mr. Pulaski that he's looking at our coroner; Paul asked Mr. Pulaski if John uses him quite a bit down there. Paul asked if he is going to maintain down there, or are you going to have enough room here.

Mr. Pulaski said that this facility is going to be state of the art; it's going to be better than the facility they have in Kingsbury; it's going to be more accommodating for families; everything about it is going to be an upgrade.

Dwayne Hogan asked if there were any remonstrators here this evening for Petition No 2.

Dwayne Hogan asked if there were any questions or comments from the board.

Paul Zona said that the only comment that he has at this time is there is a crematorium less than a mile away where Casmir wants to put it now. Paul said that this board Okayed it.

Mr. Pulaski said that there is a difference between the two, but there hasn't been any issue with Scott Harris.

Paul Zona said that there have not been any issues since he was allowed.

Dwayne Hogan asked the pleasure of the board.

William Eaton asked if this was outside the two hundred foot setback.

Paul Zona said that it is fifty five foot away and that's part of the variance.

Mr. Pulaski said that they're in the process of purchasing the Przbylinski property and so the property to the west of them will be under their ownership.

Paul Zona told Mr. Pulaski that what Bill is getting at is State Law says that the crematory has to be two hundred feet away from your present establishment.

Mr. Pulaski said that he was thinking it was the neighboring properties.

Attorney Biege said that it has to be two hundred feet from the lot line.

Mr. Pulaski said that he thinks that it is the neighbor lot line.

Melissa Mullins Mischke made a Motion that the Petition for Midwest Development, LLC and Indiana Limited Liability Company to construct an addition to the present structure that would include a crematory, located at 247 W. Johnson Road. La Porte, IN be granted. Paul Zona seconded.

All approved. Motion carried 5-0.

3. The Petition for Stephen Ralph Gerbie to place a wind mill forty five (45') feet in height and connect a water/tank water tower twenty (20') feet in height to irrigate a small orchard. This property is located at 0261 E. County Road 1000 North, La Porte, Galena Twp., zoned AG.

Legal work complete. Remonstrator present.

Stephen Ralph Gerbie, 0261 E. County Road 1000 North.

Dwayne Hogan asked Mr. Gerbie what he would like to do this evening.

Mr. Gerbie said that he would like to place a wind mill on his property. Mr. Gerbie said that wind mill will draw water from a well which will fill a water tank, which will than gravity feed a small orchard, (21) trees.

Dwayne Hogan asked Mr. Gerbie to approach so he could show the board where he wants to put the wind mill.

Dwayne Hogan asked if there were any remonstrators here this evening for Petition No. 3.

Remonstrator:

1. Richard Lidke, 10296 Range Road, which is directly adjacent to the property and he didn't have any notice of what is going on there. Mr. Lidke said that he has prior concerns from what was done in front of his property in the past in a kind of unusual manner in the evening. Mr. Lidke said that in the middle of the night in the winter when all thirty feet of dirt was piled after being dredged from the lake directly in front of his house. Mr. Lidke said that he has concerns about any new construction in his view wasn't made public. Mr. Lidke said that he wasn't given notice and he doesn't know if it was in the news paper, he was only told by another neighbor about this. Mr. Lidke said that he would like to know where it is going, if anything.

Attorney Biege asked Mr. Lidke where his property is at.

Mr. Lidke said that his property is directly adjacent across the street.

Mr. Lidke up at the bench showing the board members where his property is located.

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Dwayne Hogan asked Mr. Lidke if he has anything else.

Mr. Lidke said that the main thing was to find out what was going on and where it's going to be located. Mr. Lidke said that he doesn't have any problem with what he sees.

Dwayne Hogan asked if there were any questions or comments from the board.

Melissa Mullins Mischke said that she is curious on the well depth. Melissa asked Mr. Gerbie if he has had the preliminary work done on the well locating.

Mr. Gerbie stated yes. Mr. Gerbie said that he hit water at one hundred one (101') feet.

Attorney Biege asked Mr. Gerbie if this was only going to be used to pump water.

Mr. Gerbie stated yes.

Attorney Biege said that he doesn't know if the board is aware, but our new joint zoning ordinance includes a section for wind energy (it says conversation), but he's sure it means conservation systems. Attorney Biege said this section is intended for electricity generating wind mills. Attorney Biege asked Mr. Gerbie if he has looked in Section 14.15 (b) in the zoning codes.

Mr. Gerbie stated yes.

Attorney Biege said that there are a lot of construction requirements on height. Attorney Biege asked Mr. Gerbie if he would be complying with all of these requirements, or are you asking for a waiver of any of the requirements.

Mr. Gerbie said that it requires no more than a forty five (45') foot height and less than a fourteen (14') foot mill and this is a forty five (45') foot wind mill and a twelve (12') foot mill, the mill being a circular portion. Mr. Gerbie said that this complies with the zoning codes.

Melissa Mullins Mischke said that the water tower is going to be twenty (20') feet in height.

Mr. Gerbie said the water tower itself, it's not really a tower, it's a platform, that is twelve (12') feet elevated and the water tank, which will gravity feed the orchard is eight (8') feet high.

Dwayne Hogan asked Mr. Gerbie if he's constructing this.

Mr. Gerbie stated yes.

Dwayne Hogan asked if there were any comments, questions or concerns from the board.

William Eaton made a Motion for Stephen Ralph Gerbie to place a wind mill forty five (45') feet in height and connect a water/tank tower twenty (20') feet in height to irrigate a small orchard be granted. This property is located at 0261 E. County Road 1000 N., La Porte, Galena Twp. Melissa Mullins Mischke seconded.

Dwayne Hogan asked if there were any questions, comments or concerns.

All approved. Motion carried 5-0.

Mr. Gerbie said that Mr. Lidke expressed concerns that he wasn't informed. Mr. Gerbie said that he did in fact send a certified letter to him that he submitted as evidence and that letter was returned apparently for a lack of a displayed address on his site.

4. The Petition for Miranda Reeves & Alan Reeves to put an in-ground pool (18x28) in a pole barn which is now under construction. This property is located at 11998 West 1350 South, Wanatah, Cass Twp, zoned Agricultural.

Legal work complete. No remonstrators present.

Miranda Reeves, 11650 W. 1350 South, Wanatah, Indiana.

Dwayne Hogan asked Ms. Reeves what she would like to do this evening.

Ms. Reeves said that they have a pole barn that has been constructed a quarter of a mile from their property and they would like to add in in-ground pool into this pole barn.

Dwayne Hogan asked if there would be heated bathrooms.

Ms. Reeves stated yes.

William Eaton asked if anyone lives on that property.

Ms. Reeves stated no. Ms. Reeves said that her parents, herself and her two brothers all live on that mile stretch.

4. Dwayne Hogan asked if there were any remonstrators here this evening for Petition No.

Melissa Mullins Mischke said that she was slightly confused at the request.

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Glen Minich asked if this is a separate parcel.

Ms. Reeves stated yes.

Attorney Biege said that he thinks that we're going to need more than one variance here.

Dwayne Hogan asked Ms. Reeves if there was a variance to build the pole barn.

Ms. Reeves said that there wasn't a variance for the pole barn. Ms. Reeves said that they were initially going to use it as a machinery shed for agricultural use.

Attorney Biege asked Ms. Reeves when the pole barn was constructed.

Ms. Reeves said that they just finished up on this pole barn.

Paul Zona asked attorney Biege if we would grant a variance for a pole building on Ag. property to be built on without any house there and we make a variance for plumbing in this building and a septic, and also make it for a pool building, is that all they have to do to cover this.

Attorney Biege said that he thinks so.

Paul Zona made a Motion that the Petition for Miranda Reeves & Alan Reeves be granted a variance for number one:

1. A pole building on property prior to a home.
2. Be allowed a septic water system in that building.
3. Be allowed to put a pool for year around use in this building.

William Eaton seconded.

Dwayne Hogan asked if there were any questions, comments or concerns.

All approved. Motion carried. 5-0.

- 5. The Petition for Matthew & Tracey Lehman** to have two horses on less than three (3) acres of land. This property is located at 4118 S. 150 W., La Porte, Scipio Twp., zoned A.

Attorney Biege said that an attempt was made on Don & Beverly Kelter. Attorney Biege said that we have a receipt for the mailing, but there was no return receipt from the Post Office.

Dwayne Hogan asked for name and address for the record.

Matthew Lehman, 4118 S. 150 W.

Dwayne Hogan asked Mr. Lehman what he would like to do this evening.

Mr. Lehman said that he's making a request for a variance for two horses on less than three (3) acres.

Glen Minich asked Mr. Lehman how much property is there.

Mr. Lehman said just two acres.

Dwayne Hogan said just over or under, or just two?

Mr. Lehman said just barely over.

Annemarie Polan said that according to our sheet it's 2.0.

Dwayne Hogan told Mr. Lehman that he is just at 2.0, one (1) acre short.

William Eaton asked Mr. Lehman how wide is that lot.

Mr. Lehman said that he's not sure.

William Eaton asked Mr. Lehman if he would have an idea on how wide that is. Is it two hundred and fifty (250') feet?

Mr. Lehman said that it is probably close to two hundred (200') feet.

Remonstrator:

Dwayne Hogan asked for name and address for the record.

1. John Minich, 4115 S. 100 West. Mr. Minich said that he sold the lot and he is the one who started the subdivision and that is a one hundred and seventy one foot by five eleven, because when he had surveyed out back in 1995 he believes that was the standard.

Paul Zona asked Mr. Minich when this originally started he knows there were changes put to it a few years ago, but when it was started wasn't there covenants on these lots?

John Minich said that there are covenants on the lots. Mr. Minich said that mainly he has to approve the building. Mr. Minich said that he never turned any down, but he had to stop two for starting building without getting approval.

Mr. Minich said that two acres isn't allowed for horses. Mr. Minich said that the county stated that. Mr. (inaudible) did research that at thirty seven thousand pounds of manure a year.

Melissa Mullins Mischke said that we aren't quite to that part yet.

Dwayne Hogan told Mr. Minich that he would call him back.

Glen Minich asked Mr. Lehman if the lot next to his was for sale.

Melissa Mullins Mischke told Mr. Lehman the lot south of his.

Mr. Lehman said that there is no sign or anything up.

Dwayne Hogan told Mr. Lehman if he added that lot to his it would be a different story. Mr. Hogan told Mr. Lehman that would give him four (4) acres.

Dwayne Hogan asked if there were any questions from the board.

Paul Zona asked Mr. Lehman where his septic is.

Mr. Lehman said that it is actually near the front.

Glen Minich asked where the well is at.

Mr. Lehman said that the well is to the rear of the house.

Paul Zona asked Mr. Lehman how much acreage he's giving these horses.

Mr. Lehman said that the back portion was going to be fenced off basically for the area behind where they were going to build a building for them. Mr. Lehman said that they don't really go outside that much; they feed them hay mostly and they feed them grain. Mr. Lehman said that they're not outside now where they're being boarded, so there is not a large need for them to be pastured.

Glen Minich asked if these were show horses, or just for pleasure.

Mr. Lehman said they're for pleasure.

Paul Zona asked Mr. Lehman if they go outside everyday for exercise.

Mr. Lehman said that they exercise them out in the arena and stuff like that where they're at. Mr. Lehman said that they go horse trail riding and stuff like that.

William Eaton asked Mr. Lehman how he was going to handle the manure.

Mr. Lehman said that they can compost it, or he can have it hauled away, either way. Mr. Lehman said it's not been a problem that they have ever seen before.

Dwayne Hogan asked if there were remonstrators here this evening for Petition number 5.

Dwayne Hogan asked name and address for the record.

John Minich, 4115 S. 150 West.

Dwayne Hogan told Mr. Minich to go ahead.

John Minich said that after he received his letter about the variance, he went up and down the street because everyone in the covenants should be notified. Mr. Minich said that there are twenty seven (27) houses in that area, and he has about twenty-four (24) families opposed to it. Mr. Minich said that the reason he doesn't have any more is because he could never get a hold of them and he was on vacation last week.

Dwayne Hogan asked Mr. Minich if that is twenty-seven (27) on 150 West.

Mr. Minich stated yes.

Mr. Minich said that there was not one person who did not oppose it. Mr. Minich said that they were all totally against this. Mr. Minich said that Donna Kolver who did the research on the manure said that a thousand pound horse could produce fifty one pounds of manure on an average and two horses that would be thirty seven thousand two hundred and thirty pounds of manure a year.

Mr. Minich said that he raised his stock for years and a lot of stock produces manure.

Mr. Minich told Mr. Lehman that he knows that they are his pets and he has nothing against somebody loving horses, but you can't expect everyone to love your horses. Mr. Minich said that the letter stated how docile they're; Mr. Minich said that he has a scar on his back where his own horse took a chunk out of him when he was twelve. Mr. Minich said that a horse can bite very hard. Mr. Minich said that they have snowmobiles out there; if that spooks the horses, what guarantees the horses don't go out and trample the little girls that live two lots down.

Mr. Minich said that his concern is for the horses also, because if you put that horse out there, within six months ... the well is out there, there will not be any vegetation back there to take up any of the nitrates. Mr. Minich said that even through it is zoned Ag 2, it's a residential area. Mr. Minich said that their realtor he believes it was McIntyre, tried to get a hold of him before they bought the house. Aaron Coultier, the original owner of the house called and wanted to know if there was going to be a problem with a horse barn. Mr. Minich said that he told him that he didn't have a problem giving them the okay to build a barn if it looks nice in the neighborhood, but he can't give them permission to have horses on two acres. Mr. Minich said they knew that up front.

Mr. Minich said that they were offered to buy the other two acres according to Aaron and they turned it down. Mr. Minich said that he doesn't feel three acres is enough for two horses.

Melissa Mullins Mischke asked Mr. Minich the name of the subdivision.

John Minich said that it goes under Minich Addition.

Melissa Mullins Mischke asked Mr. Minich if it is a recorded subdivision.

Mr. Minich said that he doesn't know. Mr. Minich said that he had it all surveyed out at one time and it was always the Minich Addition.

Melissa Mullins Mischke asked Mr. Minich if he has a homeowners association and that's how the covenants is---

Mr. Minich said that basically once you buy a lot there is a covenants.

Dwayne Hogan asked who made the covenants.

Mr. Minich said that his attorney made the covenants, Tom Wineholt. Mr. Minich said that it's not that restrictive. Mr. Minich said that he had two people start a barn; one wanted to use used material and he said absolutely not and he agreed to take it down and build a brand new building.

Melissa Mullins Mischke asked if the covenants and restrictions were recorded.

Mr. Minich said that every parcel gets a recorded covenants.

Dwayne Hogan asked if there were any other remonstrators for Petition No. 5.

Attorney Biege asked Mr. Minich for the Petition of the other owners and make that part of record.

Melissa Mullins Mischke said that we have another letter of remonstrance as well.

Paul Zona read the letter:

To the La Porte County Board of Zoning Appeals:

This letter is to inform you that I'm not in favor granting a variance for a two horses on less than three (3) acres of land at 4118 S. 150 W., La Porte, Indiana 46350. However, if the Lehman's would purchase adjacent property, I would not be opposed. The additional land would give the animals the space they need. Thank you for allowing me to submit my comments in writing. Tim & Cathy Lindewald.

5. Dwayne Hogan asked if there were any other remonstrators this evening for Petition No.

Dwayne Hogan asked if there were any questions or comments from the board.

Paul Zona asked Mr. Lehman if there is any way you can look at buying the other two (2) acres.

Mr. Lehman said that the price that they offered for us to purchase that was basically too high priced and that it wasn't comparable to what the land is worth.

Glen Minich asked who the landowner is for that two (2) acre parcel.

Mr. Lehman stated the Colliers.

William Eaton asked Mr. Lehman where the horses are at now.

Mr. Lehman said that they're currently being boarded in a self care facility to the west of Westville.

Melissa Mullins Mischke asked Mr. Lehman when they purchased the property.

Mr. Lehman stated in June.

Melissa Mullins Mischke asked Mr. Lehman if he was made aware last June that there was an ordinance that restricted the use of animals on the property with less than three (3) acres.

Mr. Lehman said that the way it was presented was the fact that there was this process to make a request for a variance.

Paul Zona asked Mr. Lehman if they said it will be no problem.

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Mr. Lehman said that nobody ever said there would be no problem. Mr. Lehman said that they just told them about the process. Mr. Lehman said that they looked at a lot of property before they purchased this piece with less than three (3) acres.

Paul Zona said that he goes past to many establishments/homes that they know how to raise horses. Mr Zona told Mr. Lehman he bought this property in June knowingly, he's sorry. Mr. Zona said that he would reconsider if you buy----have enough acreage. But the law is the law.

Dwayne Hogan asked if there were any other questions or concerns from the board.

William Eaton made a Motion for Matthew & Tracey Lehman to have two horses on less than three (3) acres of land be denied for the simple fact that there is not enough property. This property is located at 4118 S. 150 W., La Porte, Scipio Twp., zoned Ag. Paul Zona and Melissa Mullins Mischke seconded.

All approved. Motion carried 5-0.

Dwayne Hogan said that our next Petition at the request of Attorney Brad Adamsky is going to switch #6 and #7 and we will hear Petition No. 7 first.

7. The Petition for Harvey Adams, by attorney Brad Adamsky be allowed to continue the commercial use, specifically light industrial and warehouse storage on the original parcel as well as on the two adjoining parcels he is purchasing, contingent on the granting of this use variance. This property is located at 7044 N. Highway 39, and additionally he is seeking to purchase an additional three hundred and fifty feet of road frontage to the north of this parcel as well as an additional two hundred and twenty five feet of road frontage to the south, La Porte, Springfield Twp., zoned A1.

Legal work complete. There are receipts for attempted mailing. Remonstrators present.

Attorney Brad Adamsky, Newby, Lewis, Kaminski & Jones, 916 Lincolnway, La Porte.

Attorney Adamsky said that Mr. Adams is looking to purchase property beyond his existing property. Attorney Adamsky said that he needs to point out that property that is located at 7044 N. Highway 39 was previously zoned Industrial under the old ordinance. Attorney Adamsky said that his family has owned that property since the 80's. Attorney Adamsky said that as it currently exists under the new ordinance it would be preexisting nonconforming use, but since he's buying land and expanding his foot print there he would lose that. Attorney Adamsky said that ultimately what they're going to be looking at is a Petition to rezone through the Plan Commission, but since he's looking to purchase that property to the north and the south

of him right now they want to make sure that he's able to continue the use of his property as a commercial use/light industrial warehouse use.

Dwayne Hogan asked what he's doing there.

Attorney Adamsky said Double AA Raintite is his company. Attorney Adamsky said that there is some storage there and he believes that there are rubber roofs that they repair.

Paul Zona asked attorney Adamsky if they're planning on expanding it for bigger storage.

Attorney Adamsky said that they're looking at having a more marketable piece of property in the future.

7. Dwayne Hogan asked if there were any remonstrators here this evening for Petition No.

Remonstrator

1. Tina Young Scherb, 3069 E. US Highway 20, Rolling Prairie. Ms. Scherb said that she is the owner of the farmland that surrounds his and she just wants to be sure there is not going to be any pollution or environmental concerns down the road since she doesn't know what industrial means and this is valuable farm land.

Attorney Adamsky said that he believes that his clients are purchasing the property from the Scherbs.

Dwayne Hogan asked if they're not planning anything else on environment impact.

Attorney Adamsky stated no.

Dwayne Hogan asked if there were any other remonstrators for Petition No. 7.

Melissa Mullins Mischke asked if the building is for storage.

Dwayne Hogan asked if they manufacture that product there.

Attorney Adamsky stated no. Attorney Adamsky said that it is an existing nonconforming use. Attorney Adamsky said that it is going to continue there with or without the purchase of this property. Attorney Adamsky said that again they will be going before the Plan Commission at some point seeking a rezone since this was changed within the ordinance from Industrial to Agricultural.

Dwayne Hogan asked attorney Adamsky if there are any environmental concerns there currently.

Attorney Adamsky said not as far as he knows.

Paul Zona said that he doesn't live too far away and they have been care takers since they took it from the previous owners. Mr. Zona said the previous owners we will not talk about.

Mr. Zona said that the property is very quiet and he doesn't see much movement around there. Mr. Zona said that they've kept it up.

Paul Zona made a Motion that the Petition for Harvey Adams, by attorney Brad Adamsky be allowed with no stipulations and it covers both properties north and south. This property is located at 7044 N. Highway 39 and additionally three hundred and fifty feet of road frontage to the north of this parcel as well as an additional two hundred twenty five feet of road frontage to the south, La Porte, Springfield Twp., zoned A. Melissa Mullins Mischke seconded.

All approved. Motion carried 5-0.

6. The Petition for Talon Farms, LLC, by attorney Brad Adamsky to conduct their peat harvesting operation under the same standards as imposed by the county at the time they purchased their property in 2011. This property is located as vacant land on or near 1125 S. and 750 E., Walkerton, Johnson Twp., zoned A.

Legal work complete. Attorney Biege said that there was a mail attempt to Brad & Donna Lawrence . No remonstrators present.

Attorney Brad Adamsky, 916 Lincolnway, La Porte, Indiana. Attorney Adamsky said that he is here on behalf of Talon Farms, LLC as the property owner. Attorney Adamsky said that he has with him tonight in the audience Rhett Burgess and John Young, who are two principals of that company and also very experienced in the peat harvesting operations, both in La Porte County and the State of Indiana the last thirty five to forty years.

Attorney Adamsky said that this was a piece of property which was purchased at the end of 2011 at the time the old ordinance was in effect. Attorney Adamsky said that they went to the Building Commissioner, which at that time was Ray Hamilton, to ask basically under both the old ordinance and the new ordinance if they were going to receive the same treatment as peat harvesting operations has done in the past. Attorney Adamsky said that the reason for that is that the county was very aware of the single incident that shed a negative light on this industry.

Attorney Adamsky said at the time they talked with Mr. Hamilton, Peat Harvesting has always been treated as an agricultural use in the county. Attorney Adamsky said that they found out after the purchase that the ordinance has language in it that to trump into sort of a mining operation standard. Attorney Adamsky said that they don't believe that is appropriate, but that's

not 'up to this board to address tonight, that is going to be addressed through the Plan Commission and ultimately the La Porte County Commissioners.

Attorney Adamsky so with focusing that larger issue under this specific property, they are asking that this property was purchased in 2011; that efforts were made and expenses incurred as far as setting up the operation where it was located, while there is no specific construction or operation done on this property, there has been enough to say that there has been a vested interest and it should be treated under the same manner that it was under the prior zoning ordinance. Attorney Adamsky said that after talking with Mr. Biege and Ms. Polan for the last few months, he doesn't want it to seem like they're just suddenly showing up in October of 2012. Attorney Adamsky said that this has been an ongoing discussion throughout this year as far as what the new ordinance is ultimately going to say and how they were going to be treated for this property.

Attorney Adamsky said that Mr. Biege pointed out that the old ordinance did actually have a reference to Peat Mining and it did have some requirements that were in there depending on where the location was and if you were within two hundred (200') feet of residential, which they're not. Attorney Adamsky said that even then, you'd have to have to fifty (50') feet from the property line, which they are. Attorney Adamsky said that the board may request a plan be submitted and there is an issue of a potential bond for reclamation of the property. Attorney Adamsky said that has never been enforced in the past thirty years or so. Attorney Adamsky said that they are just asking for the same treatment under the old ordinance as they would have if the new ordinance would not have been passed after they purchased the property.

Attorney Adamsky said that they understand that ordinance was being drafted at the time the property was purchased, but again doing their due diligence and talking to the Building Commissioner, they felt was sufficient to make sure they were going to be able to continue their use of the property as they intended to when they purchased it.

Paul Zona told attorney Adamsky that this board reversed their decision once before on Peat Mining.

Attorney Adamsky said that he was not aware of that.

Paul Zona told attorney Adamsky that they reversed it against Mr. Dankert in the past. Paul said that the problem was there were people----they were far enough away, but he was creating a hell of an amount of dust and a man was dying of lung cancer anyway.

Attorney Adamsky said that he thinks that is understood even with in industry that Dankert was the exception. Attorney Adamsky said that there is a memo with a couple of comments that have been prepared by Mr. Burgess previously submitted to the county. Attorney Adamsky said that one of the things that they point out is that very issue; they are very aware of the neighboring and the adjoining properties to the point where there is dry seasons and what is going to be affecting dust; they're going to stop the transportation on it. Attorney Adamsky said

that Mr. Burgess told him that there was a road that was previously gravel, and maybe against his business partner, he paved that road to avoid that situation.

William Eaton asked attorney Adamsky if this is the company that caused La Porte County to lose that road.

Attorney Adamsky stated no.

William Eaton asked attorney Adamsky if they were aware of that.

Attorney Adamsky said that they are aware of that and that is why they approached Mr. Hamilton last year, even prior to purchasing the property. Attorney Adamsky said that they were also aware of that from the county's perspective that the county was going to come in and be more restrictive and they wanted to be aware of those restrictions.

6. Dwayne Hogan asked if there were any remonstrators here this evening for Petition No.

Dwayne Hogan asked if there were any questions or comments from the board.

Glen Minich said that he was made aware of the problem with the road in the county and he said that he doesn't have the expertise in this, but he was wondering whether we should restrict how close to the road that this could be mined.

Paul Zona said that they are responsible for any damages incurred.

Attorney Biege said that while Mr. Adamsky's argument is eloquent, he wants to make sure that Peat Mine is treated under the old code and the new code; there are not a lot of differences between the two. Attorney Biege said that in the old code, there is still two hundred (200') foot setback from residential area, fifty (50') foot setback from lot lines. Attorney Biege said that under the old code the board may establish rules with regard to use boundary lines to be excavated, vehicle access, lighting, grading, seeding and landscape approvals. Attorney Biege said that under the new code for a special exception, there is site plan requirement and he thinks this is the key. Attorney Biege said that there is supposed to be a report from a soil scientist, or soil engineer and an erosion control planner. Attorney Biege said other than that there aren't a lot of differences between the two. Attorney Biege said that they would have been subject to the old code no question, whether they're grandfathered in under the new code is arguable.

Attorney Biege said that he read it and he researched it, and he doesn't believe that they're grandfathered in under the new code. Attorney Biege said that there is not an ongoing operation. However, Mr. Adamsky alleges that they expend significant resources and time in expectation of engaging in Peat Mining Operations. Attorney Biege said that the law says where someone expends such resources, money and time to the point where they have a vested property

right (whatever that is), that they're still grandfathered in and the new code provisions do not apply. Attorney Biege said that generally looking at the old code would be useful, but the board does have the authority and power to impose restrictions. Attorney Biege said again, between the two, what it really boils down to is soils and some monitoring when it is put back.

Attorney Adamsky said that obviously their position is that they have vested interest in this property under the old rules. Attorney Adamsky said that also under the old ordinance, there is the manner how the old ordinance was enforced, or wasn't enforced. Attorney Adamsky said that if you're going to start putting specific requirements on this particular property, we might have some concerns that they're being singled out, or that they're being treated differently when the old ordinance was enforced. Attorney Adamsky said that being said, he thinks that they're going to be reasonable with whatever the board requests. Attorney Adamsky said that obviously they want to engage in business in La Porte County and we want to continue to engage in business in La Porte County. Attorney Adamsky said that the larger issue is as far as whether Peat Harvesting falls under harvesting or mining operation, they still plan on addressing that at the county level.

Paul Zona said that he thinks that it is more of a harvesting operation, but he stills feels as a board that we should put some kind of restrictions on there if the board so deems. Paul said that his personal opinion is the fact that if Talon Farms doesn't abide by it, they have the right to pull the plug.

Attorney Adamsky said that is understandable, it is also understandable that any damage caused they would be responsible for that.

Dwayne Hogan asked if there were any comments or questions.

Paul Zona made a Motion that the Petition for Talon Farms, LLC, by attorney Brad Adamsky be granted with the following stipulations:

1. They will be held responsible for any damages incurred, such as roads disappearing.
2. They must do some kind of maintenance on dust control.
3. That this board still has the authority to pull the plug.

Attorney Biege that he doesn't know if this is a problem or not, just as an example, the new code we have a slope requirement and a landscaping requirement.

Paul Zona asked attorney Adamsky if they submitted anything from a soil scientist.

Attorney Adamsky said that they are not aware of a soil scientist that would do this sort of research.

Attorney Biege said that he commends attorney Adamsky how he characterizes this and he's doing his job, but it is defined as mining in the old code and it is defined as mining in the new code. Attorney Biege said that he's not advocating any position, but let's be clear on what it is now. Attorney Biege said that he has to compliment Mr. Adamsky to his clients. Attorney Biege said that he has been in absolute consistent contact with him with regard to rewriting the zoning code.

Paul Zona said that we never had a soil scientist in the past, but we need a soil scientist of some kind.

Attorney Adamsky said that there isn't a requirement for a soil scientist under the old code, so you are extending that.

Attorney Biege said as an example under the new code it says a report by a qualified soil scientist, soils engineer or geologist, the proposed operation will have upon the watershed of the area, with the particular attention being devoted to the water table, and, if water bodies are to be created the anticipated permanence of such. Attorney Biege said that it has to do with the water table. Attorney Biege said that would be the purpose for all five soil scientist, soil engineer, or geologist.

Paul Zona said that would fall in the soil and water conservation.

Attorney Adamsky said that they have major concerns with that becoming an issue.

Rhett William Burgess, 15215 Manning Street, Leland, Indiana.

John W. Young, Hamlet, Indiana.

Mr. Burgess said that John has been in business in La Porte Community since 1979. Mr. Burgess said that he was for ten years and he left and came back in 2008. Mr. Burges said that they've harvested peat off of many properties and have always been a responsible corporate citizen. Mr. Burgess said that all they are asking is that they be treated under the old zoning code the way it was with the stipulation that it covers the water front and any damage that is done they're going to fix; whatever that damage is. Mr. Burgess said that he has a beautiful sixty acres lake all contoured and fishing cattle that he's going to join in his senior years.

Mr. Young said that they have always tried to maintain labor relations.

Paul Zona said that Millborn Peat always watered when they need to.

Attorney Biege said that he thinks that is where some of the discussion comes in, what's damage? Attorney Biege said that he's not advocating use of either section, but he thinks that is the purpose of some of the changes or amendments to the new code.

Attorney Adamsky said that one would clearly have damage if the road is being washed out. Attorney Adamsky said that the goal in any of the operations is to leave the property better so it is useable in the future.

Attorney Biege said that the soil scientist comes in if it comes under natural resources protection.

Dwayne Hogan asked if there are any questions, comments, concerns, or any type of clarification.

Dwayne Hogan said we have a Motion on the floor.

William Eaton seconded.

All approved. Motion carried 5-0.

Dwayne Hogan asked if there was any other business this evening for the BZA.

Attorney Biege said that when he was first appointed with the board, he asked the Building Commissioner how we determine who an abutting property owner is. Attorney Biege said that his response was we check. Attorney Biege said that the Blint hearing shed some light and the board asked me to check this out who received notice and who didn't; apparently petitioners go to the real estate office and they look themselves and it's never verified by anyone.

Attorney Biege said that if the board takes the position that's what they want to happen, that's fine, but he's not sure the board is aware of this and he wasn't aware of this. Attorney Biege said that he would check to make sure that the list is correct. Attorney Biege said that whatever they bring up to him he doesn't have any way of verifying that. Attorney Biege said that we come to the practical problem whose responsibility is it at the county level. Attorney Biege said that he could certainly check before the hearing, but it is a charge to his time.

Attorney Biege said that Mr. Hinchman said that he's not a part of the BZA and Annemarie's staff who would have to go over this. Attorney Biege said that he brings this up to the board because he's not comfortable with the accuracy of the list with the Petitions when we're relying solely upon the petitioner with that verification.

Annemarie Polan, Building Commissioner said that she thought that real estate was checking it all along. Annemarie said that in our book the notices are supposed to come from the

real estate office. Annemarie said that they have the records and they're the bookkeepers. Annemarie said that they would have all the current changes.

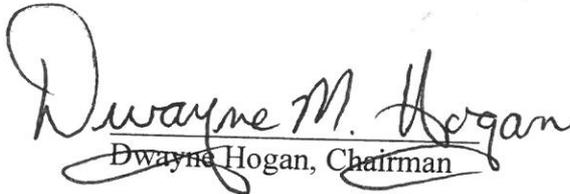
Attorney Biege said that he has realized that they're not counting anyone across the street and that's not correct. Attorney Biege said that abutting means next to.

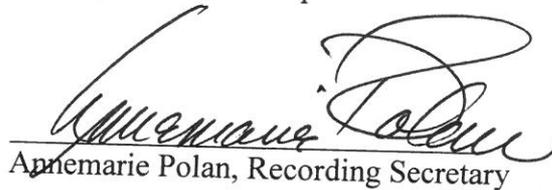
Attorney Biege said that on October 30th the Plan Commission and the County Commissioners are having a joint public hearing for Amendment to the Zoning Code for Adult Entertainment Businesses and the Proposed Conduct and Licensing Ordinance for Adult Entertainment Businesses.

Dwayne Hogan asked if there was any other business.

Paul Zona made a motion to adjourn. Melissa Mullins Mischke seconded. All approved Motion carried 5-0.

There being no further business, meeting adjourned at 7:25 p.m.


Dwayne Hogan, Chairman


Annemarie Polan, Recording Secretary