



# LAPORTE COUNTY PLAN COMMISSION

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**ANNEMARIE POLAN**  
Building Commissioner

November 19, 2013

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, November 19, 2013, at 6:00 p.m. in the Assembly Room of the County Complex.

MEMBERS PRESENT:      Glen Minich              Wally Pritz  
                                 Candice Nelson          Melissa Mullins Mischke

OTHERS PRESENT:      Annemarie Polan, Recording Secretary, Attorney Doug Biege and  
Darlene Pavey, Secretary

Pledge of Allegiance.

Melissa Mullins Mischke said that she will entertain a Motion for approval of the meeting minutes of October 15, 2013.

Wally Pritz made a Motion to approve the meeting minutes. Candice Nelson seconded. All approved. Motion carried 4-0.

- 1. The Petition for Dan Kravitz** to put an in-ground pool in the front yard. Mr. Kravitz is adding a two-story addition (1670) to an existing residence on an existing property meeting the required setbacks. This property is located at 101 Chickadee Trail, Michigan City, Springfield Twp., zoned R1B. (**Section 16.04 (a), referencing pools in the Joint Zoning Ordinance.**) (This matter was tabled from the October 15, 2013 meeting.)

Attorney Biege said if the Board might remember, we had mail notices last time, but we didn't have publication. Attorney Biege said notice is adequate.

Melissa Mullins Mischke said that she needs a Motion to remove this from the table.

Candice Nelson made a Motion that we remove it from the table. Wally Pritz seconded.

All approved. Motion carried 4-0.

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Melissa Mullins Mischke asked Mr. Kravitz what he would like to do.

Mr. Kravitz said that they would like to put a pool in the front yard and add an addition to an existing single family home. Mr. Kravitz said that he brought some drawings last time he was here and again today. Mr. Kravitz said that the reason for having the pool in the front is that there are setbacks in the back that don't conform at all; there is kind of a forest in back and they wouldn't get any sun back there.

Mr. Kravitz said that if you look at the drawing, you can see the Chickadee side where the length of the pool is, they are actually going to build up a hill and you won't even see it from the street. Mr. Kravitz said that it becomes one big single family home connected through a screen porch in the middle.

Mr. Kravitz asked Darlene Pavey if the variance is strictly for the pool.

Darlene Pavey stated that is correct.

Melissa Mullins Mischke asked if there are any remonstrators here this evening for Petition No. 1.

Melissa Mullins Mischke asked if there are any questions from the Board.

Wally Pritz asked Mr. Kravitz if he's going to fence the pool.

Mr. Kravitz said that there is a fence that runs from one end of the house to the other end of the new house and it probably goes about fifteen (15') feet. Mr. Kravitz said that they're still approximately ten (10') feet beyond the setbacks from the street. Mr. Kravitz said that they're about thirty-five (35') feet off the house and then they're going to build up to the land so that you wouldn't even see the pool from the street with the fence around it.

Wally Pritz asked Mr. Kravitz what kind of a fence he's putting up.

Mr. Kravitz said that in the pillars that you see, he guesses they're simple squares; it's stone and the rest of the fence is kind of an engineered lumber to look like wood, but it's insect and termite proof.

Glen Minich said that the only question that he has is actually how many --- what are we giving him the variance for -- just the pool being in the front yard -- is it a setback to the side, or how many issues are there.

Annemarie Polan, Building Commissioner, told Glen that it is just one issue. Annemarie told Glen that the addition meets the setbacks. Annemarie said that the addition he's going to put on meets the setbacks and the variance for the pool.

Glen Minich asked if there are any remonstrators on this.

Melissa Mullins Mischke said that if there are no other questions, she will entertain a Motion on Petition No. 1.

Wally Pritz made a Motion to allow Mr. Kravitz to put an in-ground pool in his front yard be granted at 101 Chickadee Trail, Michigan City, Springfield Twp., zoned R1B. Glen Minich seconded.

All approved. Motion carried. 4-0.

**2. The Petition for Donald Jr. & Charlotte Blint to operate an auto repair business.**  
This property is located at 6226 E. Bootjack Road, Rolling Prairie, IN, Wills Twp, zoned R1B. (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.)

Mr. Blint was granted a variance on October 16, 2012 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 and not selling any cars. All approved. Motion carried 5-0.

Mr. Blint is before the Board of Zoning Appeals for review and compliance of the variance that was granted on October 16, 2012.

Annemarie Polan, Building Commissioner, said that that this matter is tabled to December 17, 2013.

Attorney Biege asked Annemarie if this was continued prior to the meeting.

Annemarie Polan, Building Commissioner, said that he hasn't been here yet – he was going to come in October and due to various misunderstandings, we let him go until December. Annemarie said that Mr. Blint was here a year ago and he had to come back.

Attorney Biege said to make sure the record is clear, we will show that this is continued.

Glen Minich said that he's sorry if there was anyone in the audience for this Petition.

Melissa Mullins Mischke said that she will also mention that if there is anyone in the audience for Petition No. 4 for Ashley Hundt and David Hedrick to operate a one chair hair salon at that residence has been removed from the Agenda as well.

- 3. The Petition for Allen Stevens, Jr. and Heather J. Stevens to construct a new home twenty feet from front and back property lines instead of the required twenty-five feet and to raise ten (10) hen chickens for eggs. This property is located at 4124 W. Volk Road, Hanna, IN. Hanna Twp., zoned R1A. (Section 04-04, referencing setbacks in residential and Section 14.02 on animals in the Joint Zoning Ordinance.)**

Attorney Biege said that legal is adequate.

Allen Stevens said that he and his wife Heather are petitioning the Board for permission to build a new construction house within twenty feet of the front property lines and twenty feet of back property lines. Mr. Stevens said that if you would look around the community of Hanna, it is very consistent with all the surrounding houses. Mr. Stevens said that they are also looking to raise ten (10) chickens (hens only) for eggs.

Melissa Mullins Mischke asked Mr. Stevens to state his current address for the record.

Mr. Stevens said that it is 13002 S. 450 W., Hanna, Indiana 46340.

Melissa Mullins Mischke told Mr. Stevens that although she does live in the area she did not have any trouble finding your location, but she understands that all the Board members had difficulty finding the property location and she just wanted to make a generalization to please make sure that you're staking your locations when your apply for your permit.

Mr. Stevens said that there is some on-going confusion about the actual road name, whether it's Old 30, or it's West, or its Volk Road. Mr. Stevens said that there was also a little confusion up in the building office when they were getting an address. Mr. Stevens said that you guys at some point in time clarified what the road is.

Glen Minich asked Mr. Stevens if he's actually asking for two variances – one is for the setback and the other is for chickens.

Mr. Minich asked Mr. Stevens the size of the property.

Mr. Stevens stated it is .914 acres.

Melissa Mullins Mischke said that the property is kind of an irregular shape, is it not.

Mr. Stevens said that it is long and narrow.

Melissa Mullins Mischke said that it is situated between a railroad track and the Old US 30.

Mr. Stevens said the corner of Volk Road, or West Street, yes.

Melissa Mullins Mischke asked Mr. Stevens if he recalls what the property was used for previously.

Mr. Stevens said that he's heard from some of the old timers in town that it was some kind of an agricultural business there – once upon a time – maybe the 50's or 60's – farm chemicals, or something of that nature.

Melissa Mullins Mischke asked if there are any remonstrators here this evening for Petition No. 3.

#### REMONSTRATORS:

1. Kim Griffin, 4123 W. 1350 S., Hanna. Ms. Griffin said that they were here twenty (20) years ago and Alan wanted to do the same thing. Ms. Griffin said that it's basically railroad property – it's very narrow. Ms. Griffin said that they purchased their property because nothing could be built – it's a strip of land – he paid back taxes on it because the railroad didn't pay taxes. Ms. Griffin said that twenty years ago they ruled it was still rail road property even if they didn't pay their taxes.

Ms. Griffin said that she's in a subdivision – they have to follow rules. Ms. Griffin said that if your land wasn't subdivided, you had to have at least a minimum of two acres. Ms. Griffin said that it's not farm ground – they are right in town even though it sounds like it's out in the country. Ms. Griffin said that she's not thrilled with the chickens. Ms. Griffin said that there are crazy events that have happened—it has just been a bag of tricks. Ms. Griffin said that there has been a donkey put over there. Ms. Griffin said that he had a garden this year and when she walked up to him he said that he thinks he finally did something – excuse her language—that's not going to piss anyone off .

Ms. Griffin said that she will let Laura come up because she's done a lot of speaking with the railroad.

Candice Nelson asked Ms. Griffin if she has a copy of a covenant.

Glen Minich said that this property is just an adjacent property and it's not in a subdivision.

2. Laura Schaffer, 4091 W. 1350 S., Hanna, Indiana.

Melissa Mullins Mischke asked Ms. Schaffer her concerns.

Ms. Schaffer said that her concerns are that anything that has been done on that property before has been said one way and done another. Ms. Schaffer said that there was at one time about five

years ago where Nipsco was tapped illegally --- there wasn't actually no meter (inaudible) was made and it was actually tapped into the Nipsco line.

Ms. Schaffer said that when they went there the railroad property was a buffer – the railroad tracks are literally right there and when they first moved there, there was a lot of train activity – there was a nice buffer of trees and brush and it also helped with the snow in the winter time. Ms. Schaffer said that their living room faces that way – their bedroom faces that way – their family room faces that way.

Ms. Schaffer said that the strip of land he owns is widest, which isn't very wide right in front of their houses and their neighbor's houses and that is where she believes the structure would be going.

Ms. Schaffer said that a few years back he stated that he wanted to build a pole barn and work on larger vehicles and then this summer when he planted the garden it was supposedly for the girl scouts so they could earn their badges. Ms. Schaffer said that she really doesn't know him personally, and she's sure he's a nice man, but you just don't want to every time you see somebody over there think 'oh no' what's going to happen now. Ms. Schaffer said that they were there when the donkey was there – she knows people change over the years, but the things that keep happening over there are not changing and she feels like she doesn't know what the structure says – her copy looks like it says 12,232 square feet--she really never got a copy, the copy came from her neighbor. Ms. Schaffer said that she's worried about other things happening over there besides the residence.

Ms. Schaffer said that she can't see a residence going there because when the trains sit there from the Co-op – they're right there and they feel the shaking and we can hear the trains – she just doesn't see a home going there. Ms. Schaffer said that she has a lot of concerns. Ms. Schaffer said that she would feel like she would be putting her family in danger with the railroad being so close. Ms. Schaffer said that she doesn't know if the railroad was contacted for encroaching on their --- footage – easement and Highway because it's not a very big strip of land.

3. Michael Wardell, 4079 W. 1350 S., Hanna and he's across the road from 1350 and in between Route 30. Mr. Wardell said that he owns an acre and an eighth of property, which is just adjacent to where he wants to put this building. Mr. Wardell said that the only thing that he has to say is that he does not trust him to do what he says. Mr. Wardell said that he had an old tar – one of those things that you do to roads – the sprayer things he had sitting over there for about six to seven months on the South East corner of his property across the road and when he first moved in there he had a camper sitting over there and that pole where he was hooked onto which was on his property, he was running electricity and he wasn't paying for it. Mr. Wardell said that he just doesn't trust him and he said that he's going to have chickens -- Mr. Wardell said that if they are on his property they are not going to be alive.

Melissa Mullins Mischke asked if there were any additional remonstrators for or against Petition No. 3.

Attorney Biege asked Mr. Stevens how he acquired title to the property.

Mr. Stevens said it was a quit-claim-deed and he would like to present to the Board a deed and a title action signed by Judge Alevizos and twenty years of paid taxes. Mr. Stevens said that some of these people remonstrating tonight have repeatedly tried to question his ownership.

Attorney Biege asked Mr. Stevens if he could see the deed as well as the title work.

Mr. Stevens up at the bench.

Attorney Biege asked Mr. Stevens if he knows if there is any preexisting easement on the real estate.

Mr. Stevens stated no.

Attorney Biege said that he has no further questions. Thank you.

Melissa Mullins Mischke asked if there were any additional questions of the Board at this time.

Glen Minich asked Attorney Biege if this is an easement between the railroad and that property, he's wondering if there is going to be any problem as far as our county code in allowing a house that close to a railroad. Mr. Minich said that in most cases we have a significant buffer between them and the adjoining properties.

Mr. Stevens said that there is seventy feet between the county's easement on Old US 30 where that ends and where the railroad right-away begins is seventy feet wide.

Mr. Minich said that from the edge of their easement to the rail is extremely narrow in that spot.

Mr. Stevens said that the rail actually sits from the property line between him and the railroad --- the rail is probably another fifty-five to seventy feet in.

Mr. Minich said that is not what he observed. Mr. Minich said that he doesn't believe that to be factual.

Attorney Biege said that he doesn't believe the code has any additional setback requirements for railroads, but with that, he thinks that comes with practicality and the necessity of the BZA to take a look at unique situations like this. Attorney Biege said that he doesn't think that the zone

took into account a wider buffer from a railroad than what we would normally have on a traditional building setback.

Melissa Mullins Mischke said that she agrees and she thinks that there is some concern about what the rails (inaudible) rails or right-of-way, if that in fact applies to this particular parcel. Melissa said that her experience is that they generally do have right-of-way of access to their rails.

Mr. Stevens said that this is seventy feet between the railroads right-of-way and the county's right-of-way and there aren't any covenants, right-of-ways, (inaudible), or easements on the deed.

Mr. Minich told Mr. Stevens that he thinks he laid the property out as good as he possibly could, but his problem is that the space between you and the actual railroad is so narrow – it's almost a safety concern even though the railroad for some reason didn't take a wider easement at that point -- it's still being used for railroad operations.

Mr. Stevens said that he's not going to put his family into harm's way – he's not going to put himself into harm's way. Mr. Stevens said that there is a good distance between his property line and the railroad. Mr. Stevens said that you guys probably have a Beacon sheet where you can see this.

Board members speaking amongst themselves.

Attorney Biege told Mr. Stevens that he attached a picture to his Petition and he wanted to know if that was his drawing.

Mr. Stevens stated yes.

Attorney Biege asked Mr. Stevens where the measurements came from.

Mr. Stevens said that they came off the county's information.

Attorney Biege asked if that was Beacon.

Mr. Stevens stated yes.

Wally Pritz asked Attorney Biege if Mr. Stevens is asking for a variance on a setback and if he drops the chickens, then basically all we're concerned with is the setbacks.

Attorney Biege said that there would also be a variance on the road frontage -- Attorney Biege said that it's a preexisting non conforming lot and it would only be on the setbacks. Attorney Biege said that the lot width is only seventy feet, preexisting, a non conforming lot, so it's grandfathered in.

Wally Pritz asked Mr. Stevens if he has had anyone check on the septic system. Mr. Stevens said that he was approved by the county in 1994 and they did a perk test; he sees no problem with it passing right now. Mr. Stevens said that the soil is still the same.

Wally Pritz said it's almost a twenty year difference.

Mr. Stevens said with what he read on line he doesn't feel he will have a problem getting it. Mr. Stevens said that he thinks that is a prerequisite in getting a building permit.

Melissa Mullins Mischke told Mr. Stevens that he would have to apply for a septic permit and a well through the Health Department.

Attorney Biege said that he's looking at the Quiet Title here. Attorney Biege said that the way Quiet Title works with the Courts it's only as good as who the named defendants are. Attorney Biege said that there are no named defendants other than everyone in the world. Attorney Biege said that we have no way to verify whether or not the railroad or someone else who may hold an easement – he's not intimating that you didn't, but we have no way to verify who may or may not have received notice of this Quiet Title search. Attorney Biege said that if they did not receive notice, this Order would not be effective against them. Attorney Biege said in other words, this is not proof that no easements exist. Attorney Biege said that the deed is from him to him and his wife.

Attorney Biege said again, he's not questioning ownership, what he's saying is, he can't verify the point of whether or not an easement may or may not exist other than his representation. Attorney Biege said that the other part he wants to mention, the legal description has no dimensions-- just runs from boundaries. Attorney Biege said that he's assuming that this is consistent with Beacon – this drawing, but there is no way he can verify what the width of the lot would otherwise be because this is not a mete's and bounds description.

Wally Pritz asked Attorney Biege if Judge Alevizos would have some way for someone to check.

Attorney Biege said that's not really the way a Court works. Attorney Biege said that it's presumed that when someone petitions for Quiet Title they do a title search and notify all judgment lien holders or easement holders. However, if they don't do it, there is no way for the Court to verify because legally it's not effective against someone who's not named as a defendant – that's why the Court doesn't require – it's presumed it's done, but if it's not all done, they'd have to go back and do it again.

Glen Minich asked Attorney Biege if we could request a title search to make sure there is no easement on this property.

Attorney Biege said we could.

Board members speaking amongst themselves.

Glen Minich said that he thinks that would be in our best interest to serve everybody and to serve you to request a title search to check for any easements that may be outstanding on that property. Glen said that he's mostly concerned because of the narrowness of an easement that the railroad took. Glen said that he understands that property was previously used almost for an agricultural and/or industrial use being loaded into anhydrous or natural gas on that property. Glen said sometime just like if you've had a siding on a railroad they would have allowed them to have that narrow spot, but perhaps still have an easement there notwithstanding. Glen said that he thinks that we need to rule out that is not the case here.

Mr. Stevens said that with all due respect, we came here to hear the Petition; we didn't come here to scrutinize the ownership, or second guess Judge Alevizos' and impugn his ownership and he means that with all due respect.

Attorney Biege said that part of what we do is to verify that the Petitions correct and it's my job to make sure there is no question in ownership on the property. Attorney Biege said yes, that is part of what we're doing here and the information that you showed me does not without a doubt cancel out any easement and he has to make sure that he lets the Board know that. Attorney Biege said that ownership and previous easements are two different things. Attorney Biege said that with the width of this property lying next to an old Highway as long as the railroad, it's not beyond the Board's power or the reasonability to verify that no easements exist. Attorney Biege told Mr. Stevens that is part of what they do.

Glen Minich made a Motion that the Petition for Allen J. Stevens, Jr. & Heather J. Stevens to construct a new home – Petition No. 3 to be continued until the Petitioner can have a title search done by a title company in search of any past easements on the property. Candice Nelson seconded.

Attorney Biege said that he would suggest that you have Mr. Stevens supply that to him and then he could advise the Board as to what he sees on the title.

Melissa Mullins Mischke asked Attorney Biege what is a reasonable time for a search like that.

Attorney Biege said thirty days usually – a two or three week turn around unless you want more time.

Mr. Stevens said that he would like to get back on the Agenda as soon as possible.

Annemarie Polan, Building Commissioner, said December 17, 2013 will be the next meeting.

Mr. Stevens asked what are the necessary steps he needs to take ---

Melissa Mullins Mischke asked Mr. Stevens if we could finish the Motion first then we will go through.

Melissa Mullins Mischke said that the Motion is to request that the item be tabled for thirty days until the December 17, 2013 meeting allowing Mr. Stevens time to have a title search performed by a reputable title company and provide those results back to our Attorney.

Melissa Mullins Mischke said that she has a Motion and a second.

All approved. Motion carried 4-0.

Attorney Biege gave Mr. Stevens his card.

Melissa Mullins Mischke asked Mr. Stevens if he has any questions on what we're asking you to do before December 17<sup>th</sup>.

Melissa Mullins Mischke said that Petition #4 for Ashley Hundt and David Hedrick has been removed from the Agenda.

**5. The Petition for G.E. Marshall, Inc.** to construct a pole barn (36x45) on a one acre parcel with no road frontage and residence. There is an existing cabin with an existing wood burner on this property; there is no septic or well to this cabin. Mr. Marshall also owns a forty four foot wide piece of property along 900 East going back 2645.73 feet to this one acre using it for ingress/egress. This property is located at 2508 S. 900 E., North Liberty, IN, Lincoln Twp., Zoned Ag. **(Section 16.02 (a) & "(b) and Section 04.03 (d) (1) and (2) in the Joint Zoning Ordinance.)**

Attorney Biege said that the affidavit of publication is proper. Attorney Biege said that there is a certified mail attempt at two of the adjoining property owners. Attorney Biege said that he has receipts for an attempt without a return receipt.

Melissa Mullins Mischke asked for name and address for the record please.

Doug Homeier with McMahon & Associates here representing Mr. Marshall, 952 S. State Road 2, Valparaiso, Indiana.

Mr. Homeier said that his client has a parcel of land – actually adjoining parcels of land and he would like to construct the pole barn on the one acre of land. Mr. Homeier said that leading to that parcel is another forty foot in width by a half mile long that gets him to this parcel that comes off of County Road 900 East. Mr. Homeier said that we're before you tonight because he would like to build an outbuilding to store his mower, tractor, 4-wheelers, log splitter, and things

of that nature for the upkeep of the property that is 36x45 foot long and with this parcel having its own key number, they have no actual frontage on a county road even though the other parcel owned by his client does front on the county road.

Mr. Homeier said that they're before you tonight to answer any questions on this Petition and hoping to obtain approval so they can get a building permit. Mr. Homeier said that there is no home on this parcel – there is a small outbuilding there. Mr. Homeier said that the actual address of the property is 2508 S. 900 W.

Annemarie Polan, Building Commissioner asked if that is 900 West.

Mr. Homeier said 900 East.

Glen Minich asked where the other frontage besides where he owns is on this narrow easement.

Mr. Homeier is up at the bench going over the site plan with the Board members.

Attorney Biege said that in addition to that forty foot strip, did you say that he has other acreage adjacent to the one acre parcel.

Mr. Homeier said yes. Mr. Homeier said that is in a wildlife preserve. Mr. Homeier said that it is part of the property, but it's not allowed to be built on so it's taxed differently because it's in a specialty program.

Attorney Biege asked how many acres.

Mr. Homeier said that it is two-hundred ten (210) acres.

Melissa Mullins Mischke asked if there are any remonstrators here this evening for Petition #5.

Melissa Mullins Mischke asked if there are any questions from the Board.

Glen Minich asked Mr. Homeier what the intent is for the use of this property – Glen said that this Board is not going to give a variance for a home back there – it's just a recreational site and as long as we are all in agreement that that's what we're doing.

Mr. Homeier said that is what he uses it for.

Melissa Mullins Mischke asked Mr. Marshall to come up to the microphone.

Melissa Mullins Mischke asked for name and address for the record.

Clint Marshall, 420 W. 100 S., Valparaiso. Mr. Marshall said that there is no residence and they don't intend to ever have a residence on the piece of wildlife habitat. Mr. Marshall said that they

just want to put up a barn to keep their maintenance equipment in and secure it – basically keep it out of the weather. Mr. Marshall said that there are various mowers, gator utility vehicle, some ATV's – things of that nature and he just wanted to get them in doors.

Melissa Mullins Mischke asked Mr. Marshall out of curiosity, the two-hundred and ten acres you have, is that north of this location?

Mr. Marshall said that its north. Mr. Marshall said that a large portion of it is to the north as well as to the west.

Melissa Mullins Mischke asked Mr. Marshall if this is classified as forest.

Mr. Marshall said that it's classified wildlife habitat.

Mr. Marshall said that he would like to clarify one more item. Mr. Marshall said that the forty feet egress access and ingress is not an easement, it's owned.

Glen Minich said that his question is for Anne, or Dar. Glen said that you name a couple of different things here for the reason – Section 16.02 (b). Glen asked if there is more than one building on this property already.

Annemarie Polan, Building, Commissioner said that there is some kind of a little –

Mr. Marshall said that there is currently – he bought this property with a cabin on it with no running water or plumbing. Mr. Marshall said that it's just a get out of the weather structure and that's the only structure out there.

Melissa Mullins Mischke asked Mr. Marshall if the pole barn will replace this small cabin structure.

Mr. Marshall said that it will be placed adjacent to that existing cabin. Mr. Marshall said that the cabin is 21 foot by 24 foot.

Melissa Mullins Mischke said that you said that there is not plumbing; is there electric or any other utilities?

Mr. Marshall said that as of two weeks ago, they ran electric down that forty foot owned parcel back to the cabin that they plan to utilize for the new pole building as well.

Wally Pritz asked Mr. Marshall if there is a lane to run the 4-Wheelers.

Mr. Marshall said that there are various paths and grass routes around feed plots out there that they maintain.

Wally Pritz asked if that is for hunting.

Mr. Marshall said that the people that owned it prior to them buying it were hunters. Mr. Marshall said that they aren't really hunters, but they keep it maintained.

Board members speaking amongst themselves.

Wally Pritz asked Mr. Marshall if there is any intention to have living quarters back there. Wally asked Mr. Marshall if he's asking for water, sewer, or septic to be brought back to that corner.

Mr. Marshall said none whatsoever.

Melissa Mullins Mischke said that if there are no further questions from the Board she will entertain a Motion.

Candice Nelson made a Motion to approve the Petition for G.E. Marshall to construct a 36x45 pole barn on a one acre parcel located at 2508 S. 900 E., North Liberty, Indiana, Lincoln Twp., Zoned Ag. Glen Minich seconded.

All approved. Motion carried 4-0.

**6. The Petition for Brent & Angela Jaybar to operate an antique business out of their barn (30x40) with a lighted sign (4x6). This property is located at 2194 E. State Road 2, Rolling Prairie, IN, Kankakee Twp., zoned R1B. (Under Schedule of Uses under retail.)**

Attorney Biege said that legal is adequate.

Melissa Mullins Mischke asked for name and address for the record.

Brent Jaybar, 2194 E. State Road 2, Rolling Prairie.

Melissa Mullins Mischke asked Mr. Jaybar what he would like to do this evening.

Mr. Jaybar said that he and his wife would like to open an antique shop in an old barn that is on their property.

Melissa Mullins Mischke if the barn is existing.

Mr. Jaybar said that it was built in 1928.

Melissa Mullins Mischke asked Mr. Jaybar what kind of operating hours they're considering – days of the week and hours during the day.

Mr. Jaybar said that they have talked with some other people kind of in the same business and they recommended that we ask for 9:00 to 9:00 seven days a week, but they really don't intend to be open that much. Mr. Jaybar said that they're going to be starting as a kind of by chance, or appointment kind of thing to see how much traffic they get and how many hours it really warrants.

Candice Nelson asked Mr. Jaybar if they will be using both floors of the barn?

Mr. Jaybar said not initially, but eventually maybe. Mr. Jaybar said that they have no idea how successful this will be. Mr. Jaybar said that initially it will open on the first floor.

Wally Pritz said that he looked at the property and it looks very nice.

Melissa Mullins Mischke asked if there were any remonstrators here this evening for Petition # 6, either for or against.

Candice Nelson said as far as fire safety if they were to do something on the second floor, how would they create a fire escape?

Glen Minich said that they would have to follow all the building codes. Glen doesn't think that will really be an issue.

Melissa Mullins Mischke asked if the hours of operation seven days a week 9:00 a.m. to 9:00 p.m. and a lighted sign 4x6?

Mr. Jaybar said that he would actually like to ask for a 6 foot tall by 8 foot wide sign if possible.

Mrs. Jaybar said that when she filled out the paper work it took her by surprise and she didn't know she needed to have a dimension that day. Mrs. Jaybar said that she thinks that he's anticipating the legs taking up a foot or two.

Wally Pritz asked the face of the sign itself not counting the legs.

Mr. Jaybar said that the face would probably be 4x8 – it will be elevated a couple of feet off the ground.

Melissa Mullins Mischke asked if there were any other questions from the Board.

Melissa Mullins Mischke said that she would like to entertain a Motion.

Candice Nelson made a Motion to approve the Petition for Brent & Angela Jaybar to operate an antique business out of their 30x40 barn with a lighted 4x8 sign and the property located at 2194 E. Stated Road 2, Rolling Prairie, Indiana, Kankakee Twp., zoned R1B. Wally Pritz seconded.

Melissa Mullins Mischke asked if there were any questions on the Motion.

All approved. Motion carried 4-0.

**7. The Petition for Franklin & Sandra Endres to construct a detached carport in front of his house (4'2") from side setback. Mr. Endres started construction not aware that he needed a building permit for this project. This property is located at 50 Dogwood Drive, La Porte, Center Twp., zoned R1B. (Section 04.04 and Table 04.04 and 16.02.)**

Mr. Endres said that he would like to get the variance changed to five foot. Frank Endres, 50 Dogwood Drive, La Porte, Indiana. Mr. Endres said that when the sheer winds came through it did some damage to their house and they had some roofers and people come over to construct some stuff. Mr. Endres said that when they were making some repairs, his wife is handicapped, she's had (inaudible), knee surgery, hip surgery and an ankle surgery so she asked to get a carport built. Mr. Endres said that they have two cars.

Mr. Endres said that the way the house is built we put it across and it did come out unfortunately crooked because the house is crooked because one pole is forty five inches, then fifty one inches and sixty one inches away from the property line. Mr. Endres said that they can move those poles back if we are allowed to have the five foot variance for the house.

Mr. Endres said that the lot next door – it's a double lot and there is no house, but there is an existing garage on this. Mr. Endres said that the house burnt down a couple of years ago. Mr. Endres said that he did not have a building permit; he had no idea that he was in violation of that and ignorance.

Melissa Mullins said that we are still waiting for confirmation; she jumped the gun and she's going to wait to make sure the legal work is complete.

Attorney Biege said that notice is adequate.

Melissa Mullins Mischke apologized for getting ahead of you on that.

Melissa Mullins Mischke told Mr. Endres said that she heard what you want to do with respect to the carport.

Melissa Mullins Mischke asked if there were any additional questions from the Board at this time.

Melissa Mullins Mischke asked if there were any remonstrators here this evening for Petition No. 7.

**REMONSTRATORS:**

1. Bill Hedge, 1033 Indiana Avenue said he's the attorney for John Esposito and he owns lots #51 and 53.

Attorney Hedge up at the Bench handing out a site plan to the Board members.

Attorney Hedge said that the first page that he handed out highlights the lot owned by the Petitioner highlighted in green. Attorney Hedge said that you will notice on one side of the property – the adjoining neighbor's property, the house is very close and maybe over the lot line. Attorney Hedge said that is already a non-conforming use.

Attorney Hedge said that the next document is actually the map that affects his property. Attorney Hedge said that the next picture shows additions from the adjoining property owned by Mr. Esposito. .

Attorney Hedge said that although Mr. Esposito is not a registered surveyor he has taken some regular training and he shot a line down the property and it wasn't easy to accomplish because of the tree on the property line.

Attorney Hedge said that Mr. Esposito's measurement shows that the building is three foot nine inches from the property line.

Attorney Hedge said that if you enclose the carport which his client has been told by his neighbor, he would be encroaching more than the three feet nine inches on his property line. Attorney Hedge said that the next picture shows the front of the carport and the location of the property, and as you can see, it's very close.

Attorney Hedge said another picture of the carport as constructed at this point from the side rear of the property. Attorney Hedge said the next picture is the rear and you can see how close this carport is to the adjoining property. Attorney Hedge said that he provided Attorney Biege a copy of the covenants and restrictions for this property. Attorney Hedge said as you can see by the deed highlighted in yellow is the covenants and restrictions of record.

Attorney Hedge said that if you look at the next document you'll find a copy of the covenants and restrictions. Attorney Hedge said to comply with the covenants and restrictions of this subdivision, the property line has to be back ten feet.

Attorney Hedge said that even if the Board were to grant their Petition, they still would not be able to construct a carport within five feet; it would have to be ten feet to be in compliance with the restrictions and the covenants of the property. Attorney Hedge said that the next document is a hard card of the structure and it shows the additions to the property.

Attorney Hedge said that it is the obligation of the Petitioner to meet certain requirements and those requirements are first: The approval of the variance would not be injurious to the public health, safety, morals, and general welfare of the community. Attorney Hedge said that there has been absolutely no evidence submitted on that point and they would submit it would be a safety hazard if there was a fire and it would make access to the back very difficult, if not, impossible.

Attorney Hedge said the second requirement is the Use and Value of the area adjacent to the property will not be affected in a substantially adverse manner. Attorney Hedge said again, there has been no evidence submitted on that requirement and there will be later testimony from a realtor that will show that it will have a bad adverse affect on the adjoining land by his client.

Attorney Hedge said the third: The Strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. Attorney Hedge said that the practical difficulties shall result from exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. Attorney Hedge said again, there has been no showing by the Petitioner that that requirement has been met.

Attorney Hedge said that they respectfully requests that the Petition be denied and that the structure be removed.

Melissa Mullins Mischke asked for name and address for the record. \

John Esposito, 510 Closser in La Porte. Mr. Esposito said that a couple of times he tried to verify the line through site. Mr. Esposito said after a couple times of that, he called a buddy of his – he and I went to Purdue North Central and took surveying courses and engineering courses; they have back ground in instrument use plus he was in construction for twenty six years and frequently had to use instruments.

Mr. Esposito said that the twelve and a half inch offset measured the area; located it; setback twelve and a half inches again to establish the property line. Mr. Esposito said that the measurement of three foot nine inches is right on.

Mr. Esposito said a few years ago he had Jim Keil do a survey for him because at one point in time Mr. Endres pulled a stake out at the lake. Mr. Esposito said back in the day, Mr. Endres said it was a pipe and it was bothering him so he paid for a new survey to acquaint themselves with the actual lot lines. Mr. Esposito said he found the pins based on the dimensions from other pins he knew existed and those numbers should be good.

Melissa Mullins Mischke asked Mr. Esposito if he had that survey with him.  
Mr. Esposito stated yes.

Board members and Mr. Esposito going over the survey.

Attorney Biege told Mr. Esposito that the survey isn't signed.

Mr. Esposito said that there was a date on the survey either 2010 or 2009.

Attorney Biege said it's dated September 3, 2009.

Mr. Esposito said that's when it was done and he couldn't find his copy at home so he called Jim and he pulled that out.

Attorney Biege asked if Jim reprinted this.

Mr. Esposito stated yes.

Wally Pritz asked Mr. Esposito if he's remonstrating because of the ten foot?

Attorney Hedge said that and also they feel it will be too close to the property line and cause safety hazards.

Wally Pritz asked Attorney Hedge if Mr. Endres would maintain the ten foot there wouldn't be any objections.

Attorney Hedge said frankly they might have an objection, but it would be irrelevant because he would be in compliance with the covenants and restrictions. Attorney Hedge said if he's ten (10") feet back, they don't have any say so.

Melissa Mullins Mischke said that the covenants and restrictions are something the Homeowner's Association is going to enforce, not something that we're going to take into consideration as part as our vote.

Attorney Hedge said that you don't need a Home Owner's Association to enforce it and Doug can confirm that for him, Attorney Hedge said that if you grant the variance it would be undermining the code and restrictions.

Melissa Mullins Mischke said that it would still be subject to those covenants and restrictions, whoever will be enforcing those. Melissa said that it's not part of their decision making process for fact finding.

Wally Pritz asked if they have a Home Owner's Association.

Attorney Hedge said that he doesn't think there is.

Wally Pritz told Attorney Hedge that his client does not have the authority to force this restriction.

Attorney Hedge said that he does. Attorney Hedge said that he's an adjoining land owner.

Wally Pritz said unless he goes to Court.

Attorney Hedge said that you don't need a Home Owner's Association to enforce the code and restrictions. Attorney Hedge said most of the new covenants and restrictions have Home Owner's Association, but those older ones do not.

Attorney Biege said that the older ones any other deed holder with the same covenants and restrictions has the right to enforce.

Attorney Hedge said that usually his covenants and restrictions are quite more extensive and have a lot more detail.

Glen Minich told Attorney Hedge that he actually asked for the structure to be taken down.

Attorney Hedge stated yes.

Glen Minich said that from the pictures that they are looking at, the garage is encroaching on nearly the same line.

Attorney Hedge said not quite.

Mr. Esposito said that the garage is roughly eight (8') foot off the line. Mr. Esposito said that the supporting pole for new construction is three ten and a half --- there is a two by twelve ribbon nailed onto it, so that takes the structure another inch and a half closer to the line. Mr. Esposito said that this structure is not done and he anticipates more being added to actually close that measurement up a little bit more.

Mr. Esposito said that the roof isn't done and the roof could even possibly have some overhang -- the simple fact he lets the water run right down the side of the building. Mr. Esposito said it's not done; this is early stages -- probably a three (3) day construction job. ---it's not like there is six months in this building.

Wally Pritz asked Attorney Hedge if he would bring back his encroachment to line up with the garage, would there be an objection at that point?

Mr. Esposito said that early in that project, Mr. Endres came to his house and in the middle of the project he told me he needed me to sign something ---- a five (5') foot variance and he just finally said no. Mr. Esposito said that they talked a minute or two and he told Mr. Endres that if he ties up with his initial garage, there is no problem because the garage is already encroaching. Mr. Esposito said that he's okay with that.

Wally Pritz asked Mr. Esposito if he's okay if the carport lines up with the existing garage.

Mr. Esposito said that he has no problem with that.

Attorney Biege said that you just said encroaching---Attorney Biege said that you're talking about encroaching beyond the building setback lines.

Attorney Hedge said that's correct. Attorney Hedge asked Wally if he's saying keeping the carport in line with the garage.

Mr. Pritz said that's correct.

Melissa Mullins Mischke said that we have another Remonstrator.

2. Attorney Brad Adamsky, Newby, Lewis, Kaminski & Jones, 516 Lincolnway, La Porte here on behalf and with Alberta Tolton; address 5972 W. Van Gogh Trail also La Porte. Attorney Adamsky said that in full disclosure, Ms. Tolton is the mother of John Esposito, the remonstrator you just heard and the owner of the adjacent property.

Attorney Adamsky said that Ms. Tolton has recently been widowed and she's actually looking to move to a smaller lot and a smaller house. Attorney Adamsky said that she will be the person building a residence on Mr. Esposito's lot more than likely.

Attorney Adamsky said that the Nilewood restrictions are certainly beyond this Board's authority, so really what he's asking for is a variance for the water front protection overlay zoning ordinance, which would require thirty (30) feet of the lot width and just to give comparison in other residential districts in the County, the single family residential would be ten (10) feet and the water front residential outside of that overlay district would be seven (7) feet.

Attorney Adamsky said that the standards that are required, again Mr. Hedge went over those. Attorney Adamsky said the approval will not be injurious to the public health, safety, morals, and general welfare of the community. Attorney Adamsky said that they do have future safety concerns that there is going to be a residence built on that vacant lot with no access to the rear of the lot if that carport is going to be four (4) or five (5) feet from the property line.

Attorney Adamsky said that Mrs. Tolton has a wealth of experience in real estate and she will stand up briefly and testify to that and also say that in her experience in granting this variance as requested would have an adverse affect of the value of the property that she's looking to build upon.

Attorney Adamsky said on the last element that the strict application will result in practical difficulties. Attorney Adamsky said that they are certainly sympathetic to the fact that Mr. Endres has already started construction and mistakes were made, but unfortunately you can't create your own hardship when you're asking for hardship for a variance, or when you're using that as one of your elements.

Attorney Adamsky said again, we join in the remonstrance of Mr. Esposito and request that it be denied. Attorney Adamsky said that he can't answer as to Mrs. Tolton's opinion if he lines it up with the garage.

Melissa Mullins Mischke asked for name and address for the record.

3. Alberta Tolton, 5972 W. Van Gogh Trail. Ms. Tolton said that is in Jongkind Park, but the mailing address is La Porte.

Ms. Tolton said that for more than thirty (30) years, she had been active as a real estate broker. Ms. Tolton said that she knows the value of covenants and restrictions of record and variances. Ms. Tolton said that every purchase agreement – every title policy – every deed includes that terminology – that they're buying that real estate, subject to covenants and restrictions of record, if any.

Ms. Tolton said that you have three opportunities on what you're buying. Ms. Tolton said that people do not abide by those rulings---Ms. Tolton said that her husband was a builder, a land developer and John Doyle did all of his surveying, came to the Board many many times always with covenants and restrictions and easements more protection of the property values within that neighborhood for subdivisions and to provide adequate area for utility easements and also for emergency vehicles – police, fire and ambulance services.

Ms. Tolton said that according to public record at the present time, the real estate improvements on this subject property that we were discussing, is a sixty-five (65) foot lot according to public records. Ms. Tolton when you look at the dimensions from the public records, on that sixty-five (65) foot lot the improvements are fifty-four (54) foot wide. Ms. Tolton said that if the easements require ten (10) foot on either side of the property, when you subtract fifty-four (54) feet from a sixty-five (65) foot lot, you have eleven (11) feet. Ms. Totlon said that certainly doesn't accommodate a ten (10) foot easement on one side or the other side.

Ms. Tolton said that when you do not care about easements, restrictions or covenants, you really devalue the real estate in that neighborhood because those things are not just built and put there because some builder or some developer has a whim and thinks "oh", this is a good idea. Ms.

Tolton said that they are put there to protect the integrity of that real estate in that neighborhood and that subdivision and obviously this property – the back yards are on water, which increases the need to have easements. Ms. Tolton said that if you don't have any access to the backyard and you have a fire, you need protection, or god forbid some little kid falls off one of the decks out there where they tie up the boats, you have a very serious problem .

Ms. Tolton said that this not only affects the integrity of the entire neighborhood, it is also a very big safety issue and her husband was the deputy assessor for Michigan Twp. for fourteen (14) years. He was the guy that went out to the properties and looked at them and saw that they were built in accordance with the building permit. Ms. Tolton said that he set an assessed value that was turned over to the auditor and you know the process.

Ms. Tolton said incidentally just a little side line, he would proud to hear me say, he was a World War II Veteran, he landed on Normandy Beach – he was in the Battle of the Bulge. He was one of those guys that went to concentration camps and has pictures that she can show you of the dead bodies that they freed up in that circumstance. Ms. Tolton said that he was a straight shooter and he would never ever in his life encroach on anything or do anything that would devalue any piece of real estate. Ms. Tolton said that she would certainly take this into consideration and she thanked the Board.

Wally Pritz said that he's looking at the covenants and restrictions dated June 4, 1947. Mr. Pritz said that if you read number 2 in the covenants it says building shall be built on any one lot in said Nile Addition closer than six (6) feet to the side lot lines and in the lot of an average width of fifty (50) feet or less. Wally said that they have sixty-five (65) feet.

Attorney Adamsky said that this lot would be at fifty-one (51) feet or more. Attorney Adamsky said that if you read the rest of that it says no closer than ten (10) feet to the side, front and rear lot lines. Attorney Adamsky said that this is clearly fifty-one (51) or more which would be the ten (10) feet on each side, front and rear.

Wally Pritz said that he reads it differently.

Attorney Biege said that it's irrelevant to the Zoning Board's decision.

Attorney Biege told Brad since his map is so small and almost unreadable, Attorney Biege asked Attorney Adamsky if he said that this is in a water front view protection overlay district.

Attorney Adamsky said that he can't tell by the county maps, but by the definition in the new county ordinance, he would say it is.

Attorney Biege told Attorney Adamsky that he's basing it on a definition in the ordinance.

Attorney Adamsky said that he's also basing it on the fact that he was before the City Zoning Board last week on a part of Pine Lake which is in the City Ordinance.

Attorney Biege said that he will represent to the Board that he can't tell.

Glen Minich asked what is that standard.

Attorney Adamsky said thirty (30%) percent.

Attorney Biege said thirty (30%) percent of the width of the lot so if this is a sixty-one (61) foot lot, nine point one (9.1) feet would be permissible in the overlay district. Attorney Biege said that this would be the most restrictive side lot dimensions. Attorney Biege said that he can't relay to the Board whether or not --- the maps determine where the district is and his map is too small.

Ms. Tolton said that she will be the one that will be the most directly affected as she will be the one who will be putting her home on the market since her husband passed away a little over a year ago and mowing two thirds of an acre is not her idea of a good time, even though John Deere gives her a little help from time to time. Ms. Tolton said that with this side line setback that they're asking for, that would be an adverse affect on the property that she will be living on.

Ms. Tolton said that when she comes to you and her builder comes to you, you know that you will want me to abide by the covenants and restrictions and abide by the factor that that sixty-five (65) foot lot does need a ten (10) foot easement on either side to conform with the neighborhood.

Wally Pritz asked Ms. Tolton if her son owns the property.

Ms. Tolton stated yes.

Wally Pritz said that he said that he would be okay with the fact if they brought the carport in line with the garage. Wally asked Ms. Tolton if that is her feeling too.

Ms. Tolton said that she thinks that is the only alternative because she thinks that part of the building was there from day one. Ms. Tolton asked her son if she was right.

Mr. Esposito stated yes.

Ms. Tolton said you might say that it's grandfathered in or something like that.

Melissa Mullins Mischke asked if there were any other remonstrators here this evening. Melissa asked Mr. Endres to come back up.

Mr. Endres thanked Mrs. Tolson for her husband's service and integrity, although his collar speaks for his integrity and he is a thirty (30) year retiree from the United States Navy.

Melissa Mullins Mischke told Mr. Endres that he has heard some of the concerns on the property.

Mr. Endres said the blue tarp that was put on was because they didn't get a chance to put a roof on it and it rained. Mr. Endres said that there is no intention to enclose that carport. Mr. Endres said that he had it built as close to the garage as possible. Mr. Endres said that he did that so there would be no problem with his wife slipping and falling and doing further damage to her.

Mr. Endres said that as far as devaluing the property with it being there; John's house burnt down three (3) years ago and there has been no improvement; it hasn't been painted and you can still see where there are fire marks on the side of the garage and he didn't want to bring up the devalue of the property because he didn't think it was necessary. Mr. Endres said that he doesn't think that his carport will devalue the property. Mr. Endres said that if the Board gave him the variance for five (5) foot and she decided to build a house and she still felt that way, he would be glad to tear that section off again and reconstruct it.

Mr. Endres said that the water drainage; Mr. Endres said that the garage is built so that it runs from the present garage towards the street. Mr. Endres said that there is no way any runoff could go on John's yard because when they dug out the channel, he took a lot of the dirt from the channel and raised the property level of his yard, thereby the water runs from his yard into his. Mr. Endres said that he even had to put some pier sections along when it really rained badly for the water to run into the existing garage that was there.

Mr. Endres said that he is still asking for the five (5) foot variance. Mr. Endres said that if he does not get it, he'll be glad to line it up with ----Mr. Endres said that it's going to cost about eight-hundred dollars more, but the stuff we've been through, the eight-hundred dollars would be worth it. Mr. Endres said that if you grant me the variance – the five (5) feet he would thank you very much. Mr. Endres said that it is your decision and he will be satisfied with any decision that this Board makes. Mr. Endres thanked the Board for considering this.

Melissa Mullins Mischke asked the pleasure of the Board.

Board members speaking amongst themselves.

John Esposito said that when he offered to let the construction maintain --- a tie into the garage—he was talking about wall lines. Mr. Esposito said that he just wanted to make it clear that he can tie that wall line--that post line in line with his garage line. Mr. Esposito said he's not talking about the overhang; he's talking about the garage wall line.

Melissa Mullins Mischke said that if there are no further questions, she will entertain a Motion.

Wally Pritz made a Motion that Mr. Endres to be granted **not** a variance, but to bring back his carport in line with the garage wall, located 50 Dogwood Drive, La Porte, Center Twp.

Melissa Mullins Mischke said if I understand you Wally, you want to deny the Petition for a variance – for the five (5) foot.

Wally Pritz stated that is correct. Mr. Pritz said that he would like to see Mr. Endres be able to finish his carport in line with the garage wall.

Attorney Biege said that he thinks rather than denying the variance, you're granting the variance, but not for the amount of setback that he's requesting.

Wally Pritz stated yes.

Melissa Mullins Mischke said is it not replacing the existing carport if it were going back to its original size.

Attorney Biege said that we're granting the variance for side backs to the line of his house, whatever distance that is. Attorney Biege said that is the grant of the variance, it's just less than a grant.

Melissa Mullins Mischke said we have a Motion. Melissa asked if we have a second.

Glen Minich seconded.

Melissa Mullins Mischke asked if there were any questions on the Motion.

Glen Minich said that he will make one comment. Glen said that we've had a lot of trouble in waterfront districts and we do grant narrower easements in some cases. Glen said that in this case we're best served doing it this way—we have two attorneys that are most likely going to take it to Court otherwise.

Mr. Endres thanked the Board for its decision.

All approved. Motion carried 4-0.

**8. The Petition for Dan McDonald (Nazarene Church) for a "Special Exception" to construct a fellowship hall/community services with plumbing (100x65). There is an existing church and home on this property. This property is located at 2167 W. Ash Street, La Porte, Scipio Twp, zoned R1B. (Under Schedule of Uses Page 5 – Community Centers "Special Exception".)**

Attorney Biege said that he has been presented with signatures of all the adjoining property owners except for Frank Hamilton and they presented them with a postage receipt showing

something was mailed, however he cannot verify the address to which it was mailed. Attorney Biege said that the affidavit of publication is adequate.

Melissa Mullins Mischke asked for name and address for the record.

Dave Simpson with Zion Church Builders, 10687 Stadium Drive, Kalamazoo, Michigan 49009.

Mr. Simpson said that they're a church building company that builds churches all across the country. Mr. Simpson said that they're currently working with Pastor Dan McDonald to construct a church on the property – actually it's the fellowship and community center where they currently have church. Mr. Simpson said that this building is a unit that is separate by itself; Mr. Simpson said that it has a sixty-five hundred (6500) square foot, foot print, two levels. Mr. Simpson said that the second floor is two-thousand nine-hundred and ninety four (2994) square feet.

Mr. Simpson said that current improvements would be water brought onto site for a fire suppression system. Mr. Simpson said that will also provide water to the current church that is there and the parsonage that are on the property. Mr. Simpson said that the parsonage would stay on the well that is currently there. Mr. Simpson said that the septic system has been approved by the Health Department to allow them to tap into that – it's adequate size. Mr. Simpson said that they also have included drywells to contain the water runoff from the building into a drywell system – that would be all your down pouts and everything.

Mr. Simpson said that the current exterior of the building is a pre-engineered steel building with a metal roof and the colors are to be picked out by the church, but it would be light brown colors; it also has a masonry veneer about five (5') feet up on the bottom of it.

Melissa Mullins Mischke asked if there were any remonstrators here this evening for Petition No. 8.

Melissa Mullins Mischke asked if there are any questions from the Board.

Glen Minich asked why we have to do a "Special Exception" on this.

Attorney Biege said that is what the code indicates. Attorney Biege said that under R1B a church is a "Special Exception".

Glen Minich said that church is already present.

Annemarie Polan, Building Commissioner, told Glen that the church is there and this is going to be added on between the church and the pastor's house.

Mr. Simpson said that it is not an actual connected addition; it's a new building that is considered a community center.

Melissa Mullins Mischke asked if this building is going to connect to the parsonage well and septic.

Mr. Simpson said that the current well is connected both to the sanctuary and the parsonage. Mr. Simpson said that they're going to eliminate the sanctuary and put in a new six (6") inch water main for the sprinkler system and then that will feed the existing sanctuary. Mr. Simpson said that the house will remain on the well, but the septic – all three will be connected on that. Mr. Simpson said that the septic system is large enough to handle.

Melissa Mullins Mischke asked Mr. Simpson if the parking is going to stay where it is, or are you going to expand parking at all.

Mr. Simpson said that currently they're not going to because it's not going to be used simultaneously --- this will be like for Wednesday events and social gatherings during the week, where the sanctuary will be used mainly Sunday mornings or Sunday night services. Mr. Simpson said that there is no current plan to expand parking.

Mr. Simpson said that he apologizes – the parsonage is its own septic system. Mr. Simpson said that they are tapping into the sanctuary.

Glen Minich asked Mr. Simpson the eve height of this building.

Mr. Simpson said that the eve height is twenty-two (22") feet. Mr. Simpson said that is on page 22 and 24. Mr. Simpson said that it varies.

Wally Pritz asked if there is a height restriction.

Attorney Biege said that he's looking right now, but he doesn't think so.

Melissa Mullins Mischke asked if there are any other questions of the Board.

Melissa Mullins Mischke said that if there aren't any other questions she will entertain a Motion.

Candice Nelson made a Motion to approve the Petition for Dan McDonald (Nazarene Church) for a "Special Exception" to construct a 100x60 fellowship hall/community center with plumbing on the property located at 2167 W. Ash Street, La Porte, Scipio Twp., zoned R1B. Wally Pritz seconded.

Melissa Mullins Mischke asked if there were any questions or comments on the Motion.

All approved. Motion carried 4-0.

Melissa Mullins Mischke asked if there were any more items in front of the Board this evening.

Melissa Mullins Mischke said that she would like to entertain a Motion.

**Public Comment:**

Alan Sirinek said that he's the attorney for the Town of Kingsbury and his address is 2510 Franklin Street, Michigan City.

Attorney Sirinek said that he is here tonight in response to a letter that you received – actually Annemarie Polan received on the date of October 16, 2013 from Attorney Biege and in that letter Mr. Biege made reference to the Great Lakes Poultry not needing a permit to build a storage tank, which is not situated. Attorney Sirinek said that most of Great Lakes Poultry sits in the town of Kingsbury. Attorney Sirinek said that they have plans for a holding tank or a storage tank – it's actually two point one four feet outside the boundary of Kingsbury and it's in the county.

Attorney Biege said if I may madam chairman, Attorney Biege asked Attorney Sirinek if he's appealing, or are you arguing on appealing the decision which is effectively the Building Commission. Attorney Biege said that all he knows is his opinion. Attorney Biege asked Attorney Sirinek if he's appealing that decision.

Attorney Sirinek said that he thinks and he guesses he's not sure of the exact terminology. Attorney Sirinek said that an appeal to him would be something on a decision that was made. Attorney Sirinek said what they're simply saying is that they respectfully disagree with your letter and with your opinions to the Board, or to Ms. Polan in saying that we believe that they do require approval of the Board.

Attorney Biege said that is fair enough. Attorney Biege said believe him, plenty of people have disagreed with him over the years, but he wants to make sure that we're procedurally doing this correct because as we know, everyone has notice and opportunity to be heard and if you're to proceed today, Great Lakes Poultry didn't get a chance to respond. Attorney Biege said that he looked in the code here and we could call this an administrative appeal because it was essentially an administrative decision by Annemarie based on his opinion.

Attorney Biege said that is to be handled just like a variance with a Petition being filed to the Board, publication and notice and specific written notice to within this case the affected party, Great Lakes Poultry and then set for a hearing. Attorney Biege said procedurally that Petition needs to be filed --- Attorney Biege said that he doesn't think the Board can hear that procedurally tonight because it would be a violation of due process.

Attorney Sirinek said that if you're saying that your legal opinion to the administrator that they are not in need of any kind of variance or special use permit -- if that is what you're saying is that we need to appeal, he is just making sure ---

Attorney Biege said that realistically we all know it was his opinion right, but really it was her decision – she did

Attorney Sirinek said that the Board has not made a decision on this.

Attorney Biege said that was Annemarie's decision as a Building Commissioner. Attorney Biege said she could have not listened to me – she does occasionally, but she could have ignored my opinion, but she is the Building Commissioner who made the decision and if you want to appeal her decision to the BZA you have that right, but he thinks it has to be done so through a Petition, notice, publication and hearing.

Attorney Sirinek told Attorney Biege that he wasn't sure where you were in the entire process there.

Attorney Biege told Attorney Sirinek just so he has the section, he went and looked at Section 28.09 and Attorney Biege said he would call this an administrative appeal because this was an administrative decision made by the Building Commissioner.

Attorney Biege said just so we're clear on the record for the public, the decision was that there was no "Special Exception" permit needed in this case and it could proceed. Attorney Biege said that is the only decision that's made here is whether or not a "Special Exception" is required.

Attorney Sirinek asked where is the notice to Kingsbury as to them going ahead and proceeding with this in the absence of any kind of variance.

Attorney Biege said that there is no action to take by the county. Attorney Biege said that's what is a little bit confusing about this—there is no action to take by the county. Attorney Biege said that if a "Special Exception" is not required – correct me, if a building permit is not required right –

Annemarie Polan, Building Commissioner said that is right.

Attorney Biege said because the nature of the structure. Attorney Biege said so since there is no building permit and if a "Special Exception" is not required, and he believes it's not because it's in M2, there is no action for the county to take and they can proceed.

Annemarie Polan, Building Commissioner, said that IDEM on the other hand does.

Attorney Biege said yes. Attorney Biege said that is a whole different ballgame. Attorney Biege said that they're monitoring what is going in; where it's acceptable; what's released. Attorney Biege said that they're handling all of that.

Attorney Sirinek said but they're not.

Attorney Biege said fair enough if they're not, but that is an issue for IDEM and there is nothing the county can do. Attorney Biege said that the only thing this county decides here is whether a "Special Exception" is required or not and that is the decision Annemarie made.

Attorney Sirinek said that is the decision they need to appeal then.

Attorney Biege stated yes. Attorney Biege said that you would go through a regular BZA Appeal – those channels.

Attorney Sirinek said fair enough.

Attorney Biege said that with all due respect he doesn't mean to cut you off, but he wants to protect the record and the due process rights.

Attorney Sirinek said what he's trying to do is to make sure that he doesn't get into a situation next month where we're asking you, when I say we're he's talking about almost the entire town of Kingsbury is asking you to tell these people to see cease and desist their construction of this, what we believe to be an illegal holding tank.

Attorney Biege said that he thinks ---

Attorney Sirinek said that basically what their position is and what we were hoping for tonight was some kind of a stay on that so that there is no further problem down the road --- obviously they know that the town of Kingsbury would not approve this, otherwise they wouldn't have constructed this 2.14 foot outside the town.

Attorney Biege told Attorney Sirinek that he thinks for next month – and he thought about this, after you look at the code and you disagree, call me okay. Attorney Biege said that as he sees it, the hearing for next month you would be appealing the Building Commissioner's decision as to whether or not a "Special Exception" is required only. Attorney Biege said that it stops there; the Board makes a decision whether a "Special Exception" is required or not. Attorney Biege said if the Board decides no, we agree, we're done and you have the right to appeal from there.

Attorney Biege said that if the Board decides a "Special Exception" is required, then he thinks that they have the opportunity then to have a hearing and then they Petition for a "Special

Exception” and then we have a hearing on the “Special Exception”. Attorney Biege said that is what he’s saying; he thinks that our inquiry next month is very narrow.

Melissa Mullins Mischke thanked Attorney Sirinek for his comments.

Melissa Mullins Mischke said hearing no other business before this Board she will entertain a Motion to adjourn.

Wally Pritz made a Motion to adjourn. Glen Minich seconded.

Mark Goddard, 103 Rachel Street, Kingsbury. Mr. Goddard said that he’s the adjacent property owner next to this tank that is going in.

Attorney Biege told Mr. Goddard that there is no Petition before the Board so any public comments – if the poultry is requesting something in front of the BZA then you could remonstrate, but they’re not here, they didn’t get any notice and they don’t have the opportunity to defend themselves for number 1. Attorney Biege said Number 2, there is no request before the Board; so until there is a request the Board cannot hear your comments on those issues.

Mr. Goddard asked if he could ask the Board a question.

Attorney Biege said that he could ask the question to him.

Mr. Goddard asked Attorney Biege who protects the rights of somebody like me who has property and the values going to drop. Mr. Goddard said that he’s not going to do anything because there is a giant septic tank next to it.

Attorney Biege said that if the property on which their building is zoned is M2; that is the least restrictive zoning we have in the county. Attorney Biege said that you could put up a petroleum farm there; you could put heavy construction and manufacturing there; you can put a lot of things there and the issue is whether or not this tank is required to have a “Special Exception” in M2. Attorney Biege told Mr. Goddard that he understands his point, but you own property next to M2 zoning and that is the only issue.

Mr. Goddard said that some of his property is also in the same situation; it has been zoned in the county Mr. Goddard asked who protects his rights.

Annemarie Polan, Building Commissioner told Mr. Goddard that they have to go through IDEM.

Attorney Biege said that the Planning Commission sets the zoning maps and you can ask for zoning changes. Attorney Biege said whether they grant it or not is up to them, but yes by right, many things can go into M2 Zoning. Attorney Biege said that it is heavy manufacturing—that’s the point of it.

Mr. Goddard said so basically it is the same as Kingsbury Industrial Park.

Attorney Biege said exactly. Attorney Biege said that when he took a look at it, it is a holding tank; that's all it is is a holding tank and in heavy industrial, holding tanks are allowed. Attorney Biege said that if the Board decides that they are going to overrule the Building Commissioner, and if the poultry request "Special Exception", that's the time where the Board has a list of factors if they're going to consider whether or not they would grant a "Special Exception"; that's when you can talk about those things.

Mr. Goddard asked if he could come back then.

Attorney Biege said sure.

Melissa Mullins Mischke said that she has a Motion and a second on the floor.

All approved. Motion carried.

There being no further business before the BZA, meeting adjourned at 8:00 p.m.

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Dwayne Hogan, Chairman

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Annemarie Polan, Recording Secretary