



**LAPORTE COUNTY  
BOARD OF ZONING APPEALS**

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**ANNEMARIE POLAN  
Building Commissioner**

July 17<sup>th</sup>, 2018

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, **July 17<sup>th</sup>, 2018, at 6:00 p.m.** in the Assembly Room of the County Complex.

MEMBERS PRESENT:       Dwayne Hogan                               Earl Cunningham  
                                  Melissa Mullins Mischke               Glen Minich  
                                  Greg Szybala

PRESENT:                 Annemarie Polan, Recording Secretary, Attorney Doug Biege; Dar Forker,  
Secretary

The Pledge of Allegiance.

**APPROVAL OF MINUTES:**

Dwayne Hogan asked for approval of the meeting minutes of June 19<sup>th</sup>, 2018.

Melissa Mullins Mischke made a motion to approve the June 19<sup>th</sup> meeting minutes as presented.  
Glen Minich seconded.

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

All approved. Motion carries 5-0.

Dwayne Hogan said before we get too far into this just in case you're here for Petition No. 5 tonight, Rados and Violet Antonijevic & Timothy T. LaPinshe for placement of construction on a property for an Amish Style pole barn and a garage storage building and Special Exception for two horses and one donkey is being postponed until August.

**1-A Petition for Variance of Developmental Standards for Rick & Lynn Moore** for construction of an existing pole barn or construction of new pole barn, sixty-four by thirty-six (64'x36') and a Use Variance to add two (2) bathrooms and a snack shop to reconstruct barn or new barn; Special Exception use expansions, in conformance with

Section 24.08 of the La Porte County Zoning Ordinance for the width of the shooting range from the original width set out in Exhibit "A" for the original shooting range and the shooting range depicted in Exhibit "B"; and, Use Variance for a temporary utility shed (interim shop) until existing barn is reconstructed or new pole barn has been constructed. (This Variance was granted on April 19<sup>th</sup>, 2015 and June 20<sup>th</sup>, 2017. This property is located at 9251 S. 900 W., Wanatah, Clinton Twp. **(This was continued until May 15<sup>th</sup>, 2018 at 6:00 p.m.) (This is continued to the July 17<sup>th</sup>, 2018 meeting at 6:00 p.m.)**)

**2-B Petition in Remonstrance for concerned citizens, by counsel, David Ambers** for their Petition in Remonstrance of the Petition for Variance of Developmental Standards/Use Variance filed by Rick Moore and Lynn Moore. (This was continued the same as before May 15<sup>th</sup>, at 6:00 p.m. and June 19<sup>th</sup>, which is going to be conducted here tonight.

Attorney Biege said notice is adequate.

Attorney Ambers said he's an attorney with an office at Michigan Avenue, here in La Porte.

Attorney Ambers said that he represents the concerned citizens of Clinton Township concerning the Special Exceptions and Variances that were granted in 2015 and 2017. Attorney Ambers said that's all this objection addresses. Attorney Ambers said he will address whatever comes later.

Attorney Ambers said that there are several reasons why the board should and can under the law revoke the Special Exception. Attorney Ambers said first is the failure of notice required by statute in the ordinance and he's given you the amended petition that they filed back in May, along with its exhibits. Attorney Ambers said at that time, Mr. Moore and his wife had a duty to notify the adjoining landowners. Attorney Ambers said one of his clients is Greg Smoker and he's one of those adjoining landowners. Attorney Ambers said that he did receive his written notice via certified mail, but as you see by his affidavit and the discussion in his memorandum, Mr. Moore came to him and told him he didn't have to worry about showing up at that meeting; he wasn't going to pursue it. Attorney Ambers said the 2015 meeting and the 2017 meeting, various members of this board when you watch the tape, expressed concern --- are there any remonstrators and seemed to be quite surprised that there were no remonstrators. Attorney Ambers said that would be why in 2015 there were no remonstrators because Mr. Smoker was deprived of his opportunity to remonstrate because he believed his neighbor when he said he wasn't going to pursue the petition.

Attorney Ambers said that the second error was in 2017 with the extension of the Special Exception. Article 24 of your ordinance requires any extension, or alteration to a Special Exception be given notice just as the first hearing in 2015. Attorney Ambers said the board instead just carried it over for the two (2) year review period again, without notice to the

neighbor. Thus, at the 2017 you didn't have no remonstrators because they didn't know this issue was coming back up before the board. Therefore, the Special Exception granted May 19<sup>th</sup>, 2015 should be revoked due to the misrepresentation of Mr. Moore to Mr. Smoker and the June 17<sup>th</sup>, 2017 Special Exception should be revoked based on the fact that there was no notice given to adjoining landowners and no legal notice in the paper, as they had the issue last month.

Attorney Ambers said more importantly and easier for you is Mr. Moore's failure to comply with the conditions that were imposed upon him in the May 19<sup>th</sup>, 2015 Findings. Attorney Ambers said that if you go to "C" on page 2 of his memorandum, he spells out for you what the board --- not all of you were here then, approved on that night and granting of the Special Exception was made subject to following conditions:

a) The gun range operation only shall be granted for a period of two (2) years, subject to the specifications set forth in Exhibit "A" attached for this reference.

Attorney Ambers said a copy of your Finding are attached to his memorandum, along with the schematic, which is Exhibit "A". Attorney Ambers said in that schematic you approved a back stop (10' x 35' x 15'); it had short side walls to have come out on the end 5' x 10' x 10' x 15' and it was supposed to have four (4) shooting stalls, which were supposed to be 5' x 8'. Attorney Ambers said as you know from what little discussion we've had and those of you who have gone out there, or seen the pictures, that back stop is roughly one-hundred (100) – one-hundred and twenty (120') feet wide and they have pictures that they're going to present to you tonight to show on one day they were having a class – as many as eight (8) shooters shooting at one time, not to mention the fact that they don't have actual stalls – they're just putting targets in front of this back stop, but that will become more important as we carry on.

Attorney Ambers said the fact that they now have a concrete perimeter wall all the way up to the utility shed that was placed and never got a building permit for – never asked you for a special exception, they extended that wall probably one-hundred to one-hundred and fifty feet and tried to close the property in. Attorney Ambers said that you can under the law revoke the special exception based on the fact they went beyond Exhibit "A" from your previous Findings.

Attorney Ambers said in the case law that enables you to do that is Brownsburg Conservation Club, Inc. vs. Hendricks County Board of Zoning Appeals. Attorney Ambers said that there the court held the Board as the applied authority to revoke a variance if conditions have not been satisfied. In addition to that case law from the Court of Appeals, you have your Article 24 that says 24.07 and its number 7 on page 3 of his brief. Special exception use approval shall be invalid if:

a) Changes are made to the site that violate the ordinance or the conditions of approval.

Attorney Ambers said that it clearly violated your conditions of approval and in fact it's kind of ironic that they come in May and it doesn't happen and we get continued over to June and it doesn't happen and in the interim, they're going like gang busters out there bringing in this

portable building and getting ready to set electric to it; extending the concrete wall trying to make it look enclosed; attorney Ambers said he wonders if the continuances were really just to give them a chance to build it out and then say, "forgive us", but your ordinance says you can't.

Attorney Biege said it says the Special Exception Use Approval shall be invalid if they exceed those conditions.

Attorney Ambers said with regard to the previous two (2) meetings, the deed they failed to record the conditions within ninety (90) days and they had a duty to do that under Section 24.06 and they had a further duty once recorded to provide a copy of the recorded document to the Building Commissioner to be inserted into the file. Attorney Ambers said that was never done and they weren't able to find anything at the Recorder's Office, so it's just another flagrant disregard of your ordinance and your Findings committed by the petitioner.

Attorney Ambers said in the 2017 meeting when he was watching that tape, he believes it was Mr. Hogan asked Mr. Moore if the back stop was built. Attorney Ambers said at that time Mr. Moore stated yes and it was behind the RV which there was a great amount of discussion on, particularly from Mr. Cunningham. Attorney Ambers said all that was back there was a little bit of dirt and a pile of brush. Attorney Ambers said that you will see that none of this was ever constructed until March of this year beyond just a little scrap pile; they waited over two (2) years to even begin construction, that's again why in 2017 when you asked if they had any complaints, you asked if the Sheriff had any complaints, and nobody had because they weren't doing anything. Attorney Ambers said the first time they held any classes down there, was a company out of Porter County leasing licensing it to use it the weekend of Easter, or Palm Sunday. Attorney Ambers said that Saturday and Sunday is how this broke open and came to light of what they're doing, that is when the neighbors realized what was going on and what has happened.

Attorney Ambers said finally the Findings of Fact and Conclusions of Law in both 2017 and 2015 are deficient. Attorney Ambers said that the ordinance states the specific criteria, which must be examined to grant a Special Exception. Attorney Ambers said not all those criteria are discussed in the Findings and there is case law that specifically says in the Findings, the board cannot simply restate the requirement, you have to state facts that were presented to you that showed they met that criteria; that was not done in 2015, or the 2017 Findings. The Court of Appeals in Riverside Meadows, LLC vs. City of Jeffersonville said these facts shall be found specifically, and not generally. If the BZA Findings are merely a general replication of the requirements of the ordinance at issue, they are insufficient to support the BZA's decision.

Attorney Ambers said the 2015 Findings like he said, address some of the requirements, but not facts that support the meaning of those requirements and three (3) E, G & H (Section 24.05) were not even mentioned at all.

Attorney Ambers said given this, particularly the construction beyond the conditions that were set out by you in your previous minutes – and he references in here that it was filed back in May,

statements of Mr. Smoker and the second document he gave you was Mr. Smoker's affidavit with regards to why he did not attend and the fact that the back stop was not constructed until March of 2018. Particularly given excessive construction, we would ask that you revoke the Special Exceptions granted both in 2015 and 2017. Thank you.

Attorney Biege said in order to keep the record clear, I assume you're only going to respond to Mr. Amber's petition at this time.

Attorney Millbranth said that he believes procedurally that is what you requested and he thinks he's limited until the BZA board makes their decision in response to the petition – the remonstrance that Mr. Ambers filed.

Attorney Millbranth said that he will limit his comments, but it's difficult to limit the comments because he's covered a whole historical period. Attorney Millbranth said that he will respond to the comments made by Mr. Ambers in respect to his petition, which he filed.

Attorney Millbranth said that he's attorney that's been practicing for a while in Valparaiso, Indiana and prior to that down in Winamac.

Attorney Millbranth said that he represents Rick & Lynn. Attorney Millbranth said in response to Mr. Amber's comments in 2015 and in 2017, there was an appropriate time frame in which the response you're now hearing in 2018 should have been filed. Attorney Millbranth said it seems the law will not support three (3) years later. Attorney Millbranth said Mr. Ambers coming in and saying what you folks did then as the board was constituted in 2015, in May of 2105 you made a decision. Attorney Millbranth said that decision as you will hear is based upon the information that was presented by Mr. Moore. Attorney Millbranth said Mr. Moore certainly contends as you will hear if you grant us the opportunity to present their facts in support of their petition that they filed at a subsequent time here in 2018.

Attorney Millbranth said Mr. Moore will contend that he's here to make the statement, but he's making it for him now that the representations made by Mr. Smoker in his affidavit are inaccurate. Mr. Moore never spoke to Mr. Smoker and said to him that he's not going to pursue his petition that he initiated – that he and his wife initiated in 2015.

Attorney Millbranth said common sense is that's an inaccurate statement because he has made the effort along with his wife to work at and develop the shooting range in a safe and orderly fashion, following the guidelines and the Findings of Fact and Conclusions of Law that you folks first enunciated in 2015, and he came back in 2017 and in 2017 you reconfirmed because that's true, there were no objections, but for Mr. Ambers to say that nobody knew anything about it and gee, if the opportunity would have arisen, then people would have remonstrated in 2015. Attorney Millbranth said that they didn't in 2015. Attorney Millbranth asked if there was notice.

Attorney Millbranth said that the question in 2017 is a different issue, but there you reconfirmed because he, being Mr. Moore and his wife, were on a probationary status. Attorney Millbranth

said you said okay folks, we will give you this opportunity, but prove yourself and during that time period he worked with the Sheriff's Department and he did have folks out there on various occasions and his testimony would be that long before 2017 and the hearing in June of 2017, and subsequent to that time throughout the rest of 2017 and now in to 2018, and prior to that time, there were people out there who did shooting on a fairly regular basis. So to say that nothing happened between 2015 until the spring of 2018 is not an accurate statement and Mr. Moore can confirm that and his wife can confirm that.

Attorney Millbranth said again he's going to re-emphasize to belatedly in fact appeal to this board, which is what Mr. Amber's is doing – that's fine, he can do that, he certainly has presented to you folks that he's appealing to your conscience, but he thinks procedurally he's inaccurate and he also believes that the statute that you have the ordinance and when he looks at 24.06, 24.07 and 24.08, in 2017 in your Findings of Fact and Conclusions of Law two years after 2015, you did not find that Mr. Moore erred. Attorney Millbranth said that he did change as we have now submitted the petition and the back stop is different; it's different because it's done in safe fashion for the benefit of the people who are going out there to shoot and for all the neighbors in the vicinity, so that the wall that has been up to accept the bullets is done in a correct fashion. Attorney Millbranth said that none of that was done intentionally to violate any of the language set out in 24.07, or 24.08.

Attorney Millbranth said respectfully, the belated efforts of the concerned citizens of Clinton Twp. their objection in their petition that was filed this spring should be and ought to be denied because of what you properly did in 2015 and you reconfirmed in 2017. Attorney Millbranth said that there have been some changes, but the changes he wants to talk about really are in the next petition and he's responding to Mr. Amber's petition.

Attorney Millbranth said that they respectfully request that you deny the request made by Mr. Amber's and the concerned citizens because of your prior approval and acceptance of what Mr. Moore and his wife consciously did in a reasonable fashion. Thank you.

Attorney Ambers said the response is not untimely because the construction didn't take place until 2018. Attorney Ambers said the very construction that Mr. Millbranth claims that was reasonable or added for safety, before they decided what should be added in the name of safety, they should have come to you and got permission, not let's build it like heck and go in and beg for forgiveness. Attorney Ambers said the 2018 construction is beyond what you approved in 2015 and 2017 gives you the authority of your own ordinance --- actually it says you must – you shall revoke the Special Exception. Attorney Ambers said the very changes that he admits that they made, are the items that happened in 2018 that your ordinance says you have to revoke the Special Exception. Thank you.

Attorney Biege said he previously sent a letter to the board on what this board has jurisdiction to do. Attorney Biege said he gave you his legal opinion and the board can decide to do whatever it wants to. Attorney Biege said attorney Ambers' arguments for failure of notice, the Findings of Fact if they were sufficient, or not, failure to record and failure to provide a recorded document

to the Building Commissioner. Attorney Biege said that it's his opinion that the Board of Zoning Appeals does not have jurisdiction, or the authority to rescind the Findings of Fact, but the board does have authority to rescind only on whether or not any of the conditions were failed to be met. Attorney Biege said that he respects Mr. Amber's making it a record, but it's his job to protect our record as this is probably going to court later.

Attorney Biege asked if there are any questions on his comments.

Glen Minich said as he's sorting this through his head and he guesses verbally he can say the comments that keeps being made were that the back stop has been built out. Glen said originally he stated at the previous meeting what we set was the minimum standard that we were looking for. Glen said in his mind, the larger back stop provides more safety; the walls provide more safety for the participants for the residence. Glen said he doesn't have a problem with that.

Glen Minich said the affidavit for failure to have a chance to talk at the 2015 meeting, this is well beyond us. Glen said that would be served in another direction.

Dwayne Hogan said that he doesn't want to dispute an affidavit. Dwayne said that's not this board's jurisdiction.

Glen Minich said with that being said, the only other thing that was really talked about was the way we set it up -- the way that we set it up in 2015 when we agreed that this range was a good idea, because Mr. Moore came to us and proposed that he was going to train people in firearm safety and the range was going to be used for that, and it was going to be used for the sale of firearms, whereby if you want to go out and buy a gun you can go out and test fire -- shoot it -- see if this is what you want, and that all made sense to us. Glen said that we said we're not sure how it's going to effect the neighborhood, so in two (2) years we wanted him to come back to see if there were any complaints with the Building Commission; he thinks that was checked with the Sheriff to see if there were any complaints and we thought respectfully the citizens would have responded if there was a negative problem. Glen said whether we did that right or wrong, that's what we did.

Earl Cunningham said having not been on the board in 2015, Earl asked if they gave permission at that point and time for them to hold tournament shooting, which is what they say they've done.

Melissa Mullins Mischke said the decision at that time was they could operate Monday through Saturday, with given hours. Melissa said she doesn't think it was tournament shooting versus education; it was four stalls and the range would be open. Melissa said it was not based on what type of shooting.

Glen Minich said that the petition that we acted on 15<sup>th</sup>, was a petition for a range to be used for training and gun sales. Glen said we never gave any positive response to --- he thinks even in the minutes there was some response that it would not be used for fundraisers. Glen said it was

pretty specific to what we said. Glen said this range was supposed to be used for training and the sale of guns. We didn't give an exception for target range pursue, or a competition range. Glen said we specifically said what we look for and he thinks in the minutes it was even asked of Mr. Moore if that is his primary use. Glen said maybe primary wasn't a good enough word, but we knew he was still going to use it for his own personal target range.

Earl Cunningham asked Glen if he was shocked that somebody else leased the facility to hold an event there.

Melissa Mullins Mischke said that she doesn't know that she has any actual evidence of that. Melissa said she doesn't believe everything that she reads on facebook. Melissa said she has no evidence that that actually happened.

Attorney Ambers said he has that if you want that.

Melissa Mullins Mischke told attorney Ambers that she hopes it's not photos off of facebook.

Attorney Ambers said it's from Infinity Solutions and Mr. Moore. Attorney Ambers said Mr. Moore conducts his classes in.

Board members speaking amongst themselves.

Attorney Biege said that we've heard arguments. Attorney Biege asked Melissa if she's asking that each party submit evidence for the board's consideration.

Melissa Mullins Mischke said that she was responding to Earl's question.

Attorney Biege asked Mr. Ambers if he has evidence that he wishes to present.

Attorney Ambers said really we're going beyond the construction. Attorney Ambers said the violations are the conditions is what gives you the authority to revoke this. Attorney Ambers said that we're starting to go into the next portion of this. Attorney Ambers said he has it if the board would like to see it.

Attorney Millbranth said that he does agree. Attorney Millbranth said what you folks have been so kind to listen to from both sides gives you the opportunity to make a decision on the issues that you have heard. Attorney Millbranth said to maybe guestimate, or speculate on other issues, he thinks would not be proper at this juncture and that's what he's requesting that you make the decision on. Attorney Millbranth said he thinks that's a fair reasonable approach.

Attorney Biege said that there were no conditions on the 2017 grant. Attorney Biege said the conditions in 2015 were as follows:



a) Gun range operation only shall be granted for a period of two (2) years, after which the Special Exception will be reviewed, in which we did in 2017.

b) Subject to the conditions as set forth in Exhibit A, and he attached the drawing that was submitted.

Attorney Biege said the range had to comply with this drawing and couldn't vary from this drawing.

Earl Cunningham told Attorney Biege when you say it couldn't vary, that contradicts – and that was a minimum standard, and it could be bigger. Earl told Attorney Biege that he's saying it couldn't vary from the drawing.

Attorney Biege said arguably he thinks that is the decision that you have to make. Attorney Biege said this is what you granted. Attorney Biege said you have to decide if he varied from this to the degree in extent that the variance should be rescinded.

Attorney Ambers asked if he could approach. Attorney Ambers said he has one photo that addresses that – the four stall.

Attorney Millbranth said that he respectfully request the court – the board not to look at that photo. Attorney Millbranth said if he wanted to make that presentation that should have been done at the time he made the argument, not in a belated fashion.

Board members speaking amongst themselves.

Attorney Millbranth said he hasn't looked at it; he doesn't know where it came from and he doesn't know the basis of it.

Attorney Biege said that he thinks the president will decide if it should be **(Unintelligible)** at this stage.

Board members speaking amongst themselves.

Melissa Mullins Mischke asked Attorney Millbranth if there are four (4) shooting stalls.

Attorney Millbranth said that his client has told him that the answer to that is no.

Dwayne Hogan asked if there are any stalls at the shooting range right now.

Attorney Millbranth is asking his client.

Attorney Millbranth said to support the training, his client has informed him that they created areas so that they could do the training in the areas. Attorney Millbranth said that would be

expanded on if the next petition is heard. Attorney Millbranth said to answer your question, there are areas to do the training of the people who come out to the facility.

Dwayne Hogan asked if the areas consist of a stall.

Attorney Millbranth stated no. Attorney Millbranth said that they're two different things.

Dwayne Hogan asked how many areas there are.

Attorney Millbranth said currently there is one open area.

Dwayne Hogan asked the size of that area.

Attorney Millbranth said with your indulgence may his client explain that answer, because he can explain it better than he could. Attorney Millbranth said that he doesn't want to misinterpret what he understands it to be in response to your question.

Dwayne Hogan asked for name and address for the record.

Rick Moore, 9251 S. 900 W., Wanatah.

Dwayne Hogan told Mr. Moore if he could answer those questions they would appreciate it.

Rick Moore asked if the question is what the size of the area is now.

Rick Moore said they don't have stalls.

Dwayne Hogan asked if he has one area.

Mr. Moore stated yes.

Dwayne Hogan asked the size of that one area.

Rick Moore said the one area that they have has a wall on the south side and there is no boundary set on the north side. Mr. Moore said each shooter is given three (3) to five (5) yards of space, so they space themselves according to the area that they need, so it's not a defined walled space. Mr. Moore said as they pursued their training, it went more from not being able to fire in a stall, which is a static place you cannot move from to an area where you can vary your distance that you shoot, which is required with the type of training they ended up doing.

Earl Cunningham asked Mr. Moore how many shooters he can have at one time.

Mr. Moore said that is limited by instructors; it's limited by the space. Mr. Moore said when they're finished, we allow a maximum – we have fourteen (14) students and seven (7), or eight, (8) shoot at a time, while the others are preparing.

Earl Cunningham said the reason why he asked that question is because he's looking at the chart here that you originally got permission for was for four (4) shooting stalls indicates a width of twenty-four (24') feet. Earl said now that you have up to seven shooters with three (3) to five (5) yards, so we've considerably expanded the shooting area.

Mr. Moore stated yes. Mr. Moore told Earl if he wants him to address that he would be happy to address that. Mr. Moore said that he has a written statement for the next petition, but he will address that right now if you want me to.

Earl Cunningham said his question for our attorney is where did he get permission to do that. Earl told attorney Biege that he just gave them the specifics on what they can do, and by his own admission he has expanded that.

Attorney Biege said he was given permission for four (4) stalls. Attorney Biege said the schematics is four (4) stalls. Attorney Biege asked how we define a stall, it's not on the schematic. Attorney Biege said we go to the minutes where we discussed stalls and he's quoting "Mr. Moore said that the shooting stalls are actually going to be surrounded by three (3) sides with a wall; Mr. Moore said if you heard something a half mile away, it would be very muffled and it wouldn't be as if you were standing there". Attorney Biege said that's exactly what he said.

Board members speaking amongst themselves.

Melissa Mullins Mischke said that she certainly don't think there's a doubt that the approval that was given and the facility that you're operating right now is not in line with what we requested. Melissa told Mr. Moore if he remembers in 2015 noise was a huge concern from not just this board. Melissa told Mr. Moore the reason why he went with the five (5') foot by eight (8') foot stall was because you said it was going to muffle the sound more than in open air shooting. Melissa said that she thinks that if she would have known in 2015 that you were going to continue with open air shooting, she would not have made a motion to approve fire arms education at that location.

Dwayne Hogan said based on the information we had.

Melissa Mullins Mischke said exactly.

Glen Minich said that if you go out to KOP and look at the range that's there and look at what they built for their shooting stalls, you can see exactly what Sheriff Boyd expected. Glen said we said that this was an area where there are quite a few residences --- there is good woods and

it's going to muffle a lot, but we were told you were putting those stalls in at the last meeting we had. Glen said we said you could only shoot if the stalls were in place and you're now saying there are no stalls in place.

Earl Cunningham said again, he wasn't here in 2015, but based on what you guys are telling me, you gave him an expanded shooting area of a twenty-four (24') foot wide based on the schematic that he's looking at. Using the information you just gave us three (3) to five (5) yards starting with number one, no space to his left, but your nine (9) fifteen (15) feet to his right with seven (7) shooters, it's going to be up to forty-nine (49') to ninety (90') feet width for shooters.

Glen Minich told Earl he sees his point, because when we talk about the back stop being a minimum size, but this minimum size when it was expanded, it looks like it would be a better idea, but if you expand the width of the stalls, then you're not gaining anything, just making the it larger.

Dwayne Hogan said maybe it's an error on our part for not asking that night.

Mr. Moore asked if he could make another statement.

Dwayne Hogan stated yes.

Mr. Moore said just addressing those things. Mr. Moore said that he doesn't have an attorney on staff and he didn't hire an attorney until these issues arose. Mr. Moore said he could have done better diligence by reading through the paper work in its entirety, but his honest understanding was that his property was exempted for a range. Mr. Moore said when you asked him for those schematics, if you remember you asked me before the meeting in 2015 that you approved. Mr. Moore said that you asked him what he was looking for and he said he didn't know – he wanted a range – he wanted to pursue a range so you told me to draw something up and give it to you. Mr. Moore said when he went home and said if he takes the back of his barn, he could cut four (4) stalls in there and that's what he presented to you. Mr. Moore said when their training opportunities grew, that shooting position in a stall was no longer conducive.

Mr. Moore said that it was not intentional; I don't care what the board said, I'm going to go do what I want, his understanding was that his property was exempted for it. Mr. Moore said that is what he understood and he gets that, but what he's not appreciating of being accused of is manipulating, because that's not what happened. Mr. Moore said his understanding was that his property was exempted by this board for a range. Mr. Moore said if he felt he needed to come back to ask for the expansion ---- this whole thing made me aware and okay, it's quite possible we're violating outside the perimeters of what you said, that's why the next petition is on the docket because they didn't want to violate anything.

Mr. Moore said his understanding was that his property was a range. Mr. Moore said when he told people, when he worked with other people, he said hey, our property has been exempted for a shooting range. Mr. Moore said that particular drawing was – yea I did draw it and I presented

it, but I did that because you asked me to specify what I envisioned. Mr. Moore said when he presented it, it was his idea what he envisioned. Mr. Moore said that he was not under the impression that it would be looked at underneath a magnifying glass every little detail, and maybe he should have understood that.

Mr. Moore said Mr. Ambers said I didn't file the paperwork. Mr. Moore said he didn't do that maliciously, he didn't know he needed to. I wasn't told by this board to; he wasn't told by the Building Commissioner, he just didn't know he needed to. Mr. Moore said it wasn't anything he did maliciously and it wasn't anything he did intentionally, he just wasn't aware he needed to do it.

Mr. Moore said he's not willing to invest forty-thousand (\$40,000.00) dollars in a range, only to violate all these rules knowingly and intentionally to come and say well sorry you guys, we're going to revoke your range. Mr. Moore said no one would do that. Mr. Moore said he wasn't doing anything intentionally and he felt like he needed to explain that, because that's why it went from what you're seeing on paper because you asked me to come up with something and I came up with it.

Mr. Moore said the whole thing about the fundraiser coming up. If you remember correctly, I was set to host a fundraiser for a specific party. When this whole thing blew up about the thousand (1000') foot in front of a residence, he backed off of that and called the people and told them he wasn't going to do it. Mr. Moore said his understanding when one of you, maybe Mr. Minich asked me ----- his understanding was that was tongue and cheek. Mr. Moore said that he wasn't going to be doing that fundraiser.

Mr. Moore said it wasn't that he said he was saying he would never ever host a fundraiser on his property, it was his understanding that conversation, if you were there in 2015, it was kind of a tongue cheek based on upon an issue that just happened the month before.

Attorney Ambers said he guesses he's just sticking with his previous statement. Attorney Ambers said the ordinance says shall revoke. Attorney Ambers said he went so far beyond, didn't create stalls. Attorney Ambers said that this board has no choice but to revoke its Special Exception.

Dwayne Hogan asked if there are any questions of the board.

Earl Cunningham asked attorney Biege if he disagrees with Mr. Ambers.

Attorney Biege said 24.07 said Special Exception Use Approval shall be invalid if changes are made to the site that violate the ordinance or conditions of approval. Attorney Biege said he might add, the range is allowed in this zoning area, so this is not a zoning problem. Attorney Biege said it's listed as a Special Exception because to inherit problems and issues with the range that needs to be reviewed more closely as to how it's designed, and how it may affect the

neighborhood. Attorney Biege said in a Special Exception, the zoning is allowed, but you're looking at how it's constructed, how it affects the neighbors and what occurs.

Melissa Mullins Mischke said that she's been reading through these meeting minutes from the 2015 for some months at this point, and we talked a lot at that meeting about the fashionable shooting sports foundation and that's where you came up with some of the standards for your drawing, and those are the drawings you presented to Sheriff Boyd when you discussed the shooting range with him, and he then in turn came back and told Annemarie he was pleased with the presentation, or the paperwork that was presented by you.

Melissa Mullins Mischke said her issue again is the lack of the stalls; we talked a lot about noise and she knows that she lives in that area, and she's concerned about noise and wouldn't want to be hearing that; and the difference between open air shooting versus the stall shooting, or inside the structure for your shooting locations. Melissa said that she would have never approved the petition knowing that it was going to be open in the air shooting. Melissa said she doesn't think that's what was presented in her opinion to the Sheriff, and she doesn't think that is what was presented to us.

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

Dwayne Hogan asked the pleasure of the board.

Board members speaking amongst themselves.

Melissa Mullins Mischke said for Petition 2-B, the Petition in Remonstrance for concerned citizens, by counsel Dave Ambers for their Petition in Remonstrance of the Petition for Variance of Developmental Standards/Use Variance filed by Rick Moore and Lynn Moore she agrees with attorney Ambers and it should be revoked.

Attorney Biege asked for the conditions that you feel it was violated.

Melissa Mullins Mischke said that she feels like the construction of the facility wasn't in accordance with the petition that was granted in 2015.

Glen Minich seconded also based that we reiterated time and time again this was a noise issue and that shooting stalls had to be put in place to muffle the noise.

Dwayne Hogan asked if there are any questions, or concerns.

All approved. Motion carries 5-0.

Attorney Millbranth said because of the action of the board, the petition that has been subsequently filed will not be heard because you revoked what was previous available to his client, is that correct?

Attorney Biege said he believes so. Attorney Biege said procedurally we want to thank you and we're trying to make sure we have a clear and clean record. Attorney Biege told attorney Millbranth that his petition is now void and you of course need to refile. Attorney Biege said that he thinks it would be cleaner to refile in the event either side wishes to appeal.

Attorney Biege asked attorney Ambers if he agrees with that?

Attorney Ambers said that he agrees because; first I was thinking he should go ahead and present, but when he thinks about his actual petition, the only change was the Sundays and he's assuming everything else is in place, so he thinks that counsel would want to draft a petition that basically starts over, rather than ask for an addition to.

Attorney Biege said in addition to that, if you choose to appeal the board's decision, we have that issue with the Court. If you file a separate petition and you win there, you can appeal that and we have two (2) clean petitions for the Judge to decide.

Attorney Millbranth said he thinks it would be better suited for his client to make the decision along those lines, and if he chooses to pursue the range, that we file a new petition and carefully draft how the range is structured so there is a clear understanding for everybody's perspective.

Dwayne Hogan said we're going to take a quick five (5) minute recess.

Attorney Biege said Petition No. 3, the Erdmann's called him and he told them they didn't have to show up. Attorney Biege said that the developer installed a cul-de-sac, but it's not large enough and you can't turn a plow truck around, so the county is requiring that the cul-de-sac be large enough for a plow to turn around and he thinks they're resolving that right now. Attorney Biege said that he thinks that this should remain pending until we know that road construction is adequate.

Dwayne Hogan asked attorney Biege if he wants to see it on the agenda next month.

Attorney Biege said he thinks we should leave it on. Attorney Biege said if he expands that cul-de-sac they can withdraw this petition because they will then comply, as well as the other lots around that road.

Earl Cunningham made a motion to continue until August.

Melissa Mullins Mischke seconded.

Dwayne Hogan asked if there are any questions.

All approved. Motion carries 5-0.

**4. Petition for Variance of Developmental Standards for Betty Schlundt** for continued placement of a mobile home. Last variance was granted on May 7<sup>th</sup>, 2011 for three (3) years. Minutes are attached hereto. This property is located at 2351 W. 400 S., La Porte, Scipio Twp., zoned Agricultural on 71.61 acres.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Paul Schlundt, 83 W. 850 N., Valparaiso.

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

Mr. Schlundt said that they have a continued variance for a mobile home.

Dwayne Hogan asked Mr. Schlundt where he has been since 2011.

Mr. Schlundt said that time flies and he didn't realize the time had gone by so fast.

Dwayne Hogan asked Mr. Schlundt if the trailer is still being used.

Mr. Schlundt stated yes.

Dwayne Hogan asked Mr. Schlundt who's living in the trailer.

Mr. Schlundt said that his nephew lives there. Mr. Schlundt said that he's on lower income and lives there with his daughter and his girlfriend.

Mr. Schlundt asked if this trailer is being used for rental property.

Mr. Schlundt said that it's his mother's trailer.

Dwayne Hogan asked if it's being use for rental property.

Mr. Schlundt stated yes.

Dwayne Hogan asked how old the trailer is.

Mr. Schlundt said he would guess fifteen (15) years.



Dwayne Hogan asked if there is any intent to remove it, or do you want it to keep going every three (3) years and use it as a rental property.

Mr. Schlundt said that it's his mother's on her property and she is ninety-one (91) years old.

Dwayne Hogan asked if the trailer was originally for her.

Mr. Schlundt stated no. Mr. Schlundt said that trailer was originally his brother's trailer and he lived there quite a while ago.

Dwayne Hogan asked what the circumstances were granting the variance in 2011 to allow you to have a trailer.

Mr. Schlundt said that his nephew still stays on the farm and he helps take care of the property and he takes care of his mother on the other end of the farm.

Dwayne Hogan asked if he's a caregiver.

Mr. Schlundt stated yes.

Dwayne Hogan asked if it was rented at that time.

Mr. Schlundt said yes, to his nephew. Mr. Schlundt said that they have never rented it to anybody else besides the family.

Glen Minich said he's guessing there is a reduced rent.

Mr. Schlundt said it's a reduced rent and it doesn't even cover the costs of the trailer. Mr. Schlundt said that his mom pays all of the electric, gas and taxes. Mr. Schlundt said that his nephew pays what he can.

Mr. Schlundt said there is no intention to turn it into a rental trailer.

Melissa Mullins Mischke said in reality he's helping Betty with the property and maintenance of the property.

Mr. Schlundt stated yes. Mr. Schlundt said that he helps take care of the property and he also stops in the house when she's home to make sure that she's okay. Mr. Schlundt said that it's an L shaped farm and her house is on one end and the trailer is on the other.

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

Dwayne Hogan asked if there are any questions, or concerns of the board.

Glen Minich made a motion that the Petition for Variance of Developmental Standards for Betty Schlundt for continued placement of a mobile home on her property be granted for three (3) years renewable on property located at 2351 W. 400 S., La Porte, Scipio Twp., zoned Agricultural on 71.61 acres.

Greg Szybala seconded.

Dwayne Hogan asked if there are any questions, or concerns.

Melissa Mullins Mischke said that she just wants to clarify that at the three (3) year, it is your responsibility to come in front of this board and renew the variance.

Mr. Schlundt stated okay.

All approved. Motion carries 5-0.

Dwayne Hogan said like we said earlier, No. 5 has been postponed until August.

**6. Petition for Special Exception for Arthur & Wanda Clemons (owners) and Stephanie Martz (contract purchaser) for keeping one (1) miniature zebu and one (1) miniature pig. This property is located at 9071 S. Highway 39, Union Mills, Noble Twp., zoned Agricultural on .557 acre.**

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Stephanie Martz, 9071 S. State Road 39, Union Mills, Indiana 46382.

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

Ms. Martz said they want to keep their miniature zebu and the miniature potbelly pig. Ms. Martz said the miniature zebu is a miniature bovine, or a miniature cow.

Dwayne Hogan asked if that is a miniature cow.

Ms. Martz stated yes. Ms. Martz said that they get between two-hundred (200) to four-hundred (400) pounds full grown.

Dwayne Hogan asked how high?

Ms. Martz said thirty-six (36") inches to forty-two (42") inches at the biggest.

Dwayne Hogan asked if these are used for a 4-H project.

Ms. Martz said that they bought it to raise their own meat and then eat them eventually.

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

Earl Cunningham said that he believes we should read this into the record.

Earl Cunningham said that this letter is dated July 13<sup>th</sup>, 2018.

La Porte County Zoning Appeals:

Regarding the above description we do not have any issues with the animals located at the residence, however we would like to see them put up their own secure fence because they're using ours on the south side of the property and their dog almost knocks down that fence when they see us out.

We put our four (4') foot fence up to keep our dogs on our property. The fence they currently have does not keep all of their dogs in as they get out and come onto their property. We've already seen two (2) dogs of their several dogs get killed on Highway 39.

Thank You. Louis & Cheryl Carreara, 9131 S. State Road 39, Union Mills, Indiana.

Dwayne Hogan asked if there are any other remonstrators here tonight for, or against.

Dwayne Hogan asked for name and address for the record.

Frank Hirvnak, 9076 S. State Road 39, Union Mills.

Mr. Hirvnak said that he lives right across the street. Mr. Hirvnak said his concern is the acreage; point five five seven (.557) doesn't seem hardly enough when you have a house, an attached garage, a detached garage and shed on that property consuming some of that acreage, which probably leaves about .35 acres. Mr. Hirvnak said that doesn't seem like a whole lot for a cow, eight (8) dogs, and three (3) ducks. Mr. Hirvnak asked where is all the waist going to go, it has to go somewhere.

Mr. Hirvnak said that they have always had problems with the dogs. Mr. Hirvnak said that the dogs always seem to be coming out and into the yard and came after his grandson once. Mr. Hirvnak said he's not going to tolerate much more.

Mr. Hirvnak said the other part is the cow. Mr. Hirvnak said that's a big cow and they live right on the highway. Mr. Hirvnak said that she's already lost two (2) dogs, one last year and one this year. Mr. Hirvnak asked how many more are we going to lose. Mr. Hirvnak said he would

rather not see her have anything to devalue his property. Mr. Hirvnak said that they're very poor about maintaining their yard.

Dwayne Hogan asked if there any other remonstrators here tonight for Petition No. 6.

Dwayne Hogan asked for name and address for the record.

Mary Hirvnak, 9076 S. State Road 39, Union Mills.

Ms. Hirvnak said that she wanted to address about her dogs being on their property and how one of them came over to their grandson and how one of them jumped the fence that they have. Ms. Hirvnak said that their yard isn't very well taken care of.

Ms. Hirvnak said she does have a picture on her tablet that she would like to show you.

Ms. Hirvnak said after one of the dogs got killed this was posted on her mail box that we were a dog killer; they didn't kill the dog.

Board members looking at the picture on the tablet, which consist of a picture of Ms. Martz's mail box.

Ms. Hirvnak said to her she feels like she's not reliable and not taking care of them.

Dwayne Hogan asked if there are any other remonstrators.

Attorney Biege asked Ms. Martz if she's purchasing this place on land contract.

Ms. Martz stated yes, from her mother.

Melissa Mullins Mischke said let's talk about the fence. Melissa asked if the property is fenced.

Ms. Martz stated yes.

Melissa Mullins Mischke asked Ms. Martz what type of dogs she has.

Ms. Martz said she has a Chinese crested, a pug and pug (unintelligible) and a char pei and a bassest hound mix.

Melissa Mullins Mischke asked if the dogs frequently get out of the fence.

Ms. Martz said no. Ms. Martz said she had one that was overzealous crazy strong. Ms. Martz said she would constantly jump the fence. Ms. Martz said she could stand flat footed and jump a four (4') foot fence. Ms. Martz said that they tried to stretch it to a five (5') foot and she ended up getting tangled up in that.

Dwayne Hogan asked Ms. Martz how many dogs she has.

Ms. Martz said she has five (5) dogs.

Dwayne Hogan asked Ms. Martz what else she has as far as animals.

Ms. Martz said a miniature zebu, miniature cow and then they had one (1) duck and her friend had a problem ---

Melissa Mullins Mischke asked Ms. Martz just to give them a number on the animals.

Ms. Martz said three (3) ducks.

Dwayne Hogan said three (3) ducks, one (1) cow, one (1) pig and five (5) dogs.

Glen Minich told Ms. Martz that he doesn't have a picture to where she's trying to contain these animals.

Dwayne Hogan asked if there is a pin.

Ms. Martz said that she has a small barn for them; it's an eight (8') by twelve (12') foot barn.

Glen Minich said that all the pictures they have, they're just kind of roaming. Glen said that you can't have animals on top of your septic system.

Ms. Martz said that their septic system actually has a smaller fence on the inside.

Ms. Martz is up at the bench going over the site plan.

Glen Minich asked Ms. Martz to draw where her septic field is.

Ms. Martz and board members going over the site plan.

Glen Minich said that the septic field is usually much larger than that.

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

Dwayne Hogan asked the pleasure of the board.

Earl Cunningham made a motion for Petition No. 6 for a Special Exception for Arthur & Wanda Clemons (owners) and Stephanie Martz (contract purchaser) for keeping one (1) miniature zebu and one (1) miniature pig be denied on property located at 9071 S. Highway 30, Union Mills, Noble Twp. on .557 acres.

Greg Szybala seconded.

Dwayne Hogan asked if there are any questions, or concerns.

Glen Minich told Ms. Martz that she's going to have to show them that it's not roaming above the septic system. Glen told Ms. Martz that she would have to go to the Health Department and get a map and generally clean up the situation.

Melissa Mullins Mischke said that she feels the property needs a little bit more attention to keep a miniature pig in there. Melissa said she thinks it's a safety issue especially being on State Road 39.

All approved. Motion carries 5-0.

**7. Petition for Variance of Developmental Standards for Tim & Mary Kay Hinds, (Sellers) and Wayne & Denise Blough, (Purchasers)** for a two (2) story room addition to main house, plus a deck, and a two (2) story garage with guest house on property across the street – same parcel number. Room addition and deck will encroach upon the side setback line by nine (9') feet. This property is located at 5622 E. 800 N., Rolling Prairie, Galena Twp., zoned R1B.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Wayne Blough, 13165 Denise Street, Plainfield, Illinois.

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

Mr. Blough said that he's looking for a couple of variances on an existing property in Saugany Lake and they want to extend the property. Mr. Blough said it's only six-hundred (600) square feet and he and his wife want to extend the first floor and the second floor. Mr. Blough said that the house is twenty (20) by thirty (30) and he wants to make it twenty (20) by forty-five (45). Mr. Blough said across the street, you can't put a garage on the lake side of the property, so he wants to put a carriage house on the other side. Mr. Blough said that would mostly be a garage for himself, but if the kids come and visit, they want to have space for them.

Dwayne Hogan asked if that's why the guest house is on the property across the street.

Mr. Blough stated yes.

Dwayne Hogan asked if the side setback is nine (9') feet.

Mr. Blough stated yes, on the side. Mr. Blough said that he talked to the owner and he said he's good with everything one-hundred (100%) percent. Mr. Blough said it's his existing house that's been there for fifty (50) to sixty (60), seventy (70) years, he's not sure.

Dwayne Hogan asked if it's a six-hundred (600') square foot house now.

Mr. Blough stated yes.

Dwayne Hogan asked Mr. Blough how big he wants to make it.

Mr. Blough said twenty (20) by forty-five (45); nine-hundred (900) down stairs and nine-hundred (900) upstairs, so eighteen-hundred (1800).

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

**Remonstrator:**

Dwayne Hogan asked for name and address for the record.

Larry Johnson, 13862 Mill Road, Three Oaks, Michigan 49128.

Dwayne Hogan asked Mr. Johnson if he owns property by this.

Mr. Johnson said that he owns two (2) lots right adjacent to this facility. Mr. Johnson said that this facility has been there for sixty (60) to seventy (70) years and it sets within one (1') foot of the property line. Mr. Johnson said he can't do anything about that, but he does not want this extended out another forty-five (45') feet stated by Mr. Blough. Mr. Johnson said that the state law says there needs to be a ten (10') foot setback and he's asking that nine (9') feet be varied on that setback and the answer is no.

Mr. Johnson said a law is a law and he doesn't want him digging with a backhoe adjacent to his property one (1') foot, and actually it might even be ten (10'') inches. Mr. Johnson said he accepted the existing building.

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

Mr. Johnson said he might also say this is pretty close to the water level of the lake. Mr. Johnson said that's kind of a no no also.

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

Dwayne Hogan asked if there are any further questions of the board.

Greg Szybabla asked Mr. Blough how wide is the lot.

Mr. Blough said that the lot is forty (40') feet. Mr. Blough said he wants to go back fifteen (15') feet, not forty-five (45') feet. Mr. Blough said the property next door that Mr. Johnson lives on is adjacent to theirs and it's off to the side. Mr. Blough said at this point they don't use it, it's inhabitable right now. Mr. Blough said he's not sure when they're going to get around to fixing it up, or doing something with it. Mr. Blough said that they're just looking to do something nice.

Glen Minich asked how many feet is to be added on.

Mr. Blough said fifteen (15') feet for the house and fourteen (14') foot deck.

Glen Minich said twenty-nine (29') feet.

Mr. Blough said twenty-nine (29') feet with the deck.

Dwayne Hogan asked if there are any further concerns.

Earl Cunningham asked if these petitions for variances are separate. Earl asked Mr. Blough if he's going to act on the one across the street if we deny the expansion on the one (1') foot property.

Mr. Blough said that he really hasn't thought about that. Mr. Blough said that they really wanted to fix up the lake house and make it nice for their grandkids to come up there and enjoy it. Mr. Blough said that there is a home there today and he doesn't know how it got within one (1') foot that was a long time ago. Mr. Blough said that they're just looking to fix it up at this point. Mr. Blough said would we do it across the street, potentially, but he thinks their goal was really to make the lake house something special.

Mr. Blough said as far as the basement goes, there is a flood plain there, but they're not going to add to the home at all on the lower level, so there wouldn't be a flood plain issue at all.

Melissa Mullins Mischke said that she's also concerned about separating the variance into two requests. Melissa said she's inclined to be more open to north property, and she's definitely not in favor of expanding the footprint of the building --- the existing structure. Melissa said it's extremely close, but if we don't get a handle on it, we're never going to get a handle on it if we continue to allow the practice of this to happen. Melissa said she's definitely not in favor of building any closer. Melissa said just like Larry said, the neighbor, she wouldn't want demolition, or equipment backhoes on her property as well.

Mr. Blough said he's not looking to demo anything, they're just going to add onto the existing home.



Mr. Blough said they don't use that house at all. Mr. Blough said he doesn't know when the last time --- it's been vacant and ready to come down for several years.

Dwayne Hogan asked the pleasure of the board.

Glen Minich said its way to close. Glen said that you would be standing on the neighbor's property to build this house.

Glen Minich said on the Petition for Variance of Developmental Standards Tim & Mary Hinds, (Sellers) and Wayne & Denise Blough, (Purchasers) for a two (2) story room addition to the main house plus a deck be denied. The two story (2) story garage with the guest house on the property across the street with the same parcel number be granted. Property is located at 5622 E. 800 N., Rolling Prairie, Galena Twp.

Melissa Mullins Mischke seconded.

Dwayne Hogan asked if there are any clarifications.

Greg Szybala told Mr. Blough maybe he could reconsider how he lays out the addition on that house so it would fall within that ten (10') foot offset and still allow you to get the addition and the equipment.

Greg Szubala said that he can't speak for the board, but it's something to consider here and stay within the guidelines.

Glen Minich said that he doesn't think that needs to be in there because it would be allowed if it was ten (10') feet away from the property.

Earl Cunningham asked Glen on the property across the street, the one that we're talking about is the room addition with the deck was a side setback of nine (9') feet, is the one were talking about the one (1') foot? Earl said we don't have any clue to the guest house if it would be ten (10') foot from sides.

Glen Minich said he thinks the only reason why we're making this motion on this petition is because you have a second home on a wrong parcel. Glen asked attorney Biege if that's right.

Attorney Biege stated yes.

Board members speaking amongst themselves.

Dwayne Hogan asked if there are any other concerns.

All approved. Motion carries 5-0.

**8. Petition for Variance of Developmental Standards for Grzegorz & Monika Charmiec** for an existing carport forty-eight by eleven (48' x 11') feet with a four (4') foot setback behind house instead of the minimum ten (10') feet ( permit issued for big carport in error – not ten (10') feet behind house, and a carport seven by twelve (7'x'12') foot attachment two (2') feet from side of house (without permit). This property is located at 8116 Orchard Drive, Michigan City, Coolspring Twp., zoned R1A.

Attorney Biege said publication is adequate.

Attorney Biege said that there is an issue on this one that may supersede what the board does.

Attorney Biege asked Ms. Charmiec if she was involved in a property line dispute.

Ms. Charmiec stated yes.

Attorney Biege asked if it involves where the border is.

Ms. Charmiec said yes, on the property side.

Attorney Biege said that anything the board would decide would be affected by the ruling of the Court as to where the property line is. Attorney Biege said that he thinks that this would be premature for the board to make any decision until the property line has been established by the court.

Melissa Mullins Mischke asked if there is a time frame on that.

Attorney Biege said that it's in litigation, that's all we know. Attorney Biege said rather than postpone it, he'd say continue it until it's decided.

Attorney Biege asked Ms. Charmiec if she understands what he's saying.

Ms. Charmiec stated yes.

Earl Cunningham made a motion to table Petition No. 8 indefinitely until the court case has been rendered.

Melissa Mullins Mischke seconded.

Dwayne Hogan asked if there are any questions, or concerns.

All approved. Motion carries 5-0.

**9. Petition For Special Exception for Joint Petitioners, Ozinga Materials, Inc., d/b/a Ozinga Materials & Logistics ("Ozinga"), Marvin Crook ("Crook") and Grand**

**Kankakee Properties, LLC (Grand Kankakee”)**, pursuant to Article 28 and Article 24 of the Joint Zoning Ordinance of La Porte County, Indiana, respectfully petition for a Special Exception under the provision of Article 3 3.02 so as to permit a mining operation. This property is located at 16766 S. 250 W., Hanna, IN Prairie Twp., zoned Agricultural on ninety (90) acres. Variance was granted on May 19<sup>th</sup>, 2015 for the mining operation. Same mining operation will continue, but it's under new ownership.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Anthony Novak said he's an attorney with Newby, Lewis, Kaminski & Jones here in La Porte, here on behalf of petitioner, Ozinga. Attorney Novak said one thing to clarify President Hogan, the Special Exception that you referenced was approved in May of 2015.

Melissa Mullins Mischke asked attorney Biege if the reason we're hearing this petition tonight is because of the change of ownership.

Attorney Biege said that's right. Attorney Biege said the Special Exception tends to run with the owners themselves, and again a Special Exception is allowed in the area, but because of the type of Use, they want the board to take a look at it. Attorney Biege said from what he understands, this mine is being monitored by the Federal Government, so all the safety issues are not a concern of the Zoning Board.

Attorney Novak said here with him tonight is Tony Shivley, who is the Director of Business Developer of Ozinga. Attorney Novak said he's available and Tony is available for any questions. Attorney Novak said also here with them tonight next to Tony in the Polo is Guy Salisbury. Finally joining us in this petition tonight are the current owners of the property, which is Marvin Crook and his related LLC, Grand Kankakee Properties, LLC. Attorney Novak said he doesn't believe Mr. Crook is here tonight.

Attorney Novak said tonight they're seeking a Special Exception so as to permit the sand mine to continue to operate in La Porte County on ninety-five (95) acres of land at 16766 S. 250 W., which is in Hanna, Prairie Twp. Attorney Novak said previously in 2015, Guy Salisbury came before this board requesting and ultimately seeking and receiving this exact same type of Special Exception on this exact same night on this ninety-five (95) acres. Attorney Novak said today, all parties involved here desire for the mining operation to continue, but for Ozinga to step in and have the operations be under Ozinga's name, which ultimately requires this board's approval because the change of ownership.

Attorney Novak said specifically Ozinga has entered into a purchase agreement with Mr. Crook and his related entity for the purchase of ninety-five (95) acres and also, Ozinga has entered into a purchase agreement with Guy Salisbury to purchase the equipment that they will be using at this operation. Attorney Novak said although the operation will now bear Ozinga's name,

they're seeking to do the exact same thing that Guy was previously approved for, that is, to run a sand mine. Attorney Novak said not only is Ozinga looking to do the exact same thing that Guy was approved, but Guy is still going to be involved in this operation, either running this operation in its entirety, or working in a consultant fashion. Attorney Novak said in addition to Guy working at this operation, Ozinga plans to hire three (3) to four (4) more employees, hopefully La Porte County residence.

Attorney Novak said that Ozingas are going to have their main entrance on 1650 S. and they will maintain a one-hundred (100') foot buffer on S. 250 W. and they're going to maintain the same hours as permitted in the JZO from 7:00 to 7:00. Attorney Novak said for what days of operation, it's not limited in the JZO, but they told him they plan on doing Monday through Friday, and only Saturday if needed. Attorney Novak said certainly there are four (4) exceptions under the JZO of the Use requirements if there are other requirements that may be needed at that time.

Attorney Novak said in conclusion, petitioners here are seeking a Petition for Special Exception so as to Ozinga now to have the Special Exception of this mine at 16766 S. 250 West.

Dwayne Hogan asked if there are any questions of the board.

Melissa Mullins Mischke asked Anne if she's had any complaints about the mining activities at this location in the three (3) years.

Annemarie Polan, Building Commissioner, stated no.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 9.

Dwayne Hogan said he's not going to have duplication of complaints, or support.

**Remonstrators:**

Dwayne Hogan asked for name and address for the record.

Bill Warner, 3555 W. 1350 S., Hanna.

Mr. Warner said that he farms directly west of that. Mr. Warner said that the only concern that he has is water going down the ditch and if they're going to pump down the ditch, or drainage down the ditch, the ditch can't handle any more water. Mr. Warner said that's the only concern that he has.

Dwayne Hogan asked for name and address for the record.

Shara Mertz, 2599 W. 1650 S. Ms. Mertz said that she lives directly across from the driveway to this building. Ms. Mertz said that they have three (3) small children and their concern is the

speed these trucks were traveling. Ms. Mertz said it was controlled if they complained, but with a different company, our concern is the safety of our children. Ms. Mertz said the 7:00 to 7:00 operation times, the bus picks up right in front of her house right next to that driveway. Ms. Mertz said more than one (1) occasion there were close calls, nothing happened, but at 7:15 her kids do get on the bus and she would like to get them on safely.

Ms. Mertz said where the driveway is located, you cannot see coming up the hill with a truck pulling out of the far end of the fifty (50') foot driveway. When you come up the hill there, you do not see them until you're ten (10') to fifteen (15') feet from them. Ms. Mertz said she's concerned about the noise level if they increase production. Ms. Mertz said that they moved out to the country to have peace and it really devalues the property value and the atmosphere for their home.

Dwayne Hogan asked if there are any more remonstrators.

Dwayne Hogan asked for name and address for the record.

Nathaniel Kohn said legal address is 12355 S. 700 W., Wanatah, but he owns 17037 S. 250 W., which is right across the street.

Mr. Kohn said he wasn't here for the first hearing, so he's just wondering what the time line would be on this project – completion dates. Mr. Kohn said he heard 7:00 to 7:00 Monday through Friday, how long is this going to be taking place.

Dwayne Hogan asked if there are any other remonstrators.

Dwayne Hogan asked for name and address for the record.

David Mosier, 17061 S. 250 W., Hanna, Indiana. Mr. Mosier said that he lives directly east of the mining area and he wasn't here for the first meeting either. Mr. Mosier said he has the same concerns of the others. Mr. Mosier said that he also has children that live on that road on 250 W. and he has a wife that drives a school bus in that area. Mr. Mosier said he heard five (5) days a week, possibly six (6).

Mr. Mosier said he has a lot of questions. Mr. Mosier asked if it's going to be one (1) dump truck, one-hundred (100) triaxle trucks during the day; what type of heavy equipment is going to be on the property. Mr. Mosier asked what other structures are going to be built in the mining area. Mr. Mosier said in the past when Mr. Salisbury, he really didn't notice it because he's not home during the day, he's just curious if this operation is going to be similar to what's been going on.

Dwayne Hogan asked if there are any other remonstrators, or questions.

Dwayne Hogan asked for name and address for the record.

Gene Schmidt, 15722 S. 400 W., Hanna. Mr. Schmidt said that he farms directly south of the petitioned property. Mr. Schmidt said as stated earlier, concern of the drainage issue with water that possibly is going to go off the property. Mr. Schmidt said he doesn't know if the mining activity is going to be exactly what was done prior. Mr. Schmidt said not knowing exactly the traffic potential as was stated to you, the entrance off the site discussed onto 1650 is on an angle, which doesn't provide a very good – it sits on a hill and there was a blind intersection about three-hundred (300') feet to the east on 250 with a high bank wooded area and you can't see oncoming traffic from 1650 unless you're on 1650 at that intersection. Mr. Schmidt said from an industrial activity, the safety traffic pattern is not conducive to the kind of traffic that's going to transpire here.

Mr. Schmidt said that the road is not built for industrial traffic that you're probably going to experience in this kind of mine activity. Mr. Schmidt said it's too narrow for farm equipment, let alone oncoming trucks and traffic, school bus traffic, pedestrians, bicycle path and all of the above. Mr. Schmidt said just a concern from a safety stand point, the total mining activity and offsite concern of drainage into a drainage ditch that can't handle what's conducive.

Glen Minich asked if it's natural drainage, or is it being pumped into there.

Mr. Schmidt said that there is an existing ditch that separates the property. Mr. Schmidt said that there has been a pumped established by that ditch that was adding additional water to that and it wasn't a natural drain being pumped into; that's a concern that he has downstream. Mr. Schmidt asked if there is going to be pumping offsite of the property versus what the natural drain would contend too.

Melissa Mullins Mischke asked Gene if that's a legal drain out there.

Mr. Schmidt said it would be a private drain into a cord ditch, the Davidson drain which would be accessed south of the railroad tracks of this property eventually going down to Long Lane south.

Dwayne Hogan asked if there are any other remonstrators.

Dwayne Hogan asked for name and address for the record.

Allen Stevens, 5277 W. 1475 S., Hanna. Mr. Stevens said that he has some concerns about where the driveway is on the hill. Mr. Stevens said he thinks that's a common thing here. Mr. Stevens said while you guys said there weren't any complaints against the existing operation, you're fixing to transition from a ma and pap operation into a multi-state two-hundred thirty four million dollar operation that has to feed seventy (70) concrete plants across Northern Indiana and Chicagoland. Mr. Stevens said that there is going to be considerably more trucks and we know from the sand mine Deboco a little north from here, that's probably fresh in everybody's mind

here, there is constant problems with the trucks tearing up the roads, and who pays for that. Mr. Allen said as a tax payer he doesn't want to pay for 1650 falling apart and repaving that area.

Dwayne Hogan asked if there is anything else.

Attorney Novak said that he would like to address a couple of points and then he'd like Guy and Tony to come up here and maybe address a couple other things that he can't speak on.

Attorney Novak said just a point of clarification, what we're asking for tonight is not a Variance of Use, we're asking for a Special Exception. Attorney Novak said that you guys are very well versed at Special Exceptions, but for the benefit of everyone, the definition of a Special Exception are those uses of land which are not essentially incompatible with the uses permitted in zoning district, or **posse** characteristics for locational qualities which require individual review and restriction by the BZA. This is a specific location in a county, which a mining operation should occur. It has a locational quality as it should be.

Attorney Novak said the benefit that they certainly have here is a lot of times when you guys have a variance, you're unsure what's going to happen. You place contingencies and you say we hope that this is what's going to happen. You essentially had a three (3) year test run with this operation. Attorney Novak said in the minutes that he reviewed in 2015, obviously there were concerns of the property owners that you often hear. Attorney Novak said you hear traffic, you hear property values and you hear safety. Attorney Novak said that there has been no injuries; there has been no traffic accidents, and with a mining operation like this, they're federally regulated by the FMSHA, and certainly with regards to speed and traffic, they're regulated by the speed restrictions and things in the county. Attorney Novak said that this is a highly regulated activity that they're very well versed in operating it.

Attorney Novak said that they're certainly knowledgeable of what they have restrictions on and they're willing to comply with it. Attorney Novak said at this time he would like to have Guy and Tony come up here and just for the sake of maybe Guy just explaining the operation that he had and maybe the concerns that he previously had with traffic and water and to answer any questions.

Guy Salisbury, 499 W. US 30, Hamlet, Indiana.

Mr. Salisbury asked if you would like him to just start answering questions.

Dwayne Hogan stated yes.

Mr. Salisbury said for one to get everybody clear on questions on the water, they're not generating any water, they're only using water that's there; they're not pumping water out running it out like a lime stone core, or anything, this is only dredged material out of the ground using water to pump it and everything is self-contained. Mr. Salisbury said when Mr. Warner came up, that was in the spring of the year when it was really flooding and all their haul roads

were under water, there was a drainage ditch there and they pumped some into that, if that's a problem they won't do it.

Mr. Salisbury said everything is self-contained, they have a SWPP plan and storm water plan in place through the county that everything is approved; it's going to be maintained the same; same plan; nothing has really changed. Mr. Salisbury said that they put the road in. Mr. Salisbury said the last time people were complaining about running their entrance off of 250 and they changed it to runoff of 1650 and they did that in accordance with the County Road Superintendent, and they actually made it three (3) times wider than what he recommended so they could have all kinds of room for safety. Mr. Salisbury said that he respects the lady across the street and we've talked to them. Mr. Salisbury said that the only reason why there is a blind spot is they need to trim some trees.

Mr. Salisbury said that they moved out of there and by the time they got the drive in, they just didn't use it that much. Mr. Salisbury said that he just needs to trim some trees; they put it on top of a hill where they were told to put it and its one-hundred fifty (150') foot wide at least.

Dwayne Hogan asked about speed and safety.

Mr. Salisbury said that they're governed by MSHA, It's a Mine Safety Health Administration and they're posted –

Melissa Mullins Mischke asked if that's his plan, not –

Mr. Salisbury said that they can't govern out on the county highway and he's sure the county can put signs up if they want to and he recommends that. Mr. Salisbury said on their property, they have signs posted and anything that doesn't abide by their laws, they're seriously fined and they're not allowed to come back.

Dwayne Hogan asked if hours of operation are 7:00 to 7:00.

Mr. Salisbury stated yes. Mr. Salisbury said he doesn't remember that, he thought it was 6:00 to 6:00, that's just his memory.

Attorney Novak said that the zoning ordinance says 7:00 to 7:00.

Dwayne Hogan asked Mr. Salisbury to address noise levels.

Mr. Salisbury said that they're in compliance with what was recommended before with berms around the property. They were existing and they're maintaining them. Mr. Salisbury said that they've added a couple on the north end. Mr. Salisbury said that there is diesel engines running, equipment running, but it's kind of faraway, but it's not any louder than the railroad that's going through there.



Dwayne Hogan asked for time frame when this project is completed.

Mr. Salisbury said it's a total guess. Mr. Salisbury said that it depends on supply and demand. Mr. Salisbury said the reason this would work and it didn't work for him, they're the end user of this product; they're going to use the material that is made there, so it depends upon how much concrete they sell. Mr. Salisbury said as far as going to state to state, they're not IDOT certified and it's just the plants around this area.

Dwayne Hogan asked types of heavy equipment.

Mr. Salisbury said it's mostly the same equipment and it's his equipment that they're buying, the only thing that's not the same that's there is his plant that's existing at the gravel pit on 39, which is all electric. Mr. Salisbury said that there is no noise and they will be moving that there. Mr. Salisbury said that there will be less noise when they get all that into place.

Dwayne Hogan asked about road traffic with industrial equipment.

Mr. Salisbury said that they have an agreement with the county right now because of the frost law and they want to do business during that time, so they're under their own costs, supply all the materials --- they're going to redo the road, widen it and make it like a state highway where there won't be a frost law on that.

Earl Cunningham asked when it will be completed.

Mr. Salisbury said after they get the variance. Mr. Salisbury said it will be within a year. Mr. Salisbury said that they will have to abide by the frost law rules until then.

Dwayne Hogan asked if there are any other questions.

Glen Minich said that he can tell by the lady in the audience that she's not satisfied with this driveway that's there. Glen said he wonders if you could elaborate on the improvement. Glen said he thinks widening the county road is going to make a big difference.

Melissa Mullins Mischke said she just wants to mention to the board that in her opinion the issue here is not widening the road, the driveway, or any improvement, it's granting the transfer of ownership of the Special Exception from one owner to the next. Melissa said we're not able to make additional changes to the Use or the Variance that's already in place.

Attorney Biege said first of all it's a Special Exception and they're allowed. Attorney Biege said he thinks that you can add conditions, but those conditions should be associated with change in ownership.

Mr. Salisbury said that's really all this is – new owners.

Glen Minich said right, but the point he's trying to make that we've learned with your operation that our county road is narrow, and you're saying that you're willing to upgrade the road to make it safer for the homeowner across the way.

Dwayne Hogan asked for name and address for the record.

Tony Shivley, 232 E. 700 S., Kouts, Indiana.

Mr. Shivley said he just wanted to mention a couple of things. Mr. Shivley said that he's the Director of Business Development for Ozinga and he's lived in Indiana all his life and rural community and he understands. Mr. Shivley said that he also wanted you guys to know what Ozinga is. Mr. Shivley said one gentlemen talked about us making product to take to seventy (70) some plants. Mr. Shivley said that's not going to happen. Mr. Shivley said that their company has grown and they're the fourth generation family owned business, and the fifth generation is thirty-two (32) strong. Mr. Shivley said we as a company and a family understand the concerns of the people and their children.

Mr. Shivley said that he just wants to caution you, when you start to widen out a road, you start to increase speeds. Mr. Shivley said that there is some thought to that process. Mr. Shivley said he doesn't want to stand here and say that Ozinga's going to come in and widen this out to a highway and then leave it, because he thinks that she would be in a worse position having a highway in front of her house, then she is with a narrow road; the trucks are just coming in and out in front of her house. Mr. Shivley said he understands that. Mr. Shivley said the other reason that the entrance was originally put there is it's his understanding is because the buses typically pick up most of the children on 250. Mr. Shivley said he does understand that they do come to her house, but he just wants to bring that up and he thinks we need to be cautious about that and the Ozinga family is certainly taking that into consideration.

Attorney Biege said that you can't put a condition to widen the county road, it's the highway department's issue.

Greg Szybala asked Mr. Shivley if he has any idea how many plants are going to be supplied by this.

Mr. Shivley said in a perfect world, we don't want to supply any of their own plants, we want to sell a product. Mr. Shivley said that they will supply their plants obviously, but typically you're only going to supply plants that transportation makes sense. Mr. Shivley said with this plant, he would guess five (5) to seven (7) plants is all they're going to provide material out of this location. Mr. Shivley said that they have other sand pits in other facilities that they get sand from. Mr. Shivley said that it all comes down to a matter of logistics and money.

Greg Szybala said so you're talking as far away as possibly Lake county and Porter county, La Porte county.

Mr. Shively said that they will not take sand from here to Lake county.

Greg Szybala said how about Porter county.

Mr. Shively said probably not even that. Mr. Shively said that they buy from Land Mark sand as well, so those logistically make a lot more sense for them to try to push sand from here. Mr. Shively said that they have plants everywhere and they can't cross state lines with different approved sands, so they can't do that as well.

Earl Cunningham asked Mr. Salisbury how many trucks he's averaging per day when he was operating.

Mr. Salisbury said he was averaging fifteen (15), but on a good day, they've had up to sixty (60). Mr. Salisbury said average, he would say fifteen (15). Mr. Salisbury said that he's sure that's going to be increased, he hopes, but the main thing is they put that road - that driveway in where the county told us because it's on top of that hill and they have visibility both ways, coming and going and they widened it. Mr. Salisbury said it's one-hundred fifty (150') foot entrance. Mr. Salisbury said that it's at an angle because they're not allowed to turn to go west on a county road; that was another provision and they're angled to that direction, but they can go any direction because they have plenty of room. Mr. Salisbury said that they just need to trim the visibility there.

Earl Cunningham asked the distance to highway 39.

Mr. Salisbury said just over a half a mile.

Dwayne Hogan asked if there are any further questions, or concerns.

Dwayne Hogan asked if there are any more remonstrators.

Remonstrator:

Gene Schmidt, 15722 S. 400 W., Hanna. Mr. Schmidt said that when you talked about the statutes before under the Special Exception, was there anything set forth about business entrance; was there to be signs for truck entrance. Mr. Schmidt said when you're talking fifteen (15) to sixty (60) trucks, that's quite a bit additional. Mr. Schmidt said he would like to have that many grain trucks going by a day. Mr. Schmidt said the key is there's not even a stop sign leaving the business entrance and he'll speak personally, he's lucky to be standing here today, because a truck came out that he wasn't expecting and they didn't stop. Mr. Schmidt said you have a huge safety issue. Mr. Schmidt said you would have thought there at least would have been a stop sign for that traffic leaving that business site.

Dwayne Hogan asked if there is anything else.

Melissa Mullins Mischke said that her understanding is that since that is a county road the county highway department is looking at safety concerns on this type of business, and it's not something this board can put into a motion, or amend a Special Exception for safety, because that's not our area, but certainly we've discussed MSHA control safety within the plant, the county highway department is going to control safety along the county highway, she would suggest that anyone that has concerns contact the county highway department. Melissa said as she's going to reiterate one more time, the decision here from this board tonight is not really making changes to the existing operation, or whether or not we're going to grant the Special Exception for a new owner. Melissa said that's the decision in front of the board in her opinion.

Dwayne Hogan asked if there are any further questions of the board.

Glen Minich said that we requested the entrance be put onto 1650. Glen said we thought it was the safest place to do it because the other road had so many trees and blocked vision that they did that for us last time. Glen said he thinks you read in the minutes that Guy Salisbury stated that there would be no water pumped from the property, and apparently there has been and that request is going to be reiterated and put in effect that this petition is to say that we don't want to tax in the spring and no water will be allowed to be pumped from those parcels into the drain. Glen said that you're going to have to live with that water during that time so the farmers can get their fields dried up.

Mr. Salisbury said that they're perfectly fine with that.

Earl Cunningham said you hear about all these regulations inside; he can't leave a Walmart parking lot or Meijer without a stop sign to get out on any public road. Earl asked Mr. Salisbury how he leaves his property without a stop sign from the sand mine operation. Earl said what he's telling us there is no stop sign as you exit your own property onto the county highway, is that correct?

Mr. Salisbury said that's correct. Mr. Salisbury said that they will put one up – we will put one on both sides. Mr. Salisbury said that's not a problem at all.

Melissa Mullins Mischke made a motion that the Petition for the Special Exception for Joint Petitioners, Ozinga Materials, Inc. d/b/a (Ozinga), Marvin Crook and Grand Kankakee Properties, LLC, for the Special Exception under the provision of Article 3 Section 3.02 as to permitting mining operations, that the Special Exception be granted for the property located at 16766 S. 250 W., Hanna.

Attorney Biege asked Melissa if she's going to mention the pumping and the stop sign.

Melissa Mullins Mischke said she wasn't going to, but she will include both items.

Dwayne Hogan said both included.

Greg Szybala seconded.

Dwayne Hogan asked if there are any other concerns, or clarifications needed.

All approved. Motion carries 5-0.

Earl Cunningham said that he appreciates that you're from DeMotte, a small town similar to that area and he's only been on this board for eighteen (18) months, but this is one of the largest number of remonstrators that we've had. Earl said that he would hope that as time goes by you're able to address those concerns and constantly have communication with the people. Earl said what he thinks he's hearing is that you want to be good neighbor, and hopefully you can convince those neighbors over the next couple of years that's exactly what you're going to do.

Dwayne Hogan asked if there is any new business before us tonight.

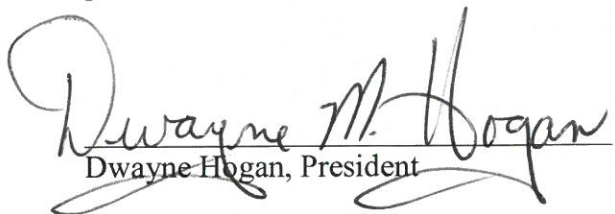
Attorney Biege stated no.

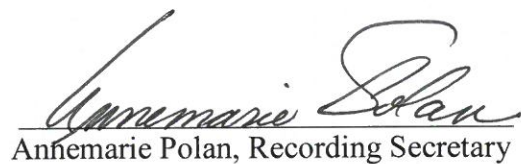
Melissa Mullins Mischke made a motion to adjourn.

Glen Minich seconded.

All approved. Motion carries 5-0.

There being no further business before the Board of Zoning Appeals, meeting adjourned at 8:20 p.m.

  
Dwayne Hogan, President

  
Anhemarie Polan, Recording Secretary