

LAPORTE COUNTY BOARD OF ZONING APPEALS

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ANNEMARIE POLAN
Building Commissioner

February 19, 2013

Dear Members:

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

MEMBERS PRESENT: Dwayne Hogan Wally Pritz
 Glen Minich Melissa Mullins Mischke
 Candice Adams

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

The Pledge of Allegiance.

Dwayne Hogan entertained a Motion for approval of meeting minutes from January 15, 2013.

Melissa Mullins Mischke made a Motion to approve the meeting minutes as presented. Wally Pritz seconded. All approved. Motion carried 5-0.

Dwayne Hogan said that he was just informed that **Petition No. 2, the Petition for Ken Tanksley** to construct a pole barn (30x60) with electric to store camper and automobiles with an already existing detached garage on this property as been postponed.

1. **The Petition for Steven & Candice Rosen** to construct a horse barn with plumbing, with long range plans of building a loft/office. This property is located at 8421 E. Heron Lake Hills, New Carlisle, IN. Hudson Twp., zoned Agricultural. A building permit was issued from the Building Department for the horse barn on December 19, 2012.

Attorney Biege asked Mr. Rosen if this is on the Michigan border.

Mr. Beck said that the property abuts Michigan State Line.

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Attorney Biege said that it lists only one property owner. Attorney Biege said that publication is appropriate.

Dwayne Hogan asked for name and address for the record.

Christopher Beck, 5899 E. 1000 N., La Porte, Indiana.

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

Mr. Beck said that he would like to get approval to put plumbing in a horse barn that he's going to be building for the owner. Mr. Beck said eventually the plan is to have some animals in the barn, which they're going to need to water the animals, and also to install a toilet in the barn for the people to use that will be occupying the barn while they're taking care of the animals.

Dwayne Hogan asked if that would be for Steven & Candice Rosen.

Mr. Beck said that is correct.

Dwayne Hogan asked if the long range plan is to have an office in the building.

Mr. Beck said that he didn't know anything about an office. Mr. Beck said that there will be a second floor unfinished. Mr. Beck said that they talked about maybe using that for doing art work upstairs, or just as a reading room, but no long range plans for an office that he knows of.

Dwayne Hogan asked if there is an idea of making this a rental. .

Mr. Beck said not at all.

Dwayne Hogan asked for questions or comments from the Board.

Melissa Mullins Mischke asked about the acreage.

Mr. Beck said that is it shown on the parcel that he gave the attorney.

Annemarie Polan, Building Commissioner, said that she talked to Mrs. Rosen and she said that for long range she did want to have a loft up there and when she retires she might do a little office work up there. Annemarie said that she said it would never be rented out.

Wally Pritz asked Mr. Beck if he approached the Health Department regarding the restroom.

Mr. Beck said that he has already obtained the septic permit for that.

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

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

Glen Minich said that the only reason this is before the Board is because of the plumbing. Is that correct?

Annemarie Polan, Building Commissioner, said that the reason she called her was because if it was just the plumbing we wouldn't have had her come for a variance, but she wanted to build a loft for future use in that horse barn. Annemarie said that she did say that she counsels sick people with diabetes. Annemarie said to be on the safe side she wanted her to come in.

Attorney Biege said that he would suggest if this is for plumbing that's one thing, but if this is for a loft or space, we don't have any specification as to what the loft or space would be. Attorney Biege said that he thinks that we should put some kind of limit, or requirement, first of all, specify what we're asking for and secondly, be specific as to what we're granting.

Wally Pritz asked Mr. Beck to help us out on the approximate size the loft will be.

Mr. Beck said that the building is 36x36; it has a ten (10') foot ceiling in the lower level. Mr. Beck said that it is going to have a vaulted ceiling on the second floor; the rafters will also serve as the future ceiling if that room upstairs is ever completed. Mr. Beck said that it's basically an attic storage area on the second floor.

Wally Pritz asked Mr. Beck if that would be approximately nine hundred (900') square feet for the loft.

Mr. Beck said it is less than that because the actual space upstairs will be sixteen (16') foot wide. Mr. Beck said that the second floor area will be 16x36.

Wally Pritz said that he is concerned about a fire escape from that loft.

Mr. Beck said that there will be a five (5') foot stairway going to the second floor.

Dwayne Hogan asked if there will be any windows on the second floor.

Mr. Beck said that there will be two dormers on the roof and there will be small windows in the dormers. Mr. Beck said that on one end of the building there will be some windows.

Wally Pritz asked if there could possibly be an escape window at a future time.

Mr. Nowatzke said they consider that half loads.

Wally Pritz said ten (10) tons or under.

Mr. Nowatzke said that when they haul the whole shingles in the tri-axle, they can only get eight (8) to eleven (11) ton on anyway. Mr. Nowatzke said if they had to go to using the tri-axle to haul the whole shingles that would be fine. Mr. Nowatzke said that the actual process product is seasonal; so only when the asphalt plants are running is when we would deliver that. Mr. Nowatzke said that he doesn't think that they need to be concerned with the frost law.

Melissa Mullins Mischke asked Mr. Nowatzke with the processing that they do in grinding it up from the shingle to the build product, is there odors or noise.

Mr. Nowatzke said that there is noise, but the machine makes no more noise than one of their farm tractors. Mr. Nowatzke said that it is not excessive.

Dwayne Hogan asked Mr. Nowatzke if they're burning the shingles.

Mr. Nowatzke said that they're not burning them. Mr. Nowatzke said that actually they just go through a mill and they get processed into a small material.

Candice Adams asked Mr. Nowatzke if they're going to store the pile of shingles as shown in the picture.

Mr. Nowatzke said that he has a thing from IDEM and that pile gets added to twice a week. Mr. Nowatzke said that they actually haul Wednesdays and Saturdays.

Candice Adams asked Mr. Nowatzke if there is any risk for chemical or contaminants.

Mr. Nowatzke stated no. Mr. Nowatzke said that he has the print out from GAF what is in these shingles. Mr. Nowatzke said that he could provide this to the Board. Mr. Nowatzke said that his understanding on these shingles until they reach their flash point; there is no oil that's going to come out of them. Mr. Nowatzke said that nothing is going to actually leach from the shingles into the ground until they reach their flash point. Mr. Nowatzke said that some of the literature he has there flash point of the GAF shingles is five hundred fifty (550) degrees.

Melissa Mullins Mischke asked Mr. Nowatzke how many hours a day does the actual grinding take place.

Mr. Nowatzke said that it will only be certain days; they started this last fall, but they only ran for two weeks because it is seasonal. Mr. Nowatzke said as they get into this summer, he could better answer that. Mr. Nowatzke said that he could say that grinder would run one hundred

Mr. Beck said that those windows will be over the main entrance doors to get into the lower level to bring the animals in and out of the barn. Mr. Beck said that he doesn't know if the design would be conducive to a second exterior stairway.

Dwayne Hogan said that he could agree with that, but what we're thinking about the future if you're going to have any inhabitants up there.

Mr. Beck said that any barn that anybody builds could have a second floor on it where people store hay and materials; single stairways are generally acceptable.

Dwayne Hogan said that once it's going to be used as recreational type activities for painting or whatever you're going to do, there is a loft and we want to make sure that there is a means of egress out of it.

Mr. Beck said that he lives in a two story home and he has one stairway going up and that was approved by the building council. Mr. Beck said that he doesn't know how this would be any different. Mr. Beck said that the permit that he obtained shows the two stories; it shows the stairway. Mr. Beck said that the building department didn't have a problem with it.

Attorney Biege said that this isn't going to be living space, correct?

Mr. Beck stated correct.

Attorney Biege said that anything that is living space he thinks the building code is going to cover whatever for ingress and egress.

Mr. Beck said that it is his understanding that it is going to be used for storage.

Dwayne Hogan said that he would entertain a Motion.

Wally Pritz made a motion that the Petition for Steven & Candice Rosen to construct a horse barn with plumbing, and the building for the loft office be granted. Candice Adams seconded.

Melissa Mullins Mischke said that she thinks that if we're going to approve it, she thinks it needs to be approved with only the horse barn with plumbing.

Annemarie Polan, Building Commissioner, said that is why she called her, because if it was only going to be plumbing, she probably wouldn't have had to come here. Annemarie said that since she mentioned having an office there in the future, she thought this Board should probably hear it.

Melissa Mullins Mischke said that she thinks if Ms. Rosen wanted an office, perhaps she should have come here herself to explain to us what the intent is.

Ms. Rosen said that it's not going to be an office like where somebody would come up and speak to her. Ms. Rosen said that if she is in the barn with the horses and she doesn't want to be where the noise is, she would go upstairs and answer questions from patients that call. Ms. Rosen said that she's not going to be conducting an office.

Attorney Biege said that he kind of jotted some notes on drafting findings of fact. Attorney Biege said at that he would suggest if you want to pass this Motion for the limitation on loft/office space to less than nine (900') square feet and that space will not be used as a living space.

Wally Pritz said that he will amend his Motion to reflect the sixteen by thirty six loft area to be used as an office with no plumbing in the office part upstairs, only down stairs and not used for living space. Candice Adams seconded.

All approved. Motion carried 5-0.

- 3. The Petition for Janice Scherer, (owner) and Barry Nowatzke, (lessee) to operate a recycling (with new shingles) business to sell to asphalt companies using fifty (50') foot easement to property. This property is next to 10752 W. 300 N., Michigan City, Coolspring Twp., zoned Agricultural. The front part of this property is zoned Commercial, B-3.**

Attorney Biege said that publication is appropriate. Attorney Biege said that we have certified mail by all adjoining property owners except for Byron & Murat Hadzovic, however we do have a receipt for attempted service by certified mail.

Dwayne Hogan asked for name and address for the record.

Barry Nowatzke, 9335 W. 200 N., Michigan City.

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

Mr. Nowatzke said that he's here today to seek approval for something that they've already started by the fact of misunderstanding to run a shingle business – recycling business on property that is zoned Ag. off of 300 North in Michigan City. Mr. Nowatzke said that if it would please the Board, to kind of go through what got us into the predicament that they're in and why they started the process.

Mr. Nowatzke said that they were approached with a business opportunity and before they even took hold of it they did some research into it and called over to the county to see what they needed to do to run this business. Mr. Nowatzke said that the county said that if the land is zoned Commercial/Industrial, it would be no problem to do it whatsoever. Mr. Nowatzke said that he contacted his one landlord where she had sold some land previously to Vanair,

Incorporated on 300 North and she was under the impression that her whole farm was rezoned Commercial/Industrial. Mr. Nowatzke said that at that point he thought they would be okay and in the mix of this they built a half mile road. Mr. Nowatzke said that this is not visible from 300 North and it's probably six tenths of a mile from the closest residence.

Mr. Nowatzke said that they did check with IDEM to see what sort of permits they would have to have to process these shingles on this property. Mr. Nowatzke said that there is no such permits that they need. Mr. Nowatzke said that they did obtain a "Use" approval letter with a few guidelines that they need to follow in order to conduct this business. Mr. Nowatzke said that the shingles are all new shingles and they come out of the GAF Plant in Michigan City. Mr. Nowatzke said that there is no tear off; they didn't want to mess with nails, asbestos and things like that. Mr. Nowatzke said that they will not entertain doing anything like that in the future.

Mr. Nowatzke said that he's a farmer and he takes care of his land. Mr. Nowatzke said that they're hoping that this could turn into a long term business and if it does not, the base they put down is ground up asphalt and they could push it up and go back to farming. Mr. Nowatzke said that any of his land that he farms he tries to maintain it, take care of it, have it look nice and he would intend to run this business in the same aspect. Mr. Nowatzke said as he previously mentioned, they're a half mile off the road. Mr. Nowatzke said that if you drive down 300 North, the grade actually goes down and you can't even see this. Mr. Nowatzke said that there is actually a tree line that is in front of the shingle pile.

Mr. Nowatzke said that he apologizes that he didn't obtain this prior to starting doing what they're doing, but that is what he's here for today.

Dwayne Hogan asked Mr. Nowatzke if he would be the one operating this business.

Mr. Nowatzke stated yes.

Melissa Mullins Mischke asked Mr. Nowatzke to explain a little bit more about the process.

Mr. Nowatzke said that they haul the shingles from GAF dump trucks; they bring them out there and pile them.

Dwayne Hogan asked Mr. Nowatzke the size of the dump trucks.

Mr. Nowatzke said that they use a twenty eight (28') foot dump trailer semi, or tri-axle dump truck.

Wally Pritz asked Mr. Nowatzke asked how much weight.

Mr. Nowatzke said that actually when they're hauling whole shingles we're are only hauling sixteen to eighteen ton on those loads because they're so bulky they can't get enough

on. Mr. Nowatzke said that once they stock pile the shingles then they have a processor come in and the processor processes them to like a half inch (inaudible) product and that product has been approved by the State of Indiana to use in asphalt paving. Mr. Nowatzke said actually the State of Illinois mandates if it's available that five (5%) percent of recycled shingles is used in their asphalt. Mr. Nowatzke said that Indiana has not gotten to that point yet; maybe sometime, maybe not, but they're establishing a good business with the local asphalt companies and actually Reith & Riley has been using these for years.

Mr. Nowatzke said that once they're ground they reload them on the trucks and then they can haul twenty (20) ton at a time once it's processed and then they are hauled out and taken to the various asphalt plants around the area.

Wally Pritz asked Mr. Nowatzke if he talked to the County Highway Department.

Mr. Nowatzke said that he hasn't talked with them.

Wally Pritz said that he has a little concern about the weight when you come off of 300 to your easement.

Mr. Nowatzke said that he thinks that Vanair has spoken with the County Department. Mr. Nowatzke said that where they put this driveway is on a fifty (50') foot strip that goes back to the remainder of the property. Vanair has sought permission from Janice Scherer, the land-owner and they're actually going to pave the whole front of this fifty (50') foot where they drive back, in order for their delivery trucks to actually turn around to back into their dock. Mr. Nowatzke said that they now back off of 300 North. Mr. Nowatzke said that he would have to check with the Vanair guys to see exactly how that's going to be done, but he thinks that the county is involved with redoing that culvert and actually doing an approach there.

Dwayne Hogan said he'd be worried about tearing that road up.

Mr. Nowatzke said that he understands that, but he can check with them and see exactly -- he knows the county was actually out there and marked the culvert area and he knows because they're probably going to do the work for Vanair and that is going to be done in the spring. Mr. Nowatzke said that whole fifty (50') foot clear to the back side to the south edge of Vanair's property is going to be all asphalt.

Wally Pritz asked when the frost law is in effect; we need to be concerned about the traffic.

Mr. Nowatzke said that is something else that he needs to look into. Mr. Nowatzke said that he knows from the past from hauling stone, they will approve light loads.

Wally Pritz asked what they consider light loads.

(100) to one hundred fifty (150) hours per season.

Dwayne Hogan said so it's not a 6:00 a.m. to 6:00 p.m. business.

Mr. Nowatzke said no because that grinder processes it quite quickly.

Melissa Mullins Mischke asked Mr. Nowatzke what type of hours of operation he is looking for.

Mr. Nowatzke said that when they haul, they can haul anytime. Mr. Nowatzke said that GAF is open twenty four (24) hours a day, but they don't. Mr. Nowatzke said if they are hauling shingles it would be maybe 7:00 a.m. to 6:00 p.m., or 7:00 p.m., depending on how much they have to haul out of there. Mr. Nowatzke said that he doesn't see any night activity.

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

Mr. Nowatzke said that they have hauled on Sundays because they farm. Mr. Nowatzke said that when they have extra time and trucks are available, they will haul on Sunday on occasion.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition #3.

Edward Hiscox, 11499 W. 125 N. Mr. Hiscox said that he has questions. Mr. Hiscox said that he's not against Barry running his business. Mr. Hiscox said that he's the adjoining property owner to the south. Mr. Hiscox asked if the zoning variance is going to be for the entire farm, or is that a restricted area. Mr. Hiscox said that where they're located is pretty much in the middle of no where. Mr. Hiscox said that if you are north of this property you can hear it. Mr. Hiscox asked what happens when this is over.

Byron Hadzovic, 1430 N. Lakeshore Drive. Mr. Hadzovic said that he has property next to this business. Mr. Hadzovic said that he's not in favor of this business because he is five (5) feet away from his property.

Melissa Mullins Mischke asked Mr. Hadzovic which direction he is by this property.

Byron Hadzovic said that he has fifty five (55) acres. Mr. Hadzovic said that he bought that property for peace and to relax because he's almost retired. Mr. Hadzovic said that they're running trucks real loud and he can't even stay in his house. Mr. Hadzovic asked how he's been able to run this business from the fall all the way up to now without a special exception.

Glen Minich asked Mr. Hadzovic to come up to the bench and identify exactly where his house is located.

Board members going over the site plan with Mr. Hadzovic.

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

Melissa Mullins Mischke said so you're saying the property owner did not give an easement to you.

Byron Hadzovic stated yes.

Melissa Mullins Mischke said so there is an easement granted to you to get to your property and an easement also that they're using to get back to where the asphalt company is.

Mr. Hadzovic said exactly; same road they have to use. Mr. Hadovic said that he has the right to use that road. Mr. Hadovic said that road is two hundred (200') feet from his house.

Board members speaking amongst themselves.

Dwayne Hogan asked if there were any other remonstrators for Petition #3, for or against.

Attorney Biege asked Mr. Nowatzke if he's asking for a variance to use that fifty (50') foot easement for access to the property; then you're asking for a variance because part of this is in Agricultural and another part of this is in Commercial B-3

Glen Minich asked if Agricultural starts at the half mile.

Attorney Biege said that the access easement is only involved in the B3 and the operation itself is in Ag. Attorney Biege asked Mr. Nowatzke if this is within five (5) miles of the airport.

Mr. Nowatzke said that he would say it is more than five (5) miles.

Attorney Biege said that there are also buffers per zoning requirements. Attorney Biege asked Mr. Nowatzke if he is aware of those.

Mr. Nowatzke said that he's not, but he could make himself.

Attorney Biege said that the Board can waive these requirements and he just wants to make sure we're clear on what those requirements are, because you may or may not like them.

Attorney Biege said that the zoning code requires a fifty (50') foot buffer from the property line. It also requires a four (4') foot tall berm or an eight (8') foot tall wall. Attorney Biege said that this doesn't make sense, but there is also a requirement for a wall or solid fence around where you're unloading materials, or loading materials. Attorney Biege said that there is also some landscaping requirements; on canopy tree, three evergreens and four shrubs per forty (40') linear feet. Attorney Biege said he believes that would be on the buffer.

Attorney Biege said that those are things he wants to clarify if those are things you are planning on doing, or be asking the Board for a variance on those items.

Mr. Nowatzke said that there is actually trees on two sides of this on the west side; it borders this gentlemen's property and there's seventy (70') foot tall trees that divide the shingle pile from his property and on the north side there is a small tree line that divides the easement that he has access to get to his back property from the shingle pile.

Attorney Biege asked Mr. Nowatzke if he had one hundred thirty nine (139) acres.

Mr. Nowatzke stated right. Mr. Nowatzke said if he could he'd say at a maximum of five (5) acres. Mr. Nowatzke said that he doesn't even see them using that much, but we're here today and he might as well do it. Mr. Nowatzke said that he thinks that they're on less than two (2) acres today.

Wally Pritz asked Mr. Nowatzke if there is a way they he could move that pile to the south from that easement that this gentlemen's referring to.

Mr. Nowatzke said that they could move it and he would ask at this point and say we will if we could do that as we start up business this summer. Mr. Nowatzke said if you say that I have to move, I'll move it, but he would ask if we could grind it up, move it and stay away from that a little farther.

Mr. Nowatzke said that with respect to that easement that goes from 300 North to the property; Mrs. Scherer says that is not an easement. Mr. Nowatzke said that there is fifty (50') foot that is actual frontage to her property; these guys have a twenty five (25') foot easement on their property right next to Mrs. Scherer that goes down to it. Mr. Nowatzke said that he's told these guys that they can use the road. His nephew was the one that stopped them the other day because there have been too many people going in and out of there who don't belong; he didn't know these guys and he was doing what he was told to do. Mr. Nowatzke said that when he built the road he told these guys they could use it; I'm like him, I don't want sore neighbors or anything like that. Mr. Nowatzke said that he believes that was a misunderstanding.

Annemarie Polan, Building Commissioner, said that she just wanted to say that she was out there twice and it's a small operation and there were only two vehicles. Annemarie said that it was everything that he said tonight what she saw. Annemarie said that there was no odor; very small operation, new shingles and it's pretty far back. Annemarie said that she couldn't even see it from 300 North, she wasn't even sure about turning in the right place.

Wally Pritz asked if that easement shows on the plots.

Annemarie Polan, Building Commissioner, said that it looks like it is one of those flag lots.

Dwayne Hogan said if it's over and said and done, whatever that time frame is, are you going to turn that back into farm ground again.

Mr. Nowatzke said that it will go back the way it was when we started. Mr. Nowatzke said that he tries to keep all his operations and equipment cleaned up and neat looking; Mr. Nowatzke said that they're going to do the same with this because he doesn't like things looking junky; he doesn't have abandoned vehicles sitting around and things like that.

Dwayne Hogan said that there was a question about the location and how many acres. Dwayne Hogan asked if it is going to be five acres or less.

Mr. Nowatzke said five or less. Mr. Nowatzke said that they would never have any need for using the whole farm.

Wally Pritz asked if the easement going back to this property would stay and be maintained.

Mr. Nowatzke stated yes.

Melissa Mullins Mischke said that it is not an easement; it's part of the parcel --- the fifty (50') feet. Mellissa said that it's part of the actual parcel itself, it's not an easement.

Wally Pritz said that he's talking about the piece of asphalt he puts in there for Vanair to use and this is something that needs to be addressed.

Mr. Nowtzke said that Vanair's plant is there and he can speak for them a little bit, because they went through him to seek the permission from Mrs. Scherer. Mr. Nowatzke said that they're going to improve that to where it helps with their water drainage; they're going to use it so their trucks can turn off of 300 North and then back into their docks and also for a little bit of parking. Mr. Nowatzke said that regardless if this is here in five (5) years or not, I'm sure Vanair is going to be there and he would anticipate that this is going to be there too, but it will be maintained.

Glen Minich said that you're only talking a short distance off of 300 with that.

Mr. Nowatzke said that it will go to the back of the building and he's saying that it is three hundred (300') foot. Mr. Nowatzke said that is going to be asphalt.

Dwayne Hogan asked Ed if that answered all his questions.

Ed Hiscox stated yes. Mr. Hiscox said the only other comment he has as far as a farmer, if they're going to use that area, they are in the right spot.

Melissa Mullins Mischke asked Mr. Nowatzke when he heard some of the requirements as to the buffer and other things from the attorney, would he be willing to put up an additional fencing if we ordered that.

Mr. Nowatzke said that they could do that. Mr. Nowatzke said that one thing that was listed in the IDEM was a berm and that was something they were going to work on this spring. Mr. Nowatzke said a berm or a fence, whatever we need to do.

Attorney Biege said that it comes out clear that there are two different sections. Attorney Biege said that one section requires a berm or a fence and the other section requires a six (6) foot fence in parking or unloading areas for materials.

Dwayne Hogan asked Mr. Nowatzke if his trucks would be stored there.

Mr. Nowatzke said no. Mr. Nowatzke said that the only thing that sits there is a loader that pushes it up, or the processing machine.

Ed Hiscox said that this thing is a long ways north of them and a long way south. Ed said that if a berm is required he doesn't know why that would even be required.

Attorney Biege said that the Board has the ability to waive those requirements. Attorney Biege said if the Board is going to waive it, then we will just include that.

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

Glen Minich said that he thinks that because the problem with the neighbor, he certainly thinks that there should be a time frame. Mr. Minich said possibly a different time frame for processing more towards normal business hours.

Mr. Nowatzke said that they wouldn't be back there in the dark running that machinery from a safety stand point

Glen Minich said that the neighbors need to know that too.

Mr. Nowatzke said that he doesn't think they ever ran that processor on a weekend. Mr. Nowatzke said that they have stacked the shingles, but they've never processed them. Mr. Nowatzke said Monday through Friday would be Okay with him for processing.

Dwayne Hogan asked Mr. Nowatzke asked how much truck traffic he anticipates.

Mr. Nowatzke said it will depend on how much the business thrives. Mr. Nowatzke said that he would say to this point, approximately fifteen (15) trucks a week and that's when they're hauling in.

Glen Minich asked Mr. Nowatzke if the fifty (50') foot road that goes back is dust free.

Mr. Nowatzke said basically what they did was put crushed concrete down first; it is farmer's clay and they actually just hauled in more rock to put on top of it because as wet as it's been, it's been pushing down in. Mr. Nowatzke said that they hauled more stone in and they will continue to do that to keep it more solid.

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

Wally Pritz made a motion that the Petition for Janice Scherer, (owner) and Barry Nowatzke, (lessee) to operate a recycling (with new shingles) business to sell to asphalt companies using fifty (50') foot easement to property be granted, subject to moving the pile of shingles to the south and subject to any zoning ordinances that may be recorded such as vegetation being planted or a fence.

Dwayne Hogan said we need to clarify this because he's not sure of the language on the easement.

Melissa Mullins Mischke said she agrees. Melissa said that if it is determined that fifty (50') foot section is in fact part of the parcel, we're not granting an easement. Melissa said that we're never going to grant an easement to the property. Melissa said that she thinks that the Motion should be amended to the Petition for Janice Scherer and Barry Nowatzke to operate recycling with new shingles business to sell to asphalt companies on property located at 10752 W. 300 N., Michigan City, Coolspring Twp., zoned Agricultural be granted.

Attorney Biege said that he's looking to see if we might need a variance from development standards on these in Industrial. Attorney Biege said that he would suggest that you put that in the Motion. Attorney Biege said that if this is Industrial we have access requirements and he's not sure this meets.

Attorney Biege said that it would simply be a developmental variance because it's a fifty (50') foot easement.

Melissa Mullins Mischke said she feels we should huddle and come out with a good one.

Dwayne Hogan said he thinks that we better re-word this Motion.

Melissa Mullins Mischke made a Motion that the Petition for Janice Scherer (owner) and Barry Nowatzke (lessee) to operate a recycling business with new shingles to sell to asphalt companies and a variance use for developmental standards for Agricultural and Commercial B3; a variance

for developmental standards with access to the property and partial waiver of the requirement of 14.07 B and 17.03 C, with a maximum of five (5) acres, processing time for the shingles restricted to Mondays through Friday from 8:00 a.m. to 5:00 p.m. and a requirement for the shingle pile to be moved beyond the fifty (50') foot buffer, within six (6) months.

Glen Minich seconded.

All approved. Motion carried 5-0.

4. The Petition for Johnson Road Properties, LLC, (owners) and Sandra & Brad Clark renters) to remodel an attached garage into a Chiropractic Office. This property is located at 6646 W. Johnson Road, La Porte, IN, Coolspring Twp., zoned R1B.

Attorney Biege said that publication is correct. Attorney Biege said that we have signatures from three of the adjoining property owners and certified mail receipts from attempt of the remaining property owners, except that one of the adjoining property owners named Johnson Road Properties, LLC who also happens to be the landlord is signed by a person named Archie Schultz, with LFC. Attorney Biege said that he doesn't have any independent verification that in fact they own Johnson Road Properties, but on the other hand they're the landlords and that seems to be okay.

Dwayne Hogan asked for name and address for the record.

Dr. Sandra Clark, 6646 W. Johnson Road, La Porte, Indiana.

Dwayne Hogan asked Dr. Clark what she would like to do tonight.

Dr. Clark said that she would like to convert their attached garage into her Chiropractic Office.

Dwayne Hogan asked Dr. Clark if she is going to remodel what is already there.

Dr. Clark stated correct.

Dwayne Hogan asked Dr. Clark what she was going to add to it. Dwayne Hogan asked Dr. Clark if a septic is going to be added.

Dr. Clark said that is already in there. Dr. Clark said they will be adding a portable heater, a window air conditioner, if necessary; she has taken pictures of her equipment already in there because she didn't want to store it. Dr. Clark said that they will be adding carpeting on half of the floor and linoleum on the other half, the reception area.

Dwayne Hogan asked Dr. Clark how many rooms.

Dr. Clark said that right now it is just an open bay area; she's not sure how she wants to setup the office for privacy. Dr. Clark said that for privacy issues she will have a temporary curtain or a temporary wall to divide the reception area from the actual treatment rooms.

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

Wally Pritz asked Dr. Clark if she is the Chiropractor.

Dr. Clark stated yes.

Wally Pritz asked Dr. Clark if she is the owner of the property.

Dr. Clark said that they rent. Dr. Clark said that she and her husband rent the home.

Attorney Biege said that Dr. Clark has provided the Board with a lease, which shows the tenancy term through September 30, 2014.

Melissa Mullins Mischke asked Dr. Clark what kind of hours of operation she anticipates.

Dr. Clark said that it will be part-time; Dr. Clark said that she will probably do alternating Mondays, Wednesdays and Fridays in the morning 10:00 a.m. to 2:00 p.m., Tuesdays and Thursdays maybe 4:00 p.m. to 7:00 p.m. and Saturdays from 9:00 a.m. to 1:00 p.m. Dr. Clark said depending how busy she gets she might hire an associate and eventually have the office open from 10:00 a.m. to 7:00 p.m., Monday through Friday.

Dwayne Hogan asked Dr. Clark if she foresees starting any earlier than 10:00 a.m.

Dr. Clark possibly, but 9:00 a.m. would be the earliest.

Dwayne Hogan said that he's trying to include that all at one time so you don't have to come back again.

Dr. Clark said then 9:00 a.m. to 7:00 p.m.

Dwayne Hogan asked Dr. Clark if 7:00 p.m. would be plenty of time and you're not going to run into 8:00 p.m. or 8:30 p.m.

Dr. Clark said that her last patient would be at 6:00 p.m.

Melissa Mullins Mischke asked Dr. Clark how many parking spaces she anticipates.

Dr. Clark said that there is actually --- she took pictures of the parking area. Dr. Clark said that there are four blocks already there for cars to park and there is a lot of space for them to turn around.

Dwayne Hogan asked Dr. Clark how many patients she can visibly see at one time.

Dr. Clark said that it is only one at a time and by appointment only. Dr. Clark said that established patients are every fifteen (15) minutes, and new patients an hour.

Dwayne Hogan said so about two (2) or three (3) cars at one time.

Dr. Clark stated that is correct.

Melissa Mullins Mischke asked Dr. Clark if she is making any major modifications to the building, or could it go back to be used as a garage.

Dr. Clark said that was part of their lease.

Glen Minich asked Dr. Clark that if we make this to be okay with this Petition, are we approving the landowner too.

Attorney Biege said that you can restrict a "Use" variance to the individual also.

Dwayne Hogan asked if she sells in five years it could become a daycare center or something else.

Glen Minich said not without us given a new variance.

Attorney Biege said that you could also terminate the required renewal upon expiration of the lease term.

Dwayne Hogan asked Dr. Clark how long she anticipates staying there and doing that.

Dr. Clark said at least two (2) years.

Dwayne Hogan asked Dr. Clark if she out grows the business and it gets bigger, that would be your reason to leave.

Melissa Mullins Mischke told Dr. Clark that she drove by and looked at it and the question she has is the egress and ingress from Johnson Road. Melissa said that is her only concern, safety issues coming off and on to the main road.

Dr. Clark said that as you're coming down Johnson Road from La Porte to Michigan City, whatever direction that is, actually the road is widened right in front of their property because there is a street that people can turn down -- there is a lot of space so if someone was making a left hand turn into their business, they could still go around.

Wally Pritz asked when they drive into the driveway, they can go further then come on the other side of that fence that's coming out.

Dr. Clark stated yes. Dr. Clark said that they already have approval from Johnson Road Properties that they can do that.

Dwayne Hogan asked Dr. Clark in the new addition if they have appropriate fire detective service. Dwayne said that he wants to make sure that it is there.

Dr. Clark stated yes.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition #4, for or against.

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

Wally Pritz made a Motion for Johnson Road Properties, LLC, (owners) and Sandra & Brad Clark (renters) to remodel an attached garage into a Chiropractic Office be granted.

Attorney Biege said that he wants to mention to the Board that the lease term does expire on the 14th and if the Board were choose to do so, you could limit the "Use" variance to the petitioner herself.

Wally Pritz said that we will incorporate the "Use" variance to the party making the request for the variance.

Melissa Mullins Mischke said with the hours of operation of Monday through Friday from 9:00 a.m. to 7:00 p.m.

Melissa Mullins Mischke said that we didn't discuss what kind of signage you were interested in. Melissa asked Dr. Clark if she was going to put a sign out.

Dr. Clark stated yes.

Melissa Mullins Mischke asked what size.

Dr. Clark said that her husband is good with that.

Brad Clark said what they're wanting to do is put an awning over the door going into the garage so the sign would probably be about two (2') foot by two (2') foot high.

Dwayne Hogan asked if they would have a light on the sign.

Brad Clark said that there is lighting right by the garage door (inaudible).

Wally Pritz asked if they want a two (2') foot by two (2') foot sign lighted.

Dwayne Hogan asked for a second.

Dr. Clark said that she said she would like Saturdays from 9:00 a.m. to 1:00 p.m.

Melissa Mullins Mischke said hours of business being Monday through Saturday, 9:00 a.m. to Saturday at 7:00 p.m.

Candice Adams seconded.

All approved. Motion carried 5-0.

5. The Petition for David & Dana Henderson to add on to existing home; a garage, basement, main floor three (3) tier, with deck and retaining wall. Front setback is 3' - 3" instead of 25"; deck is 0' instead of 15' in front each side setback is 7' instead of 20' and height is 36'.11 instead of 35'. This property is located at 376 Oak Drive, La Porte, IN Center Twp, zoned R1B.

Attorney Biege said that legal is adequate.

Dwayne Hogan asked for names and addresses for the record

David Henderson, 376 Oak Drive, La Porte, IN

Jesse Hibler, 604 North Mechanic Street, Berrien Springs, Michigan.

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

Mr. Henderson said that they're seeking a variance to add an addition to their house, which is going to be a garage and two floors.

Dwayne Hogan asked Mr. Henderson if this is house.

Mr. Henderson said that it is his and his wife's house.

Melissa Mullins Mischke asked Mr. Henderson if this is his primary residence.

Mr. Henderson said it is.

Melissa Mullins Mischke said just out of curiosity, has the lot changed size since the time you purchased it.

Mr. Henderson said no.

Board members speaking amongst themselves.

Jesse Hibler said that both side yards and the rear are fine. Mr. Hibler said that the height requirement they're now in compliance with and they lowered it to thirty five (35') feet. Mr. Hibler said that the water front only allows for two point five (2.5) stories, but because we're adding onto the building it is going to be difficult for the two point five (2.5) to align the building. Mr. Hibler said that they're three stories.

Dwayne Hogan asked if it is three full stories.

Mr. Hibler said three full stories instead of the two point five (2.5) stories.

Glen Minich said that our Petition says that the side setback is seven (7') feet instead of twenty (20') feet.

Mr. Hibler said that waterfront is a seven (7') foot setback and they're compliant with that.

Mr. Henderson said that they think that there might be a possible miss-zoning on their property. Mr. Henderson said that they talked to a local attorney and it is R1B and actually he thinks that it should be waterfront property because we actually sit on the lake and they've waterfront property.

Glen Minich said that he doesn't see that; the road's between you and your property.

Mr. Henderson said that there is a road, but he owns both parcels. Mr. Henderson said that he owns the one across on both sides of the road.

Dwayne Hogan said that it says R1B on it.

Mr. Henderson and Mr. Hibler up at the bench going over the site plan with the Board members.

Glen Minich said that you're asking for zero setback, but you're telling me that there is room for a car between the road and the house. Mr. Minich said that is not a zero setback.

Mr. Hibler said that the road is a number of feet beyond their property line. Mr. Hilber said that the deck would sit against the property line.

Mr. Hibler said that they can't go beyond the property line no matter what we want to do.

Board members and Mr. Hibler and Mr. Henderson going over the site plan at the bench.

Mr. Hibler said that when we look at the other homes in the neighborhood there is a precedence set that many—many—many—of the homes are up.

Melissa Mullins Mischke said that this is certainly why the Board exists to see if we want to continue that practice.

Board members speaking amongst themselves.

Attorney Biege said that the districts are established by the zoning maps not the description of the areas. Attorney Biege said that the possibility exists that the zoning for the area could be changed from R1B to waterfront, but that is a Plan Commission issue, rather than a zoning variance issue here. Attorney Biege said that you are stuck with whatever your zoning is right now. Attorney Biege said that they just checked the map and it's R1B.

Attorney Biege said that they're talking about some possible provisions in the future. If you look at other areas around the lake, they're waterfront and for some reason the Island's not and he

doesn't know why.

Mr. Hibler asked if it is possible to amend their variance for a side setback for seven (7') feet.

Attorney Biege said so you want it on the sides from ten (10') feet to seven (7') feet.

Mr. Hibler said only on one side.

Mr. Henderson said that the other side he's talking about the neighbors have been very cooperative and excited, and they said they would come down here; they are on call right now and we could call them in if you wanted to. Mr. Henderson said that they would fully consent on that.

Board members speaking amongst themselves.

Attorney Biege asked if this improvement is going to affect the lot coverage.

Mr. Hibler said that it could. Mr. Henderson said that he could check to see what the percentage of the lot would be.

Attorney Biege said that you're going to be restricted to thirty-five (35%) percent on the building and forty-five (45%) percent on surface.

Mr. Hibler said that he wouldn't be able to make his calculation right here. Mr. Hibler said that he would guess that we could ask for a variance based on the drawing. Mr. Hilber said that he doesn't want to have to come back.

Wally Pritz asked Mr. Hibler to clarify the retaining wall a little bit more.

Mr. Hibler said that because they've a third stall of the garage, they need to retain the dirt coming ----- Mr. Hibler said that they would put a man made retaining wall without a footing; something on a permanent structure.

Dwayne Hogan said that currently there is a small retaining wall there.

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

Board members speaking amongst themselves.

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

Melissa Mullins Mischke said that she just wants to say that she can absolutely respect that when you purchase these lots out on the Island and this is a beautiful home that you intend to put out here, continuously we've people coming in front of us and they want to make these homes three (3') feet away from the property lines and it just (inaudible) a problem that's out there and she hears every time, well, there's other homes just like it. Melissa said that this isn't a practice that we want to continue getting these homes in so tight and totally eliminating that every one that comes in we are just going to eliminate the need for those setbacks.

Melissa said that we developed those standards for a reason and it just seems to her that every person ----- not every person, but the majority of the requests that come in from the Island they want relief from the setbacks time and time again. Melissa said that we put these rules and setbacks in place for a reason and again, she respects that this is beautiful and would she love to live there, probably, but she's concerned about the setbacks and continuing that problem in the future.

Mr. Hibler said that he thinks that the only reason why we're pushing it so much is because of the garage. Mr. Hibler said that they don't have the opportunity because they're seventeen (17') feet in the air. Mr. Hibler said that there just isn't enough room and they only have a twenty (20') foot garage planned and twenty-four (24) is their typical depth. Mr. Hibler said that when he talked to the owners about this, it is definitely a push trying to go this far out, but if they

didn't have the garage, or they had another way to get in, then they would have definitely looked at that.

Glen Minich asked if this is consistent with the other homes in the area.

Dwayne Hogan said that the other ones are smaller.

Board members speaking amongst themselves.

Dwayne Hogan asked if the front setback is three (3') foot three (3") inches.

Mr. Hibler said off the property line. Mr. Hibler said that it is thirteen (13') foot six (6") inches off the road. Mr. Hibler said that they're staying in line with the existing residences.

Wally Pritz asked if it is in the road-right-of-way area.

Attorney Biege said that he wants the BZA Board to know that he just looked at the maps surrounding the lake; this is one of the few areas that's not zoned waterfront for whatever reason. Attorney Biege said that waterfront does not have a side setback or front setbacks. Attorney Biege said that he just wanted to make sure that everyone is clear. Attorney Biege said why this is R1B he's not sure, he didn't draw the maps, but just about everywhere else around the lake and the area is waterfront, which would not have setbacks. Attorney Biege said that he would venture to guess when the county does a rezone on the maps, the possibility exists at least if he's around, he would suggest that this area be rezoned to be consistent with other areas around the lake, which would be waterfront with no setbacks.

Mr. Hibler asked when they are going to do the rezoning.

Attorney Biege said that the Plan Commission just last month discussed revisions on zoning maps. Attorney Biege said that this is a new code and these are new maps and we have tweaking to do. Attorney Biege said that there are going to be public meetings, so he would suggest if some owners on the Island want to advocate changing that area in that vicinity to waterfront to match the other areas, that would certainly be the time to do it. Attorney Biege said when that's going to be is over the next six (6) months is the best that he can tell you.

Melissa Mullins Mischke said that what we're dealing with today is R1B zoning and the setbacks that are part of R1B zoning.

Dwayne Hogan said that we're going to have to have some relief in that.

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

Glen Minich asked if there are any utilities along that road.

Mr. Hibler said that there are utilities on the other side of the road, not on the side that they're building on.

Dwayne Hogan asked if it's all overhead.

Mr. Hibler said that they're overhead on the other side.

Glen Minich asked if they were going to make room if some utilities need to come through there.

Mr. Hibler said that underground electric would come in and he thinks that they're on a well in the back.

Glen Minich said that in the future underground water may come in.

Mr. Hibler said that they can't work within your easements and he doesn't think that it's common practice to put utilities on the property owner's property; it would be within the county easement. Mr. Hibler said that if the county decides to approve the road, or approve the utilities

Glen Minich said the utilities would probably be under the driveway.

Mr. Henderson said their driveway does extend beyond the property line.

Mr. Hibler said that they wouldn't have any problem with that.

Wally Pritz said that if this is approved, this would delineate the possibility of trying to put a garage on the other side of the road.

Mr. Henderson said that is a non-buildable parcel. Mr. Henderson said that he never intends on building on that parcel.

Dwayne Hogan asked if there are any concerns.

Glen Minich said that it is awful close to the road.

Dwayne Hogan asked the pleasure of the Board.

Glen Minich said that he's not ready to make a Motion.

Wally Pritz made a Motion to approve the setback, subject to there will be no building on the other side of the road and if they do make this lakefront property it would eliminate the setbacks any how. Wally said that we approve three (3') foot setback.

Dwayne Hogan asked if that gave enough in the Motion.

Attorney Biege said we're asking for the front setback be three (3') feet three (3") inches from the twenty-five (25) feet and the deck he doesn't understand. Attorney Biege asked where the deck is at.

Mr. Hibler said that the deck is on the front and it wavers out beyond and it touches the property line.

Attorney Biege said zero (0) setback on the deck.

Mr. Hibler said that in essence you could say there is zero (0) setback on the front of it.

Attorney Biege said one side setback seven (7') feet rather than ten (10') feet and its three stories.

Wally Pritz asked if the height of the deck to the bottom -----

Board members and Mr. Hibler going over the site plan.

Everyone speaking at the same time.

Dwayne Hogan asked if we're all clear on the Motion.

Attorney Biege said "(inaudible) has a waterfront overlay district included in addition to the zoning for waterfront, however the zoning map does not include the overlay district. Attorney Biege said that the height limitation would still be on residential, which is the thirty five (35') feet.

Attorney Biege said that you're going to need a variance on that.

Mr. Hibler said that they would need a variance to go to three stories.

Wally Pritz said so basically we can grant the three stories.

Dwayne Hogan said we have all of that into a Motion.

Candice Adams seconded.

Voting Aye: Candice Adams, Wally Pritz and Dwayne Hogan.

Voting Nye: Melissa Mullins Mischke and Glen Minich.

Motion carried 3-2.

Dwayne Hogan asked if there is any other business before the Board of Zoning Appeals this evening.

Attorney Biege said that the only thing that is pending right now is the litigation concerning the Sexual Orientated Business and that's pending before the Federal Court and they filed a Motion to dismiss and we're waiting for a Court ruling at this time.

Attorney Biege said that the Plan Commission continues to work on the expected revisions to the zoning code as we keep finding tweaks that will be necessary.

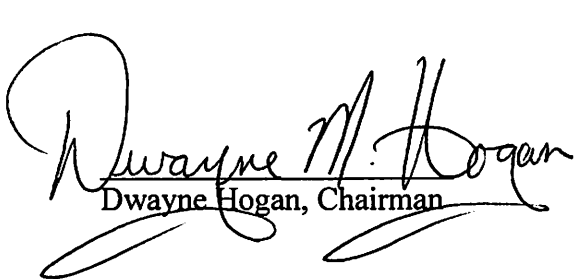
Attorney Biege said that Section 14.09 of the code has been amended by the County Commission and we expect it will be coming to vote actually tomorrow night before the Board of Commissioners for the first reading on the last meeting and it should go before the Commissioners tomorrow night. Attorney Biege said he expects that will be passed and that will be the last piece of the revision for La Porte County Sexual Orientated Business. Attorney Biege said assuming it passes tomorrow night, he will circulate a new revised section to the members of the Board.

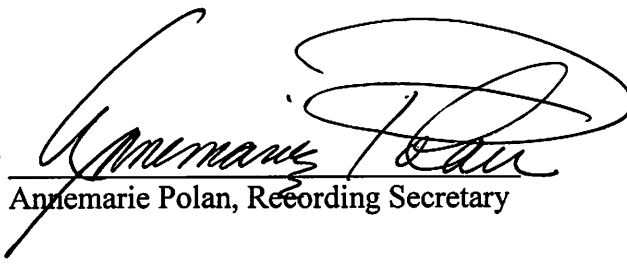
Dwayne Hogan asked if there is anything else for the Board tonight.

Dwayne Hogan said that he will entertain a Motion.

Melissa Mullins Mischke made a Motion to adjourn. Glen Minich and Wally Pritz seconded. All approved. Motion carried 5-0.

There be no further business, meeting adjourned at 7:45 p.m.


Dwayne M. Hogan, Chairman


Annemarie Polan, Recording Secretary