STATE OF ILLINOIS)
)SS
COUNTY OF OGLE)

In the Matter of the Petition
of
Fasco Holding, Inc., Dement Township
Ogle County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 24th day
of November 2009
before the Ogle County
Zoning Board of Appeals

Present:
Maurice Bronkema
Randall Anderson
Curtis Freeberg
Jason Sword
Bruce McKinney, Chairman
Michael Reibel, Zoning Administrator

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MR. McKINNEY: Next order of business?
MR. REIBEL: Next order of business is to consider the request filed November 4th, 2009 of Fasco Holding, Incorporated in care of Richard Zimmerman, P.O. Box 170, Mendota, Illinois and ADM Grain Company in care of Jeff Mauck and Michael O'Donnell, P.O. Box 350, Mendota, Illinois for a variation to allow a grain bin to be constructed 37 feet from the right-of-way line of East Illinois Route 38 in lieu of 80 feet as required pursuant to the Ogle County Amendatory Zoning Ordinance on property described as follows and owned by Fasco Holding, Incorporated and being leased by ADM Grain Company:

Part of the SW1/4 of the SE1/4 Section 14 Dement Township 40N, R2E of the 3rd P.M., Ogle County, IL, 9.60 acres, more or less. Property Identification Number: 25-14-400-007. Common Location: 19560 East Illinois Route 38.

For the record a sign was posted along the frontage of the premises indicating that a zoning hearing is to be held. All adjoining property owners have been notified by certified mail of the hearing this evening and the specifics of the petition and legal notices have

been published in the November 9th edition of the Ogle County Life and the November 10th edition of the Rochelle News Leader notifying the public of the hearing this evening and the specifics of the petition.

Under the staff report I will point out that the -- under general information the site is located at the northeast corner of the intersection of East Illinois Route 38 and South Beck Road. The size of this parcel is 9.60 acres. It's 600 feet by 700 feet. Existing land use is a commercial grain facility. Surrounding Land Use and Zoning: All adjoining land is in agricultural use, cropland. All adjoining land is zoned AG-1 Agricultural District. Zoning History: A Special Use Permit for a commercial grain elevator and storage facilities with goods and services associated with it was granted by the County Board on May 10th, 1977. Applicable Regulations: The required setback from a State highway is 80 feet measured from the right-of-way line. Special Information, Public Utilities: None. Transportation: Illinois Route 38 is a State

maintained highway. Beck Road is a seal coat surfaced road under the jurisdiction of Dement Township. Physical Characteristics: The site contains a grain storage shed, equipment storage building, office and scale and several grain bins/silos with associated equipment. The site is located on an upland ridgetop in an area of gently rolling terrain with slopes on the site ranging from zero to 2 percent to 5 to 10 percent. The soils on-site range from well drained to poorly drained. The site is not subject to the flooding, but portions of the site may be subject to occasional ponding. That's all I have.

MR. McKINNEY: This is a public hearing, so I'll entertain a motion to go into a public hearing.

MR. SWORD: I so move.

MR. ANDERSON: I'll second.

MR. McKINNEY: Jason has moved, Randy has seconded to go into a public hearing. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say nay. Motion passed. We are in a public hearing. Will the Petitioner please come forward.

MICHAEL O'DONNELL,

being first duly sworn, testified as follows:

MR. McKINNEY: Give her your name.

MR. O'DONNELL: Michael O'Donnell. O-'-D-O-N-N-E-L-L.

MR. McKINNEY: Tell us about your petition.

MR. O'DONNELL: Well, I was in here originally. We went with 43.4 is how far we were going to be away. What we're asking is 37 which is something that we discovered after we went to get occupancy that we were off by 6 foot. How do I explain it? I can't explain it with conviction. We did a measurement with the center stake. We considered that stake good and accurate. We based off that center stake and basically we were using a contractor that we're very comfortable with that we've used in many different jobs, it's Prairieland Millwright and I had drawings and prints and I thought -- I assumed they were accurate once we established

the stake. From then on we -- based on the boring samples we dug up the ground and then we went and then we were checking density on the rock and then we went to the concrete and I assumed everything was good until we came out to get an occupancy measurement and that's when we discovered that we were off. The problem that I have and per discussion with the contractor is we're right on based from the measurements from the established bin sites. Everything that was pre-engineered and pre-drawn fit perfectly. We didn't have to scale back anything or extend anything. It was -- it was just -- it laid out just like they expected it to. Somehow we mismeasured from the center of the road. And I guess, you know, you learn some things as you go along, but I just -- I just assumed once we had that stake and all the drawings were fitting that I thought we were right on.

MR. McKINNEY: And this was a licensed surveyor that surveyed this from the center of the road?

MR. O'DONNELL: When we set the stake?

MR. McKINNEY: When you set the stake.

MR. O'DONNELL: No, we -- when we had the stake set we had the County come out and check the stake and we all felt that it was -- it was proper and that's what we established it off of.

MR. ANDERSON: So who did the measurement this time to come up with --

MR. O'DONNELL: We did.

MR. McKINNEY: Somebody's calculating their math a little on the wrong side.

MR. O'DONNELL: You know, to tell you the truth -- to be honest when we first came in and started doing it we were saying okay, we're invested into this bin, we want to put a 90 in and we were concerned about the variance and with the road and how close we were and I don't know if we messed up trying to put different size bins because that's what we were trying to think in our heads is could we do this and if it didn't pass -- I don't know if something happened there, but what's really weird is we also measured -- this doesn't tell you. This measurement from this existing pit building to here is -- is right on, so that's why all the engineering was perfect. Somehow we missed -- I

can't even explain it. They can't explain it and -- because they said everything that they got is -- is perfect.

MR. McKINNEY: Is the bin bigger than what you --

MR. O'DONNELL: No, it's a 90, it's a GSI 90 bin.

MR. McKINNEY: Okay.

MR. FREEBERG: So the County measured the first time and it looked like everything was okay and now -- I don't know who measured it first, but now the County measured the second time and said it was --

MR. O'DONNELL: Well, we measured the center stake and then we said it was okay and then we measured -- when we did this drawing the only thing that's different is -- and something that I've learned is instead of being perfect you should give yourself a little bit on a larger project like this, but we were doing it based on the bin. The bin is 16 inches in from the concrete which doesn't establish the 6 foot, but I'm just saying that that was a little bit of the difference there. I don't know where the

rest of the footage came different, but yes, the County came in and then once the County measured the stake and that was our center point, then I really didn't check any of the measurements after that. Basically what I was concentrating on is from the boring samples we pulled out 8 to 10 feet of dirt and subsoil and we replaced with CA6 and made sure that we were at 95 percent compaction. Then when we went and did the concrete we had Midwest testing there and we concentrated on the concrete to make sure that we were 4,000 PSI and measured all the rebar specs and I just assumed that we were on and then I called Mr. Reibel to come and give us our permit to occupancy and that's when we discovered that we were off and he said this is --

MR. FREEBERG: Did you measure it -- did you measure it from the center of the road assuming the center of the road was in the middle of the right-of-way?

MR. REIBEL: Everything jives with -- from the center of the road to the right-of-way to the right-of-way to where it was supposed to be

and that's where we measured from is from the stake that they set. We were out there before the variation was filed. We were out there prior to construction and everything measured out at the 43 feet, 4 inches and there are right-of-way markers out there that are very clear. You can line yourself up. It's real easy to see and, you know, how this happened nobody -- nobody can explain.

MR. BRONKEMA: It must have moved, huh?

MR. McKINNEY: One of the questions for a standard is the alleged difficulty or hardship has not been created by any person presently having an interest in the property. Where do you think the difficulty came from?

MR. O'DONNELL: I'm confused. What do you mean the alleged difficulty?

MR. McKINNEY: Well, basically whose fault do you think this is?

MR. O'DONNELL: I don't know. I can't see it being mine except for not checking after we -- but I would say it would be the contractor that -- that's what I would think that the measurement was wrong from the beginning. I

don't know.

MR. McKINNEY: You don't think the stake got moved or anything?

MR. O'DONNELL: I don't think so. I can't imagine it being moved I guess because, you know, the stake is there and then you start removing the dirt and you base that measurement off that stake. That's how we did it, that's how we laid it out and we painted it to determine where we were going to cut the ground.

MR. McKINNEY: Have you had this problem in any other --

O'DONNELL: The thing that gets me though is if they moved the stake, which was established before all the equipment was already there, everything was pretty much there ready to go and it was already pre-ordered in February and I -- you would think that they would be coming to me saying that this conveyor doesn't fit, we have to extend this spout, because 6 foot is substantial once you go up the amount of height that we went up and everything fits just where -- this end of it on the bin structure side fits right where it was established.

MR. McKINNEY: So the conveyors and all from the dryer --

MR. O'DONNELL: Yeah, it fits perfect and we -- and the reason it had to fit perfect is because we wanted to be very close to the lake because we had very little fall, so if they would have come forward we couldn't have established our degree of slope for grain to move and it was right up at that stake of that bin -- I mean the stake of that tower.

MR. McKINNEY: Remind me, the grain bin that was there got destroyed or something?

MR. O'DONNELL: Yeah, the wind -- it was windblown and collapsed on the sidewalk.

MR. McKINNEY: But it was a smaller --

MR. O'DONNELL: It was a 60 and we put in a 90 with the thought process that it would be a holding -- a more -- we could carry more grain and hold more grain for the farmers.

MR. SWORD: How many bushel is that bin?

MR. O'DONNELL: This one? 550,000.

MR. McKINNEY: Have you got grain in it now or --

MR. O'DONNELL: Huh-uh. Well, I take that

back. My manager put in a thousand bushel before I -- before he told me and I told him to stop because I did not get the permit, so I do have a thousand -- one load, one semi load went in there before I could get them stopped.

MR. McKINNEY: Anything else?

MR. BRONKEMA: Well, really if we're just talking 6 feet I don't see where it's going to make much difference.

MR. O'DONNELL: I guess I'm just confused, because you know how big a project it is and I just -- I just can't see how it could be off 6 foot.

MR. McKINNEY: Has this ever happened before on any other bins you've put up?

MR. O'DONNELL: Pardon?

MR. McKINNEY: Has this ever happened before?

MR. O'DONNELL: Well, you now, you never really checked it that close. You've always checked it engineering-wise on old structures and with Prairieland we've never been off on old structures. They've done work for us in Steward. They built that extension on the rail

facility. They've done a lot of -- they put in a new bin and a new leg in for us in Mendota. They're a very established company and that's why we use them because they can do their own auto CAD drawings and print them all out for us. They've never I guess been off before and they're considering from the old -- the old buildings that they're not off. Somehow we just established the right-of-way or the reading from the center of the road wrong, because our bin is perfect -- I shouldn't say perfect, but it's right where they thought it was going to be.

MR. FREEBERG: As a retired engineer I would just say that every once in a while no matter how much you try to check things and double-check things, stuff happens.

MR. O'DONNELL: But 6 foot? I just don't --

MR. BRONKEMA: Especially when your conveyor fit.

MR. O'DONNELL: That's what confuses me the most and that's what he came and actually showed me, he said that it's -- when we established 11 inches and I may be wrong, but he

told me how much it should be right here and we were right on right off this bin and then this tail section had to be within a certain distance and we measured that and it was right on. But I think we just established this wrong.

MR. McKINNEY: Okay. Any other questions from the Board?

MR. SWORD: No.

MR. McKINNEY: All right. Do you have anything else?

MR. O'DONNELL: I don't think so.

MR. McKINNEY: Well, unless you've got any comment and want to testify in favor or opposing it, I don't think we have anybody here left to testify and there's no letter of appearance entered.

MR. REIBEL: No.

MR. McKINNEY: So I will ask for a motion to go back into open session.

MR. BRONKEMA: So moved.

MR. FREEBERG: Second.

MR. McKINNEY: It's been moved and seconded to go back into open session. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: All right. Any opposed say nay. Back into open session and we'll get our finding of facts.

MR. REIBEL: Variation Standard A) That the particular physical surrounding, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulations were carried out.

MR. BRONKEMA: The location and design of the existing structure and facility on the site create a hardship to the construction of the grain bin that meets the requirement setback of 80 feet. I feel the standard is met.

(All those agreed.)

MR. REIBEL: B) The conditions upon which the petition for a variation are based are unique and would not be applicable generally to other property within the same zoning classification.

MR. FREEBERG: The conditions upon which

the petition for a variation are based are unique and are not applicable generally to other property within the AG-1 Agricultural District due to the location, design and existing facilities on the site. I feel the standard is met.

(All those agreed.)

MR. REIBEL: C) The purpose of the variation is not based exclusively upon a desire to obtain a higher financial return on the property.

MR. SWORD: Evidence indicates that the purpose of the variation is not based exclusively upon a desire to obtain a higher financial return on the property, but rather to provide additional grain storage capacity for an existing commercial grain facility that serves the agricultural community in the surrounding area. I feel that standard is met.

(All those agreed.)

MR. REIBEL: D) The alleged difficulty or hardship has not been created by any person presently having an interest in the property.

MR. BRONKEMA: The alleged difficulty or

hardship has not been created by Fasco Holding or ADM Grain Company because of the need to construct a new grain bin has been created by the fact that a grain bin was destroyed by the weather. Standard met.

(All those agreed.)

MR. REIBEL: E) The granting of the variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

MR. ANDERSON: No evidence has been submitted that would indicate that the granting of the variation would be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. I feel that standard is met.

(All those agreed.)

MR. REIBEL: F) The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the

public safety or substantially diminish or impair property values within the neighborhood.

MR. FREEBERG: No evidence has been submitted that would indicate that the variation will impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood. The standard is met.

(All those agreed.)

MR. REIBEL: The Zoning Board of Appeals shall not vary the regulations of this ordinance unless it shall make findings based upon the evidence presented to it in each specific case that, A, the plight of the owner is due to unique circumstances.

MR. ANDERSON: The circumstances are unique due to the design and location of existing grain facilities. I feel that standard is met.

(All those agreed.)

MR. REIBEL: B) The variation, if

granted, will not alter the essential character of the locality.

MR. BRONKEMA: The variation will not alter the essential character of the locality of the site. It's currently used as a commercial grain facility and the proposed grain bin will be in character with the existing facilities. Standard met.

(All those agreed.)

MR. McKINNEY: Going through our finding of facts we found that all standards have been met, so I will entertain a motion.

MR. BRONKEMA: I will a make a motion that we grant the variation of 14-09 for Fasco Holding for the construction of the grain bin 37 feet from the right-of-way in lieu of the 80 feet with all the standards being met.

MR. ANDERSON: I'll second that.

MR. McKINNEY: Maury has moved, Randy has seconded to approve Variation No. 14-09. Roll call?

MR. REIBEL: Freeberg?

MR. FREEBERG: Yes.

MR. REIBEL: Sword?

MR. SWORD: Yes.

MR. REIBEL: Anderson?

MR. ANDERSON: Yes.

MR. REIBEL: Bronkema?

MR. BRONKEMA: Yes.

MR. REIBEL: McKinney?

MR. McKINNEY: Yes.

(By voice vote five ayes.)

MR. REIBEL: Five voted yes.

MR. McKINNEY: Motion passed. Go fill it up.

MR. REIBEL: We'll go ahead and send you an occupancy certificate then, Mike.

MR. O'DONNELL: Pardon?

MR. REIBEL: We'll send you an occupancy certificate.

MR. O'DONNELL: Okay.

MR. REIBEL: We really don't need to take another look at it. We've already taken our look and measured, so --

MR. McKINNEY: Don't want to measure it again.

MR. REIBEL: We don't want to measure it again.

MR. McKINNEY: No further business. Meeting is adjourned.

(The hearing was concluded at 8:26 p.m.)

Now on this 24th day of November 2009, I do signify that the foregoing testimony was given before the Ogle County Zoning Board of Appeals.

Bruce McKinney, Chairman

Michael Reibel,
Zoning Administrator

Julie K. Edeus
Certified Shorthand Reporter
IL License No. 084-003820
P.O. Box 381
Dixon, Illinois 61021

STATE OF ILLINOIS)
)SS
COUNTY OF OGLE)

In the Matter of the Petition
of
Marvin and Debra Horsman, Pine Rock Township
Ogle County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 24th day
of November 2009
before the Ogle County
Zoning Board of Appeals

Present:
Maurice Bronkema
Randall Anderson
Curtis Freeberg
Jason Sword
Bruce McKinney, Chairman
Michael Reibel, Zoning Administrator

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MR. McKINNEY: Next order of business?
MR. REIBEL: Next order of business is to consider the request filed October 26th, 2009 of Marvin and Debra Horsman, 8735 East Flagg Road, Rochelle, Illinois for a variation to allow an addition to an accessory building that exceeds the maximum allowable accessory building area due to parcel size pursuant to Section 6.06(D) of the Ogle County Amendatory Zoning Ordinance on property described as follows and owned by the Petitioners:

Part of the S1/2 SE1/4 Fractional Section 36 Pine Rock Township 23N, R11E of the 4th P.M., Ogle County, IL, 1.75 acres, more or less. Property Identification Number: 17-36-400-005. Common Location: 8725 East Flagg Road.

For the record, a sign was posted along the frontage of the property indicating that a zoning hearing is to be held. All adjoining property owners to the petition have been notified by certified mail of the hearing this evening and the specifics of the petition and a legal notice was published in the November 3rd edition of the Rochelle News Leader notifying the public of the hearing this evening and the

specifics of the petition.
Under the staff report, a copy of which is on file and the Board members have received, I will point out that under general information the location of the site is located on the south side of East Flagg Road beginning approximately a tenth of a mile east of South Bend Road and a tenth of a mile west of South Meridian Road. Existing Land Use of the site is residential. The site contains a single-family dwelling, a 22 by 24 detached garage and a 42 by 98 detached garage. Surrounding Land Use and Zoning: The site is zoned AG-1 Agricultural District. The site is located in a predominantly agricultural area and all surrounding land is in agricultural use and zoned AG-1 Agricultural District. No previous zoning history on the site. Special Information, Public Utilities: None. Transportation: Flagg Road is hot mix surfaced Ogle County Highway. Physical Characteristics: The site is located in an area of nearly level to very gently rolling terrain and the site is nearly level.
I have a letter on file from the Pine Rock

In Totidem Verbis, LLC (ITV)
(815) 453-2260

Township Planning Commission which reads:

"This letter is being issued to advise your committee that the above petition by the Horsmans was not approved by the Pine Rock Planning Commission and by the Pine Rock Township Board. Our basis of this denial is that the addition of the accessory building will exceed the approved December 2008 Zoning Ordinance by more than double the allowable accessory building space on 1.75 acres of land. We recommend that the Zoning Board of Appeals honor this recommendation and deny the Horsmans' petition. Additionally, we recommend that your committee also verify whether the Horsmans have the proper zoning on the property to conduct a commercial trucking business. The current zoning of the property was not provided to our planning commission. Thank you for your consideration. Respectfully, William Welty, Chairman, Pine Rock Township Planning Commission."

And I also have a letter on file from the Pine Rock Township Clerk which reads:

"The Pine Rock Township planning commission met November 5th, 2009 and voted to deny this request. Following discussion at the regular township board meeting on November 10th, 2009, the Pine Rock Township Board also voted unanimously to deny this request in order to conform to the County Zoning Ordinance restrictions for the following reason: The existing accessory buildings on this property are 4,644 square feet. The size of Mr. Horsman's parcel only allows 2,287 square feet per the December 2008 Zoning Ordinance Amendment establishing a maximum square footage of accessory building. Signed by Carol Eckert, Pine Rock Township Clerk."

And that's all I have.

MR. McKINNEY: This is a public hearing, so I'll entertain a motion to go into a public hearing.

MR. BRONKEMA: So moved.

MR. SWORD: Second.

MR. McKINNEY: Maury moved, Jason seconded to go into a public hearing. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say nay. Motion passed. We're in a public hearing. Petitioner or whoever is representing the Petitioners.

MARVIN HORSMAN,

being first duly sworn, testified as follows:

MR. McKINNEY: Give her your name and --

MR. HORSMAN: Marvin Horsman, H-O-R-S-M-A-N, 8735 Flagg Road, Rochelle, Illinois, 61068.

MR. McKINNEY: Tell us about your petition.

MR. HORSMAN: Well, originally I had

applied for a permit to build the building that's there at a hundred and eight by 42. At the time I decided the -- with the floor drain restrictions and a lot of over expense that I hadn't anticipated, so I cut the size of the building down to 98 by 42 and I shortened ten feet up on the back. At that time I was a little over 17 feet away, but I went ahead and poured the slab and everything for the existing permit which was a hundred and eight by 42 and all I wanted to do as opposed to adding 10 by 42, you know, like the original permit was, I just wanted to put 12 by 22. Just -- I've got snowplows and some other stuff I like to keep inside and out of sight and that's basically all I wanted to do is just add on to the back corner of that back in behind. It's virtually unnoticeable from the road. All the steel and everything would be identical to the other shed and it would be constructed properly. I mean, that's basically all I wanted to do.

MR. McKINNEY: You didn't think you needed another building permit to put this addition on?

MR. HORSMAN: I messed that up, yes, I

did, yes, I did. I put blocks and stuff up there and then not being that well-versed with that, no, I didn't know. I guess I really didn't stop and think about it. As soon as I was notified I stopped doing what I was doing and did it right. The existing building and everything and everything else I've done out there from the septic to everything, I've got the right permits and applied for that and that's all been taken care of and I think the record shows that.

MR. McKINNEY: And you run a business on this property?

MR. HORSMAN: I've got one truck, one semi that I haul heavy equipment. There's nobody that works for me, nobody else that lives there or anything like that. It's just me.

MR. McKINNEY: This doesn't require a special use or anything?

MR. REIBEL: Just one truck doesn't. It's the number of snowplows and that kind of stuff --

MR. HORSMAN: What's that, Mike?

MR. REIBEL: Do you have a number of large

like township snowplow trucks?
MR. HORSMAN: I've got two of them setting there now that's sold. I just bought them to sell them. They're sold and they'll be leaving this Friday.
MR. REIBEL: Okay, so no commercial activity?
MR. HORSMAN: But I've got -- my skid loader with a push box and stuff on it and I've got a loader that I bought on sale that I use around there moving stuff and I lease it out to Rockford Blacktop sometimes.
MR. REIBEL: Okay, so the property is not being used for commercial purposes and the building is used for your own personal storage?
MR. HORSMAN: My own personal storage. There's more of my mom's furniture and stuff sitting in the building than what there is of mine.
MR. REIBEL: I know, I got that problem too.
MR. FREEBERG: Now, you don't -- you just own the 1.75 acres?
MR. HORSMAN: Yes.

MR. FREEBERG: And you have a residence on there?
MR. HORSMAN: Yes.
MR. McKINNEY: When did you first take out this building permit to build?
MR. HORSMAN: You know, I think it was in 2006 because I bought the place in 2004 and I did a lot of work in the house and the grounds and everything. There was some old buildings there and everything that I tore down and had to get removed and it was a year or so after that before I actually moved in on the property and sold my other place due to the renovations and stuff that I did on the property and I'm almost positive that it was the following year then that I got the permit for the -- to build up the existing building, but I'm almost positive that was 2006.
MR. McKINNEY: He didn't need a variance on that building at that time?
MR. REIBEL: No, that was prior to any restrictions on accessory building area.
MR. HORSMAN: Yeah, and see, I was unaware of the fact that since then they had passed a

zoning law stating that you could only have so much under roof depending on the square footage, which is fine. I just screwed up and didn't check and see. It's that simple.
MR. FREEBERG: We just went through a deal, we were talking about on AG-1 you're supposed to have 40 acres, so how did this end up being AG-1?
MR. REIBEL: Well, this is a homestead on -- it was part of a farm and a homestead -- a home that was constructed before March of 1992 can be separated from a farm and remain AG-1.
MR. McKINNEY: What type of hardship would it be for you if we denied this petition?
MR. HORSMAN: What type of hardship? I'd have to tear down what I put up which I understand that. I mean, that would be my own my own fault and everything. The biggest reason I want it is just to keep stuff out of site and keep it under -- you know, I've got a pretty nice place there and I put a lot of money into the place and I just -- I don't like the stuff sitting outside due to the fact that my equipment gets weathered for one thing and the

fact that it's an eyesore. You can drive by my place virtually any time you want to. I take very good care of it. You don't see any garbage or old junk or anything sitting outside and around and what little bit of stuff I do have like the plows and stuff that I don't use in the summertime, I'd just like to have some place to put those in where they're not setting out to the side and in the way. That's --
MR. McKINNEY: And the other buildings right now are full?
MR. HORSMAN: With the semi -- getting in and out with the semi and doing the work and I've got -- well, I've got three vehicles that we drive and stuff and between the grandkids' toys and everything else, I mean, they're not full, but it makes it hard to get the semi in and out because you're constantly moving things around, you know, without having -- and when you got stuff like the snowplow blades and stuff like that that are a little harder to move it just makes it easier.
MR. McKINNEY: Uh-huh, and you say you already had this -- the pad poured when you --

MR. HORSMAN: I had the pad poured when I did the existing building when I put the -- because we was going to make it a hundred and eight by 42 and we poured the concrete, we went ahead and -- because I already had the concrete and everything priced in separately for the concrete and I already paid the guy and so I used what I paid for at that time.

MR. McKINNEY: As I recall, you've got -- halfway built up is concrete blocks?

MR. HORSMAN: Yep, yep.

MR. McKINNEY: And then the shed is on top of those. Does that mean --

MR. SWORD: Isn't that considered a permanent building?

MR. REIBEL: It's a structure. I mean, it doesn't matter if it's "permanent", it's a structure.

MR. SWORD: Okay.

MR. McKINNEY: And we really don't have building codes that --

MR. REIBEL: We don't have building codes period.

MR. FREEBERG: Is he meeting the setback

requirements from the rural lot line?

MR. REIBEL: We haven't measured. That's something that we'll be -- you know, if the variation is granted we would certainly be conducting a setback inspection and Mr. Horsman has assured me he's at least 15 feet from the rear lot line.

MR. McKINNEY: So he may have to come back for that?

MR. REIBEL: Well, we hope not.

MR. HORSMAN: No, because I had the place surveyed when I bought it in 2004 and my lot line runs within about six inches in front of that crib that's back there.

MR. FREEBERG: The crib is not yours?

MR. HORSMAN: No, it belongs -- used to belong to Walt Vanhysick (phonetic) and Walt passed away and it belongs to Tom. He's got that farm.

MR. McKINNEY: Any other questions?

MR. SWORD: No.

MR. BRONKEMA: I guess the thing I'm still milling around in my mind is the fact that the township complained about the footage but this

footage was done before the zoning took effect, so them complaining about the footage is kind of nil on my part, I mean, this -- if this was done before the zoning come into effect.

MR. REIBEL: The existing building was, but this new building --

MR. BRONKEMA: Yeah.

MR. McKINNEY: I think what Maury is saying is the pad was poured at the same time.

MR. HORSMAN: The existing permit was for 108 by 42. That was more square footage than what would be there now just by adding the 12 by 22 than what the existing permit allowed.

MR. FREEBERG: I can kind of see Maury's point. He was approved to build a building on that pad that he's got there and I wonder if it would make a difference that instead of putting up the separate building if he would have just extended the other building.

MR. HORSMAN: And you know what, when I did that -- one of the biggest reasons I didn't go ahead and do the whole building was because with the old septic system and everything that was there they wanted me to put in another

septic in case the one in the house -- to tie into that and the floor drain -- they wanted me to put in a restrictor, so I had about seven or eight thousand dollars in additional costs that I did just to comply with what they wanted. I didn't really need all that stuff. I hadn't planned on putting in a whole new septic field and everything just for that bathroom in that shed because I wanted to have a restroom out there in the shed and -- as opposed to letting me tie it into the house and the septic system in the house works fine, but it's an older one like a lot of the old farmhouses and stuff around, so they wanted me to put a new septic and I didn't balk at that a bit and I went and I paid the extra money and I put in a whole entire septic system so if I ever have any problems with the house -- I had Rochelle Vault come out and do that and they wanted me to put in the restrictor plates in case -- and all I wanted it for was so if I pulled the trucks and stuff in the snow melts off and you're not trying to squeegee it out the door and have an ice-skating rink outside. That's all I wanted the floor

drain for, not to -- I take my vehicles out to -- my semi out to Blue Beacon and get it washed and stuff. I don't do it in there in the shed. So by the time I ended up getting restrictors -- the oil restrictors and everything put in just like your commercial building has to have, that was another three thousand dollars for all that stuff and I never balked about that and that was one of the reasons why I couldn't -- didn't have the money at the time really to go ahead and finish the 108 by 42. Right now I wish I would have went and borrowed the money and finished it.

MR. BRONKEMA: You wouldn't be here then, would you?

MR. HORSMAN: No good deed goes unpunished.

MR. McKINNEY: Any other questions from the Board?

MR. SWORD: No.

MR. McKINNEY: Okay. Have a seat. And there's no letter of appearance filed?

MR. REIBEL: None.

MR. McKINNEY: Is there anybody here that

wishes to testify in favor of the petition? Anybody here that wishes to testify opposing the petition? Seeing none, I'll entertain a motion to go back into open session.

MR. BRONKEMA: So moved.

MR. FREEBERG: Second.

MR. McKINNEY: Maury has moved, Curt has seconded to go back into open session. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say nay. Motion is approved. We'll go through our standards.

MR. REIBEL: Variation Standard A) That the particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulations were carried out.

MR. SWORD: The site is located in a predominantly agricultural area and farmland adjoins it. The proposed building addition is

to the rear of the existing building adjoining farmland. It will be virtually unnoticeable from Flagg Road and will allow materials to be kept inside. These factors result in a particular hardship as opposed to a mere inconvenience if the strict letter of the regulations are carried out. I feel that standard is met.

(All those agreed.)

MR. REIBEL: Standard B) The conditions upon which the petition for a variation are based are unique and would not be applicable generally to other property within the same zoning classification.

MR. ANDERSON: The conditions in which the petition for a variation are based are unique and not applicable generally to other property within the AG-1 district due to the size, location and agricultural area and the fact that the proposed building addition will be to the rear of the existing building adjoining farmland. I feel that standard is met.

(All those agreed.)

MR. McKINNEY: I agree based on the fact

that he had a building permit. He put in the pad at the same time and decided not to build the building bigger at that time and then the zoning rules got changed, so I feel that that standard is met because of the hardship conditions.

MR. REIBEL: C) The purpose of the variation is not based exclusively upon a desire to obtain a higher financial return on the property.

MR. FREEBERG: Evidence indicates that the purpose of the variation is not based exclusively upon a desire to obtain a higher financial return on the property, but rather to provide an additional storage area for the occupants of the dwelling. Standard is met.

(All those agreed.)

MR. REIBEL: D) The alleged difficulty or hardship has not been created by any person presently having an interest in the property.

MR. BRONKEMA: Well, I can probably read both of these and be right, but I'll go with the alleged difficulty or hardship has not been created by Mr. and Mrs. Horsman and I feel that

standard is met.
MR. McKINNEY: I think the hardship was created when we changed the zoning rules, so I agree. Standard met.
(All those agreed.)
MR. REIBEL: E) The granting of the variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
MR. SWORD: No evidence has been submitted that would indicate the granting of the variation will be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. The standard is met.
(All those agreed.)
MR. REIBEL: F) The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood.

MR. BRONKEMA: No evidence has been submitted that would indicate that the variation will impair an adequate supply of light and air to adjacent property nor will it substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood. I feel that standard is met.
(All those agreed.)
MR. McKINNEY: The Zoning Board of Appeals shall not vary the regulations of this ordinance unless it shall make findings based upon the evidence presented to it in each specific case that, A, the plight of the owner is due to unique circumstances.
MR. FREEBERG: The circumstances are unique due to the presence of existing buildings on the site and the fact that the proposed building addition will be to the rear of an existing building virtually unnoticeable from the road and that the original approval for the building would have included this additional area anyway, so I think the standard is met.

MR. McKINNEY: And the pad was also already there, so I agree.
(All those agreed.)
MR. REIBEL: B) The variation, if granted, will not alter the essential character of the locality.
MR. ANDERSON: The variation will not alter the essential character of the locality. The site is located within a predominantly agricultural area where similar building sites and configurations already exist. I feel that standard is met.
(All those agree.)
MR. REIBEL: And in addition to the required findings of fact pursuant to Section 6.06(D.1) of the Zoning Ordinance the Board is also required to find that the area of all accessory buildings will be compatible with the neighborhood and design, location and size and there is proportionality between the size of the principal building, parcel, street frontage and the size of the accessory structures.
MR. BRONKEMA: Well, the Board finds that the area of all accessory buildings will be

compatible with the neighborhood and design, location, size and the proposed accessory buildings -- I don't think you'll much more notice the addition to start with and like I say, it will be behind, so I feel the standard is met.
(All those agreed.)
MR. McKINNEY: In going through all the standards the Board has found that they all have been met. So I will entertain a motion.
MR. FREEBERG: I move that we grant Petition No. 13-09VAR to Marvin and Debra Horsman, 8735 East Flagg Road in Rochelle after we made the findings that all the standards were met.
MR. SWORD: I'll second that.
MR. McKINNEY: Who seconded it, Jason?
MR. SWORD: Yeah.
MR. McKINNEY: Curt moved, Jason seconded to approve Variation No. 13-09. Roll call?
MR. REIBEL: Bronkema?
MR. BRONKEMA: Yep.
MR. REIBEL: Anderson?
MR. ANDERSON: Yes.

MR. REIBEL: Sword?
MR. SWORD: Yes.
MR. REIBEL: Freeberg?
MR. FREEBERG: Yes.
MR. REIBEL: McKinney?
MR. McKINNEY: Yes.
(By voice vote five ayes.)
MR. REIBEL: Five voted yes.
MR. McKINNEY: Motion passed. You just need to come in and see Mr. Reibel next week.
MR. REIBEL: Yeah, that would be good.
MR. HORSMAN: When?
MR. REIBEL: Next week.
MR. HORSMAN: I'm leaving tomorrow and going to be gone down to Florida.
MR. REIBEL: You can come in tomorrow or whenever you can.
MR. HORSMAN: I'm coming back the 6th of December.
MR. REIBEL: That would be fine. Just come in when you get back. Just come see us when you get back.
MR. HORSMAN: Okay. I'll be in -- well, I'll be right after the 6th.

MR. REIBEL: That's fine. Thank you.

Now on this 24th day of November 2009, I do signify that the foregoing testimony was given before the Ogle County Zoning Board of Appeals.

Bruce McKinney, Chairman

Michael Reibel,
Zoning Administrator

Julie K. Edeus
Certified Shorthand Reporter
IL License No. 084-003820
P.O. Box 381
Dixon, Illinois 61021

STATE OF ILLINOIS)
)SS
COUNTY OF OGLE)

In the Matter of the Petition
of
JNASA Holding, LLC, Byron Township
Ogle County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 24th day
of November 2009
before the Ogle County
Zoning Board of Appeals

Present:
Maurice Bronkema
Randall Anderson
Curtis Freeberg
Jason Sword
Bruce McKinney, Chairman
Michael Reibel, Zoning Administrator

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MR. McKINNEY: I call this meeting of the Ogle County Zoning Board of Appeals November 2009 meeting to order. Please stand for the Pledge of Allegiance.

(WHEREUPON the Pledge of Allegiance was recited.)

MR. McKINNEY: Roll call, please.

(Roll call was taken and all were present.)

MR. REIBEL: Five present.

MR. McKINNEY: Five present. We do have a quorum. The verbatim transcripts serving as minutes from the last meeting is on file and will not be read at this time. I'll entertain a motion to approve the minutes of the last ZBA meeting.

MR. FREEBERG: So moved.

MR. BRONKEMA: Second.

MR. McKINNEY: Curtis moved, Maury seconded. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say nay.

Motion passed. All testimony will be taken under oath. Please come forward to testify and state your name and address to the recording secretary. Please spell your last name. When testifying please speak clearly and loud enough to be heard. This hearing is the only opportunity to place testimony and evidence on the record. There will not be another opportunity beyond tonight's hearing to submit additional evidence or testimony for consideration. Please turn off all cell phones and pagers.

The procedures on hearings that will be followed tonight is as found in the ZBA Rules of Procedures or Citizen's Guide to Zoning Board of Appeals which are available near the door -- oh, on the table in the back.

Mr. Lloyd Funk is present representing the Ogle County Planning Commission if any board member has questions on the Planning Commission's actions on the petition.

If anyone has trouble hearing please let us know.

Mr. Reibel, what's the first order of

business?

MR. REIBEL: First order of business is to consider the request filed October 20th, 2009 of JNASA Holding, LLC in care of Jerald Aarvig, 12680 Ashfield Road, Caledonia, Illinois for an Amendment to the Zoning District to rezone from AG-1 Agricultural District to R-1 Rural Residence District on property described as follows and owned by the Petitioner.

Part of the S1/2 G.L. 2 NW1/4 Fractional Section 7 Byron Township 25N, R11E of the 4th P.M. and part of the SE1/4 of the NE1/4 Section 12 Byron Township 25N, R10E of the 4th P.M., Ogle County, IL, 18.0 acres, more or less. Part of Property Identification Numbers: 05-07-100-013, -014, and -016 and part of 04-12-200-012, -013 and -015. Common Location: 11490 North Tower Road.

I have a letter on file from the City of Byron dated November 23rd, 2009 which reads:

"The City of Byron has reviewed the application submitted by Jerald Aarvig to rezone the property at 11490 Tower Road based on the fact that the concept plan does not show an intended use of the property other than its current. We would have to assume a worst case scenario and that the property may be intended for further subdividing of lots. It is no secret that Byron's growth corridor appears to have a tendency to be working its way north along Tower Road and it is our intent to see that area grow from the

city limits outward by means of city sewer and city water. Understanding that this parcel is beyond the City's one and one half mile jurisdictional boundaries, we would nevertheless object to the owner rezoning the 18-acre parcel. Respectfully submitted, Larry M. Hewitt, Building and Zoning Official."

Oh, another housekeeping matter. For the record, a sign was posted along the frontage of the premises indicating that a zoning hearing is to be held. All adjoining property owners to the petition have been notified by certified mail and a legal notice was published in the Monday, November 2nd edition of the Ogle County Life notifying the public of the hearing this evening and the specifics of the petition.

At the November 19th, 2009 meeting of the Ogle County Regional Planning Commission, Mr. Conn made a motion to recommend approval of Petition 9-09 Amendment. The motion was seconded by Mr. Ocken. The motion to recommend approval carried by a roll call vote of five in favor and two opposed.

Under the staff report, a copy of which is on file and the Board members have received, I will point out under general information that the site is located on the west side of North

Tower Road approximately six-tenths of a mile north of east Oak Grove Road. Existing Land Use: Approximately 75 percent of the site is in agricultural use. The remainder of the site contains a dwelling, detached accessory building, driveway and residential yard area. Surrounding Land Use and Zoning: The site is located within a predominantly agricultural area. There are three non-farm dwellings located within one-half mile of the site. All surrounding land is zoned AG-1 Agricultural District. Zoning History: The dwelling on the site was constructed in 2005 under Zoning Certificate No. 190-05NA. The dwelling was constructed on a 41.8 acre parcel. In October of 2008 the dwelling was sold to JNASA Holding, LLC on a five-acre parcel which violates the 40 acre minimum lot size requirement of the AG-1 Agricultural District. Special Information, Public Utilities: None. The dwelling on-site is served with a private well and septic system. Transportation: North Tower Road is a hot mix surfaced Ogle County Highway. Physical Characteristics: The slopes on-site range from

nearly level to sloping. The site is located in an upland area of rolling terrain. The site is generally well-drained with the exception of the area within a drainage swale that crosses the central portion of the site and drains from north to south. The area within the drainage swale is classified as frequently flooded. There are no mapped floodplain or wetland areas on the site.

According to the Ogle County Digital Soil Survey, soil types on the site are: 21C2 - Pecatonica silt loam, 412B - Ogle silt loam, 414B - Myrtle silt loam, 416C2 - Durand silt loam, 618C2 - Senachwine loam, 622C2 - Wyanet silt loam, and 3451A - Lawson silt loam. 39.1 percent of the soils identified on the site are classified as "Prime farmland," with the remainder being "Farmland of statewide importance." Approximately 12 and a half percent of the soils are classified as "Frequently flooded." 51.1 percent of the soils are rated as being "Very limited" for septic fields and the remainder are rated as being "Somewhat limited."

Under the LESA program, the LESA score of 199.55 indicates a Medium rating for protection. Land evaluation being
75.55. Site assessment
124.
In a letter from the Ogle County Soil and Water Conservation District, the District would like to list the following facts from the soils and the land evaluation and any other additional site facts that could be a concern to the protection of our County's natural resources. Land evaluation score of 75.55 out of 100. Most of the site appears to be in continuous row crop production. There's a house built on the western side of the property. Severe limitations for proposed use due to low strength for supporting loads. Signed by Phil Fossler, Chairman and Brian Lindquist, Resource Conservationist.
According to the Illinois Department of Natural Resources, the Illinois Natural Heritage Database contains no record of state-listed threatened or endangered species, Natural Area Inventory Sites, Illinois Nature Preserves or

registered land and water reserves in the vicinity of the project and the consultation process with IDNR has been terminated. That's all I have.
MR. McKINNEY: This is a public hearing, so I'll entertain a motion to go into a public hearing.
MR. BRONKEMA: So moved.
MR. SWORD: Second.
MR. McKINNEY: Maury has moved, Jason has seconded to go into a public hearing. All those in favor signify by saying aye.
(All those simultaneously responded.)
MR. McKINNEY: Opposed say nay. Motion passed. We're in a public hearing.
Petitioners, whoever is going to be testifying, please come forward and I'll swear you in.
DAVID AARVIG: You just need one us to speak, correct?
MR. McKINNEY: Yeah, unless -- is that your dad?
DAVID AARVIG: Yeah.

MR. McKINNEY: If he wants to add anything he'll need to be sworn in, so.
JERALD AARVIG: I'll just -- you want me over there?
MR. McKINNEY: Yes, please.
DAVID AARVIG AND JERALD AARVIG, being first duly sworn, testified as follows:
MR. McKINNEY: Please give Julie your name and addresses
DAVID AARVIG: David Aarvig, A-A-R-V-I-G, 12680 Ashfield Road, Caledonia, Illinois, 61011 zip code.
JERALD AARVIG: Jerald Aarvig, J-E-R-A-L-D A-A-R-V-I-G, 9339 Kaeler (phonetic) Avenue Northeast, Monticello, Minnesota.
DAVID AARVIG: And the LLC's address is also 12680 Ashfield Road, Caledonia, Illinois, 61011 zip code.
MR. McKINNEY: Tell us about your petition.
DAVID AARVIG: Well, the petition -- first of all, thanks for the time you're allotting to us tonight. We have petitioned to switch zoning from Ag to Residential in what we believe is a

unique hardship that has come upon the property and our home that we purchased there. We bought initially -- as you can see on the concept plan and what Mr. Reibel had referred to earlier, it was a five-acre piece of -- parcel with an existing home and an existing outbuilding that at the time we were under the belief was properly zoned and we got a good legal deed in the mail on it within weeks of the purchase. We then found out in approximately April that it was in zoning violation due to not having enough acreage. And how it came about was the previous owner owned somewhere in the neighborhood of 80 plus acres in different parcels and had the home parcel mortgaged with one lender and the rest of the land mortgaged with another lender. He went into foreclosure on everything. We purchased the home parcel from the one lender thinking that we were okay and then the rest of the land ended up being sold with the exception of recently we purchased 13 acres to make what you see on the concept plan one big parcel. We have no intention of subdividing this. We would just like it to be what it is, a residential house,

but as of current it is in a zoning violation due to the other owner re-recording these properties or his property lines in a way that he could get more loans from different banks. So what it's done is cause us a hardship which we believe to be unique in the area and I believe that's what we found. There's been only maybe one other case in 15 years where something like this has come up. So we don't think it's something that's going to set a precedent, but what it is is it will allow us to have a nice rectangular piece of property that's properly zoned so we can live there without worry or concern that we have further notices coming.

The other neighborhood homes, the neighbor north and the neighbor south are both non-farm homes. They use theirs for residential. Neighbor farms his land. We've spoke with both of them. We don't believe there would be any negative impact to their property values. We're not asking to add anything to the existing property. We're not asking to be able to build anything else on the existing property. Everything is already as is. There's a

residential house which is finished. It's serviced by its own private well and septic system and there's a current outbuilding that is already built. So we're not asking for anything to be changed in that way. We just want a piece of property that's properly zoned so we don't violate the zoning ordinances and we can put the issue hopefully to rest. Oh, and further, all of the existing land that's touching this parcel has been sold, so there is no other land available for purchase to be able to get up to the 40 acres. We purchased the remaining 13 to make it one big rectangle to -- hopefully with Mr. Reibel's help anyway we thought that it would at least qualify for residential zoning and fit your parameters.

MR. McKINNEY: Do you have anything to add at this time?

JERALD AARVIG: Nope.

MR. McKINNEY: Who's going to be living in this house?

DAVID AARVIG: My dad is there about every other week, he's retired now and then myself and my family.

MR. McKINNEY: Okay, so it's not a house that you're purchasing to resell or to rent?

DAVID AARVIG: No. We started to move there until we got the zoning notice issue and then we didn't know where that was going to go and what the penalties would be.

MR. McKINNEY: The other three non-farmhouses in that area, they -- none of them are zoned residential though, are they?

DAVID AARVIG: No, they all have the 40 acres.

MR. McKINNEY: That's a concern that some of us have is the spot zoning if we start allowing a residential out in this area and somebody else is going to come along in a year or two or even less and say you gave Aarvigs residential zoning, you know, we want to build out in the country, we want residential.

DAVID AARVIG: I think the crucial difference would be is this is existing. We're not building anything and I wouldn't even ask for a rezoning if I would not have bought it and had the house not been existing. All this is is a situation that is unique. I think it

definitely applies to the hardship from what I've read in your standards in that we have a home that unless there's a way to bulldoze it or get rid of it -- it's a situation that we're asking for the Board's consideration to make it to where it's not in violation of any of the Board or County issues and use it as a residential premise. We do not want to build or subdivide or anything in that way.

MR. McKINNEY: Do you have anything in your contract with the bank that this property met the county zoning?

DAVID AARVIG: Not that I'm aware of, no. It just was we made the purchase, within two weeks I got the deed with all the property stamps on it and everything was fine. We then started fixing it up, putting money into it, I've paid substantial amounts of interest on it since then and then also spent another $60,000 to purchase more land to try and make it -- instead of that goofy flag lot that the previous owner somehow recorded. Basically to us we're a victim of somehow this guy got it recorded and it was able to be split up and it should have

never been able to be split up from 40 acres to where we should have gotten the 40 acres. The other bank should have in my opinion had to give the land back to attach it to that residence and then give us the land. So we're trying to make this easy on everybody. The person who purchased the property to the south has a little over the 40 acres they need to build their house, so they can't give up any of their land either. Otherwise they'd have a zoning issue and then they wouldn't even be able to build their house. But this is just dealing with an existing set of buildings. There's nothing else we're looking to build on, add on, anything there.

MR. ANDERSON: I have a question for you. You intend on living there?

DAVID AARVIG: Yes.

MR. ANDERSON: Why would you purchase this under a holding company?

DAVID AARVIG: To keep everything separate. I've got a business that I run also, so one of the legal things I went to said to have your different properties in different LLCs

so that way if something were to happen at one, they can't go after the other. It limits the liability.

MR. ANDERSON: This is going to be your personal residence?

DAVID AARVIG: Yeah. I mean, it's just the same thing. If somebody were to fall into the swimming pool out there and drown, they can only go after the LLC, they can't go after any of the other business. It's a way that -- I have another LLC that I have that runs a different company and the same thing, if there's something that would happen where a truck that I was driving as part of that LLC would run into someone, they can't come after my home because it's not even my own personal assets, so to speak. It's just a way of insulating against lawsuits.

MR. ANDERSON: I've run into this with other situations where we've had developers who put properties that they have in LLCs and what that does is it doesn't allow anything that -- if somebody defaults on that property then the LLC is all that's attached to it.

DAVID AARVIG: Yep.

MR. ANDERSON: But it's usually done on --

DAVID AARVIG: Subdivisions and such.

MR. ANDERSON: Right, on people who intend on selling a property because they don't want to get caught in a liability.

DAVID AARVIG: No, with this every piece of property that -- since I've went to that seminar we've set up -- we've got three different LLCs. Now, we only have this one -- I've already got my existing home which was purchased in my wife and I's name and that's the one that we're looking at putting up for sale as soon as we get our zoning issue taken care of.

MR. ANDERSON: So you said you started to fix this up and you started to move things there to move into this, correct?

DAVID AARVIG: Yeah, we moved a couple beds and --

MR. ANDERSON: What did you think was going to happen if the zoning didn't go through?

DAVID AARVIG: I had no idea. I didn't know what the penalties were.

MR. ANDERSON: What would you do?

DAVID AARVIG: What would I do with it?

MR. ANDERSON: What are you going to do with it if the zoning doesn't go through?

DAVID AARVIG: I guess that's why I'm here asking for the rezoning. I don't have a plan for that. With everything that I've talked with Mike about and my other attorney about that this meets the standards and hopefully you'll see that and it -- we don't have another plan, no.

MR. ANDERSON: You stopped moving things into it with the thought that if the zoning doesn't go through then you're not going to live there.

DAVID AARVIG: I don't know what we'll do. We still may end up moving in there, but I don't know what the penalties are. I don't know if I'd incur fines by living there. I haven't looked at that and that's something we really haven't discussed.

MR. ANDERSON: Okay.

DAVID AARVIG: But like my dad lives there every other week or every two weeks when he comes down, so someone is living there. It's just not constantly right now.

MR. McKINNEY: Is there any other questions from the Board?
MR. BRONKEMA: I guess a question for Mike. The place to the north of there then, he's legal with -- he's got enough ground for where he lives at then?
MR. REIBEL: Yeah, the house you can see from -- from this house, yeah, that's on an over-40-acre parcel, yeah.
MR. BRONKEMA: Okay.
MR. FREEBERG: I guess one concern or thought I have is if we rezone this residential, I mean it's 18 acres which is more than what you need for residential, so once it gets rezoned is there anything to prevent them from just selling off a piece of it or a subsequent owner?
MR. REIBEL: Being a similar situation there's really not a way to divide this and comply with the lot width requirements because it's at the -- it's right at 300 feet which is the minimum for R-1.
MR. ANDERSON: Couldn't he use the driveway as a point of ingress and egress and then split lots off going to the north off the

driveway?
MR. REIBEL: That would require a subdivision plat.
MR. ANDERSON: Correct, and that would be something then that you would be --
MR. REIBEL: Right, we would -- the County has review authority over subdivision plats and can deny those.
MR. ANDERSON: Okay. All right.
MR. BRONKEMA: We don't want a subdivision.
DAVID AARVIG: And we don't want one either, believe me.
MR. ANDERSON: We're not concerned about you two.
DAVID AARVIG: But if a subsequent owner -- I understand. Like you're saying, five, ten years down the road if someone else happened to buy it says, hey, I can do this. Well, I guess Mike knows more than I do on the subdivision requirements, but we have zero intention of any subdivision or anything on this.
MR. FREEBERG: Was it Byron's main point that eventually they want things out in this

area to have municipal water and sewer?
MR. REIBEL: Yes.
MR. FREEBERG: Could we put a condition on this that when it's available they hook up? Which probably won't be for a long, long time. I mean, to satisfy Byron or --
MR. REIBEL: Well, I don't think we have to worry about satisfying Byron. It's outside their mile and a half. I think they were just trying to make a point that Byron promotes orderly development, you know, extending from the municipality outward and I think that was a thing they were trying to do with sending that letter is send a message.
MR. SWORD: So who dropped the ball then with regards to when it was sold to him from 41 down to five acres? Is that the bank that divided that up?
DAVID AARVIG: We've discussed it and what happened is the previous owner went into the recorder and from what Mike and I have been able to figure out anyway is he had legal authority to somehow make this because he owned all the land, so he went into the recorder and got that

re-recorded and then went to two different banks and said to one I'll give you my residence and well, evidently that bank didn't do the research saying that if something ever was foreclosed on they may have a worthless piece of property if they don't have the 40 acres around it. But because -- and I guess there was something, Mike, that he also had to sign that said he would not split it up or he couldn't sell it to split it up, but when he was foreclosed on he didn't -- he didn't have a choice. It was kind of forced on him and now we're left with -- it's a bad situation, I think we all agree with that, but it's not something that I believe is going to set any kind of a dangerous precedent for you having someone else coming to you as long as the recorder won't allow another piece of property or figure out some way to put on these people that, hey, you can't go to a different bank, if you're going to do this this stays the same. That's where the problem originated. And again, if I was made aware of that prior to sinking any money into this there wouldn't even have been an issue. I would have never bought the property

not having zoning, but it was almost seven months after closing -- almost eight months, I think it was the middle of April when we got the first letter and we were tens of thousands of dollars in payments and improvements.

MR. FREEBERG: Mike, did the recorder's office essentially create a parcel of property that wasn't in compliance with zoning ordinances?

MR. REIBEL: Well, by accepting the deed, yes, but they have to accept a deed if it's a legal deed. That's not the recorder's office's responsibility to see if it violates the zoning ordinance or not and that's the problem with these types of situations where it's a legal division but it violates the zoning ordinance, I don't find out until after it's done -- the deed is done and usually -- you know, it's the case here, it's a subsequent owner who really is kind of the victim.

MR. FREEBERG: I'm just trying to figure out how these things can be prevented. I mean, are the people that issue the deed at fault that they should have known --

MR. REIBEL: Yeah, you know, the guy that built this house certainly knew that he had to maintain 40 acres, but you know, he got in serious financial trouble and he was just looking for any way out and he's -- he's gone.

DAVID AARVIG: I've looked into legal recourse against him and they said there's nothing there to get, not even a penny.

MR. FREEBERG: I'm just trying to figure out if there's just a big hole in the system here or if somebody -- I mean, should the people that issue the deed, I assume the title company, in their investigations, are they the ones that should have caught this and said this isn't --

MR. REIBEL: Yeah, probably, probably and I don't know if it was ignored, because when we issue a zoning certificate for a house on a 40 or more acre parcel, we record a document through my office that says this house, you know, issued under this zoning certificate and reference the deed was built on a conforming AG zoned parcel, any divisions have to conform to the zoning ordinance, so it's a red flag that comes up if somebody does try to do this. Now,

whether somebody missed that document or just ignored it, I don't know what happened, but there is that flag that's supposed to come up and should come up if a violation is intentionally tried to -- or unintentionally, whatever the case may be, is tried to be perpetrated. You know, we don't know really what happened here. We can only speculate because the guy that did it, he's long gone. But you know -- and maybe there is a hole, but it's really -- I think we do as much as we can to try to see that these situations don't get created by recording the documents. The recorder's office can't be responsible for policing zoning matters and we've got a very good recorder's office. They cooperate with me very well on plat act situations where other counties in the state don't have that kind of cooperation we do with our recorder's office, but there aren't that many of these situations. This is only --

MR. McKINNEY: It's nothing that we can resolve tonight.

MR. FREEBERG: I was just curious. I've

been all through that and the title insurance -- you know, to me the title insurance, they guarantee the title is good and to me they should have done a little bit more diligence on this thing before they said it was a good title.

MR. REIBEL: I agree.

DAVID AARVIG: One final thing I guess I'd just like to add is that the proposed use is the exact same as the current use. There's nothing that's going to be done. It's just a house and a place to live. There's nothing else that we're asking other than to get it in compliance so we don't have anymore items coming in the mail from Mr. Reibel.

MR. McKINNEY: Is there any other questions from the Board right now?

MR. ANDERSON: No.

MR. FREEBERG: No.

MR. McKINNEY: Okay, and there's no letter of appearance for tonight for this petition?

MR. REIBEL: No.

MR. McKINNEY: So is there anybody here that wishes to testify in favor of this petition? Anybody here that wishes to testify

opposing this petition? Seeing none, I'll entertain a motion to go back into open session.

MR. FREEBERG: So moved.

MR. BRONKEMA: Second.

MR. McKINNEY: It's been moved and seconded to go back into open session. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say nay. Motion passed. Back into open session. With that, let's go through our finding of facts.

MR. REIBEL: Amendment Standard 1) That the proposed amendment will allow development that is compatible with existing uses and zoning of nearby property.

MR. FREEBERG: Development of the site for residential use is compatible with the established agricultural and residential uses of nearby properties considering it's been used this way and is currently being used this way.

MR. McKINNEY: So you're saying the standard is met?

MR. FREEBERG: Standard is met.

(All those agreed.)

MR. McKINNEY: I agree. I think if it wasn't already a home that was built as a farm with -- that was compatible it wouldn't -- the standard would not have been met, but in this case I'll go along with the standard being met.

MR. BRONKEMA: Not to interrupt, but one question I guess we never asked is how long has that home been there?

DAVID AARVIG: 2005 was the construction date.

MR. REIBEL: Standard 2) That the County of Ogle and other service providers will be able to provide adequate public facilities and services to the property including, but not necessarily limited to schools, police and fire protection, roads and highways, water supply and sewage disposal while maintaining adequate public facilities and levels of service to existing development.

MR. ANDERSON: The continued use of the site for residential use will not create a burden on the County of Ogle and other public service providers because only one house will be

constructed on the site, which the house is there, it fronts on the county highway and also due to its relative proximity to urban services. I feel that standard is met.

(All those agreed.)

MR. REIBEL: Standard 3) That the proposed amendment will not result in significant adverse impacts on other property in the vicinity of the subject site or on the environment including air, noise, stormwater management, wildlife and natural resources.

MR. SWORD: No adverse impact on other property in the vicinity of the subject site or on the environment including air, noise, stormwater management, wildlife and natural resources are anticipated from the development of the site. I feel that standard is met.

(All those agreed.)

MR. REIBEL: Standard 4) That the subject property is suitable for the proposed zoning classification.

MR. BRONKEMA: The site is suitable for R-1 zoning district as it is in a rural area and it has a Medium LESA score and there are three

non-farming residences within a half a mile and another residence within close proximity and the petition is not inconsistent with the purpose and intent of the R-1 Zoning District. Standard is met.

(All those agreed.)

MR. REIBEL: Standard 5) That the proposed zoning classification is consistent with the trend or development, if any, in the general area of the subject property including changes, if any, which have taken place since the day the property in question was placed in its present zoning classification.

MR. BRONKEMA: Well, there is a trend of development in the vicinity of residential use on many parcels in the immediate area. The proposed zoning classification is consistent with the trend and existing zoning of the surrounding land. Standard is met.

MR. ANDERSON: Agree.

MR. SWORD: Agree.

MR. FREEBERG: Agree.

MR. McKINNEY: I've got -- this one is giving me a little problem because I really

don't feel that this parcel is consistent with the immediate area because it would be the only residential out there, but because it was built as an AG and under a hardship that's due to no circumstances of the Petitioner, I'm going to say that that standard is met.

MR. REIBEL: Standard 6) That the proposed amendment is consistent with the public interest and not solely for the interest of the applicant giving due consideration to the stated purpose and intent of the Amendatory Zoning Ordinance as set forth in Division 1 therein, the land evaluation and site assessment findings and the recommendation of the Ogle County Regional Planning Commission with respect to the Ogle County Amendatory Comprehensive Plan.

MR. FREEBERG: The proposed amendment is consistent with the public interest and is not solely for the interest of the applicant. The LESA score indicates a Medium rating for protection. The proposed amendment is consistent with the purpose and intent of the Amendatory Zoning Ordinance, the Regional Planning Commission has recommended approval. I

think this is a particularly complicated issue, but I think the standard is met.

(All those agreed.)

MR. REIBEL: And have the Board members read and considered the LaSalle factors as applied to this petition?

(All those simultaneously responded affirmatively.)

MR. McKINNEY: Going through the six standards the Board has found that all six have been met. With that, I'll entertain a motion.

MR. FREEBERG: I move that we grant Amendment 9-09 Map Amendment rezoning from AG-1 to R-1 to JNASA Holdings on Tower Road.

MR. BRONKEMA: All the standards --

MR. FREEBERG: Because, yeah, we found all the standards were met.

MR. McKINNEY: Is there a second?

MR. BRONKEMA: I'll second it.

MR. McKINNEY: Curt has moved, Maury has seconded to recommend to the County Board to approve Amendment 09-09 roll call.

MR. REIBEL: Sword?

MR. SWORD: Yes.

MR. REIBEL: Anderson?

MR. ANDERSON: Yes.

MR. REIBEL: Bronkema?

MR. BRONKEMA: Yes.

MR. REIBEL: Freeberg?

MR. FREEBERG: Yes.

MR. REIBEL: McKinney?

MR. McKINNEY: Yes.

(By voice vote five ayes.)

MR. REIBEL: Five voted yes.

MR. McKINNEY: Motion passed.

MR. REIBEL: This petition will go on to the Planning and Zoning Committee and the County Board on December 9th at 1 o'clock in the afternoon and that's at the sheriff's department training room on Jefferson Street.

DAVID AARVIG: Okay. I'll find where it is.

MR. REIBEL: Give me a call and --

DAVID AARVIG: Are you in tomorrow?

MR. REIBEL: No.

DAVID AARVIG: I'll call you next week then.

Now on this 24th day of November 2009, I do signify that the foregoing testimony was given before the Ogle County Zoning Board of Appeals.

Bruce McKinney, Chairman

Michael Reibel,
Zoning Administrator

Julie K. Edeus
Certified Shorthand Reporter
IL License No. 084-003820
P.O. Box 381
Dixon, Illinois 61021