STATE OF ILLINOIS)
) SS
COUNTY OF OGLE)

ORDINANCE NO. 2009-1203

AN ORDINANCE APPROVING A ZONING MAP AMENDMENT ON PROPERTY LOCATED AT 11490 N. TOWER ROAD, BYRON TOWNSHIP

WHEREAS, JNASA Holding, LLC c/o Jerald Aarvig, 12680 Ashfield Rd., Caledonia, IL has filed a petition for a Map Amendment (Petition No. 09-09AM) to re-zone from AG-1 Agricultural District to R-1 Rural Residence District on property located at 11490 N. Tower Road and legally described as shown in Exhibit "A" attached hereto; and

WHEREAS, following due and proper notice by publication in the Ogle County Life at least fifteen (15) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least fifteen (15) days prior thereto, the Ogle County Zoning Board of Appeals conducted a public hearing on November 24, 2009, at which the petitioner presented evidence, testimony, and exhibits in support of the requested Map Amendment, and no member(s) of the public spoke in favor of or against the petition; and

WHEREAS, the Zoning Board of Appeals, having considered the evidence, testimony and exhibits presented has made its findings of fact and recommended that the requested Map Amendment be approved as set forth in the Findings of Fact and Recommendation of the Ogle County Zoning Board of Appeals dated November 24, 2009, a copy of which is appended hereto as Exhibit "B"; and

WHEREAS, the Planning and Zoning Committee of the Ogle County Board has reviewed the testimony and exhibits presented at the public hearing and has considered the Findings of Fact and recommendation of the Zoning Board of Appeals, and has forwarded a recommendation to the Ogle County Board that the requested Map Amendment be approved; and

WHEREAS, the Ogle County Board has considered the findings of fact and recommendation of the Zoning Board of Appeals and the recommendation of the Planning and Zoning Committee, and has determined that granting the Map Amendment would be consistent with the requirements established by Section 9.07(G) of the Ogle County Amendatory Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF OGLE COUNTY, ILLINOIS, as follows:

SECTION ONE: The report of the Ogle County Zoning Board of Appeals, Exhibit "B" attached hereto, is hereby accepted and the findings set forth therein are hereby adopted as the findings of fact and conclusions of the Ogle County Board.

SECTION TWO: Based on the findings of fact as set forth above, the parcel of land located at 11490 N. Tower Road in Byron Township and legally described as shown in Exhibit "A" attached hereto, is hereby rezoned from AG-1 Agricultural District to R-1 Rural Residence District, and the Ogle County Zoning Map shall be amended to reflect said zone change.

SECTION THREE: This Ordinance shall be in full force and effect upon its adoption by the County Board of Ogle County, Illinois and attestation by the Ogle County Clerk.

SECTION FOUR: Failure of the owners of other party in interest to comply with the terms of this Ordinance, after execution of such Ordinance, shall subject the owners or party in interest to the penalties set forth in Section 9.10 of the Ogle County Amendatory Zoning Ordinance.

PASSED BY THE COUNTY BOARD THIS 15TH DAY OF DECEMBER 2009 A.D.

W. Ed Rice, Chairman of the Ogle County Board

ATTEST:

Rebecca Huntley, Ogle County Clerk and
Ex Officio Clerk of the Ogle County Board

EXHIBIT "A"
LEGAL DESCRIPTION

Part of the Northwest Fractional Quarter of Section 7, Township 25 North, Range 11 East of the 4th Principal Meridian and part of the Northeast Quarter of Section 12, Township 25 North, Range 10 East of the 4th Principal Meridian, described as follows: Beginning at a point which is North 0°42'56" West coincident with the East line of the Southeast Quarter of said Northwest Fractional Quarter of Section 7 a distance of 506.54 feet from the Southeast corner of said Northwest Fraction Quarter of Section 7 and running thence North 89°55'42" West a distance of 341.82 feet to a point; thence South 68°24'06" West a distance of 71.18 feet to a point; thence South 89°15'46" West a distance of 1,942.77 feet to a point; thence North 00°44'17" West a distance of 353.72 feet to a point; thence South 89°55'42" East a distance of 2,351.42 to a point on said East line of Southwest Quarter of the Northwest Fractional Quarter of Section 7; thence South 0°42'56" East coincident with said East line a distance of 300.00 feet to the point of beginning, containing 18.00 acres, situated in the Township of Byron, the County of Ogle and the State of Illinois.

Part of Property Identification Nos. 05-07-100-013, -014 & -016; and, 04-12-200-012, -013 & -014
Common Location: 11490 N. Tower Road

Ogle County Zoning Board of Appeals

911 W. Pines Road
Oregon, IL 61061
815.732.1190
Fax: 815.732.2229

FINDINGS OF FACT AND RECOMMENDATION
OF THE OGLE COUNTY ZONING BOARD OF APPEALS

This is the findings of fact and the recommendation of the Ogle County Zoning Board of Appeals concerning an application of JNASA Holding, LLC c/o Jerald Aarvig, 12680 Ashfield Rd., Caledonia, IL, in case #09-09AM. The applicant is requesting a map amendment to change the zoning classification of part of Parcel Identification Nos. 05-07-100-013, -014 & -016, and part of Parcel Identification Nos. 04-12-200-012, -013, & -014, an 18.0 acre parcel, from AG-1 Agricultural District to R-1 Rural Residence District. Said parcel is part of Section 7, Township 25N, Range 11E of the 4th Principal Meridian and part of Section 12, Township 25N, Range 10E of the 4th Principal Meridian and is located in Byron Township at 11490 N. Tower Road.

After due notice, as required by law, the Zoning Board of Appeals held a public hearing in this case on November 24, 2009 at the Ogle County Farm Bureau, 421 W. Pines Rd., Oregon, Illinois and hereby report their findings of fact and their recommendation as follows:

SITE INFORMATION: See Staff Report (attached herewith).

ANALYSIS OF SEVEN STANDARDS: After considering all the evidence and testimony presented at the public hearing, this Board makes the following analysis of the six standards listed in Section 9.07(G) (Standards for Map Amendments) of the *Ogle County Amendatory Zoning Ordinance* that must all be found in the affirmative prior to recommending granting of the petition.

1. That the proposed amendment will allow development that is compatible with existing uses and zoning of nearby property. **Development of the site for residential use is compatible with the established agricultural and residential uses of nearby properties, considering the current use of the property. <u>Standard met</u>.**

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. **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 that fronts on a County highway, and also due to its relative proximity to urban services. <u>Standard met</u>.**

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. **No 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 are anticipated from the development of the site. <u>Standard met</u>.**

4. That the subject property is suitable for the proposed zoning classification. **The site is suitable for the R-1 zoning district, as it is in a rural area, it has a medium LESA score, there are 3 non-farm residential uses within ½ mile and other residences within close proximity, and the petition is not inconsistent with the purpose and intent of the R-1 zoning district. Standard met.**

5. That the proposed zoning classification is consistent with the trend of 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. **There is a trend of development in the vicinity of residential uses on many parcels in the immediate area. The proposed zoning classification is consistent with this trend and the existing zoning of the surrounding land. Standard met.**

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 (LESA) findings (if applicable), and the recommendation(s) of the Ogle County Regional Planning Commission with respect to the *Ogle County Amendatory Comprehensive Plan.* **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. Standard met.**

RECOMMENDATION: We find that the proposed map amendment requested meets all the standards for recommending granting as found in Section 9.07(G) of the *Ogle County Amendatory Zoning Ordinance* and that such request is in the public interest. Therefore, the Zoning Board of Appeals hereby recommends that the zoning district classification of the property described above be changed from AG-1 Agricultural District to R-1 Rural Residence District.

ROLL CALL VOTE: The roll call vote was 5 members for the motion to recommend granting, 0 opposed.

Respectfully submitted this 24th day of November 2009 by the Ogle County Zoning Board of Appeals.

Bruce McKinney, Chairman
Maurice Bronkema
Jason Sword
Randall Anderson
Curtis Freeberg

Bruce McKinney, Chair

ATTEST:

Michael Reibel

Michael Reibel, Secretary

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,

1 but as of current it is in a zoning violation
2 due to the other owner re-recording these
3 properties or his property lines in a way that
4 he could get more loans from different banks.
5 So what it's done is cause us a hardship which
6 we believe to be unique in the area and I
7 believe that's what we found. There's been only
8 maybe one other case in 15 years where something
9 like this has come up. So we don't think it's
10 something that's going to set a precedent, but
11 what it is is it will allow us to have a nice
12 rectangular piece of property that's properly
13 zoned so we can live there without worry or
14 concern that we have further notices coming.
15 The other neighborhood homes, the neighbor
16 north and the neighbor south are both non-farm
17 homes. They use theirs for residential.
18 Neighbor farms his land. We've spoke with both
19 of them. We don't believe there would be any
20 negative impact to their property values. We're
21 not asking to add anything to the existing
22 property. We're not asking to be able to build
23 anything else on the existing property.
24 Everything is already as is. There's a

1 residential house which is finished. It's
2 serviced by its own private well and septic
3 system and there's a current outbuilding that is
4 already built. So we're not asking for anything
5 to be changed in that way. We just want a piece
6 of property that's properly zoned so we don't
7 violate the zoning ordinances and we can put the
8 issue hopefully to rest. Oh, and further, all
9 of the existing land that's touching this parcel
10 has been sold, so there is no other land
11 available for purchase to be able to get up to
12 the 40 acres. We purchased the remaining 13 to
13 make it one big rectangle to -- hopefully with
14 Mr. Reibel's help anyway we thought that it
15 would at least qualify for residential zoning
16 and fit your parameters.
17 MR. McKINNEY: Do you have anything to add
18 at this time?
19 JERALD AARVIG: Nope.
20 MR. McKINNEY: Who's going to be living in
21 this house?
22 DAVID AARVIG: My dad is there about every
23 other week, he's retired now and then myself and
24 my family.

1 MR. McKINNEY: Okay, so it's not a house
2 that you're purchasing to resell or to rent?
3 DAVID AARVIG: No. We started to move
4 there until we got the zoning notice issue and
5 then we didn't know where that was going to go
6 and what the penalties would be.
7 MR. McKINNEY: The other three
8 non-farmhouses in that area, they -- none of
9 them are zoned residential though, are they?
10 DAVID AARVIG: No, they all have the 40
11 acres.
12 MR. McKINNEY: That's a concern that some
13 of us have is the spot zoning if we start
14 allowing a residential out in this area and
15 somebody else is going to come along in a year
16 or two or even less and say you gave Aarvigs
17 residential zoning, you know, we want to build
18 out in the country, we want residential.
19 DAVID AARVIG: I think the crucial
20 difference would be is this is existing. We're
21 not building anything and I wouldn't even ask
22 for a rezoning if I would not have bought it and
23 had the house not been existing. All this is is
24 a situation that is unique. I think it

1 definitely applies to the hardship from what
2 I've read in your standards in that we have a
3 home that unless there's a way to bulldoze it or
4 get rid of it -- it's a situation that we're
5 asking for the Board's consideration to make it
6 to where it's not in violation of any of the
7 Board or County issues and use it as a
8 residential premise. We do not want to build or
9 subdivide or anything in that way.
10 MR. McKINNEY: Do you have anything in
11 your contract with the bank that this property
12 met the county zoning?
13 DAVID AARVIG: Not that I'm aware of, no.
14 It just was we made the purchase, within two
15 weeks I got the deed with all the property
16 stamps on it and everything was fine. We then
17 started fixing it up, putting money into it,
18 I've paid substantial amounts of interest on it
19 since then and then also spent another $60,000
20 to purchase more land to try and make it --
21 instead of that goofy flag lot that the previous
22 owner somehow recorded. Basically to us we're a
23 victim of somehow this guy got it recorded and
24 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.

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

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

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

1 re-recorded and then went to two different banks
2 and said to one I'll give you my residence and
3 well, evidently that bank didn't do the research
4 saying that if something ever was foreclosed on
5 they may have a worthless piece of property if
6 they don't have the 40 acres around it. But
7 because -- and I guess there was something,
8 Mike, that he also had to sign that said he
9 would not split it up or he couldn't sell it to
10 split it up, but when he was foreclosed on he
11 didn't -- he didn't have a choice. It was kind
12 of forced on him and now we're left with -- it's
13 a bad situation, I think we all agree with that,
14 but it's not something that I believe is going
15 to set any kind of a dangerous precedent for you
16 having someone else coming to you as long as the
17 recorder won't allow another piece of property
18 or figure out some way to put on these people
19 that, hey, you can't go to a different bank, if
20 you're going to do this this stays the same.
21 That's where the problem originated. And again,
22 if I was made aware of that prior to sinking any
23 money into this there wouldn't even have been an
24 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

1 don't feel that this parcel is consistent with
2 the immediate area because it would be the only
3 residential out there, but because it was built
4 as an AG and under a hardship that's due to no
5 circumstances of the Petitioner, I'm going to
6 say that that standard is met.
7 MR. REIBEL: Standard 6) That the
8 proposed amendment is consistent with the public
9 interest and not solely for the interest of the
10 applicant giving due consideration to the stated
11 purpose and intent of the Amendatory Zoning
12 Ordinance as set forth in Division 1 therein,
13 the land evaluation and site assessment findings
14 and the recommendation of the Ogle County
15 Regional Planning Commission with respect to the
16 Ogle County Amendatory Comprehensive Plan.
17 MR. FREEBERG: The proposed amendment is
18 consistent with the public interest and is not
19 solely for the interest of the applicant. The
20 LESA score indicates a Medium rating for
21 protection. The proposed amendment is
22 consistent with the purpose and intent of the
23 Amendatory Zoning Ordinance, the Regional
24 Planning Commission has recommended approval. I

1 think this is a particularly complicated issue,
2 but I think the standard is met.
3 (All those agreed.)
4 MR. REIBEL: And have the Board members
5 read and considered the LaSalle factors as
6 applied to this petition?
7 (All those simultaneously
8 responded affirmatively.)
9 MR. McKINNEY: Going through the six
10 standards the Board has found that all six have
11 been met. With that, I'll entertain a motion.
12 MR. FREEBERG: I move that we grant
13 Amendment 9-09 Map Amendment rezoning from AG-1
14 to R-1 to JNASA Holdings on Tower Road.
15 MR. BRONKEMA: All the standards --
16 MR. FREEBERG: Because, yeah, we found all
17 the standards were met.
18 MR. McKINNEY: Is there a second?
19 MR. BRONKEMA: I'll second it.
20 MR. McKINNEY: Curt has moved, Maury has
21 seconded to recommend to the County Board to
22 approve Amendment 09-09 roll call.
23 MR. REIBEL: Sword?
24 MR. SWORD: Yes.

1 MR. REIBEL: Anderson?
2 MR. ANDERSON: Yes.
3 MR. REIBEL: Bronkema?
4 MR. BRONKEMA: Yes.
5 MR. REIBEL: Freeberg?
6 MR. FREEBERG: Yes.
7 MR. REIBEL: McKinney?
8 MR. McKINNEY: Yes.
9 (By voice vote five ayes.)
10 MR. REIBEL: Five voted yes.
11 MR. McKINNEY: Motion passed.
12 MR. REIBEL: This petition will go on to
13 the Planning and Zoning Committee and the County
14 Board on December 9th at 1 o'clock in the
15 afternoon and that's at the sheriff's department
16 training room on Jefferson Street.
17 DAVID AARVIG: Okay. I'll find where it
18 is.
19 MR. REIBEL: Give me a call and --
20 DAVID AARVIG: Are you in tomorrow?
21 MR. REIBEL: No.
22 DAVID AARVIG: I'll call you next week
23 then.
24

1 Now on this 24th day of November 2009, I
2 do signify that the foregoing testimony was
3 given before the Ogle County Zoning Board of
4 Appeals.
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6
7
8 Bruce McKinney, Chairman
9
10
11
12
13 Michael Reibel,
14 Zoning Administrator
15
16
17
18 Julie K. Edeus
19 Certified Shorthand Reporter
IL License No. 084-003820
20 P.O. Box 381
Dixon, Illinois 61021
21
22
23
24

Ogle County Planning & Zoning Department

911 W. Pines Rd.
Oregon, IL 61061
(815) 732-1190
Fax: (815) 732-2229

STAFF REPORT

To: **Zoning Board of Appeals**	**File #09-09AM**
Date: **November 17, 2009**	**Prepared By: Michael Reibel**

GENERAL INFORMATION:

Applicant:	JNASA Holding, LLC c/o Jerald Aarvig, 12680 Ashfield Rd., Caledonia, IL
Status of Applicant:	Owner
Requested Action:	Map Amendment
Purpose:	Rezone from AG-1 Agricultural District to R-1 Rural Residence District
Location:	Part of the S ½ G.L. 2 NW Fractional 1/4 Section 12 Byron Township 25N, R11E of the 4th P.M., Ogle County, IL (located on the west side of N. Tower Road beginning approximately 0.6 mile north of E. Oak Grove Road). Common Location: 11490 N. Tower Rd.
Size:	18.0 acres
Existing Land Use:	Approximately 75% 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 predominately agricultural area. There are three non-farm dwellings located within ½ mile of the site. All surrounding land is zoned AG-1 Agricultural District.
Comprehensive Plan:	The site is not located within 1.5 miles of an incorporated city of village. Byron Township does not have a township planning commission. The Ogle County Amendatory Comprehensive Plan designates the site and surrounding area for continued agricultural uses.
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 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.

Applicant:	JNASA Holding, LLC c/o Jerald Aarvig, 12680 Ashfield Rd., Caledonia, IL
Applicable Regulations:	The "R-1" district is established for low-density residential uses. It is designed for areas with few or no public improvements and where general conditions are not conducive to other than low-density development.

SPECIAL INFORMATION:

Public Utilities:	None. The dwelling on site is served with a private well and septic system.
Transportation:	N. Tower Road is a hot mix surfaced Ogle County highway.
Physical Characteristics:	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, 5-10% slopes, eroded; 412B - Ogle silt loam, 2-5% slopes; 414B - Myrtle silt loam, 2-5% slopes; 416C2 - Durand silt loam, 5-10% slopes, eroded; 618C2 - Senachwine loam, 5-10% slopes, eroded; 622C2 - Wyanet silt loam, 5-10% slopes, eroded; and, 3451A - Lawson silt loam, 0-2% slopes, frequently flooded. 39.1% of the soils identified on the site are classified as "Prime farmland", with the remainder being "Farmland of statewide importance." Approximately 12.5% of the soils are classified as "Frequently flooded." 51.1% of the soils are rated as being "Very limited" for septic fields, and the remainder are rated as being "Somewhat limited."
LESA:	The LESA score of 199.55 indicates a MEDIUM RATING FOR PROTECTION (LE = 75.55; SA = 124).

ATTACHMENTS:

LESA Summary Sheet

SITE ASSESSMENT WORK SHEET - OGLE COUNTY, ILLINOIS "L.E.S.A."

Site Assessment Factors		Maximum Points per Factor	Score Assigned
Agricultural Land Use			
1.	Percent of land in agriculture within 1.5 mile of site	16	16
2.	Percent of land in agriculture adjacent to site	16	16
3.	Percent of site suitable for agricultural use	16	8
Zoning			
4.	Number of non-farm dwellings within 0.5 mile of site	12	10
5.	Percent of land zoned AG-1 within 1.5 miles of site	16	16
6.	Availability of zoned land for proposed use	10	5
7.	Number of similar map amendments and/or special use permits approved within 1.5 miles of site within last ten years	12	10
Compatibility/Impact of Use(s)			
8.	Distance from fire/ambulance protection	11	5
9.	Distance from school (high school)	11	0
10.	Impact on the environment and unique historical/cultural factors	10	0
11.	Compatibility with surrounding area	10	4
Urban Infrastructure			
12.	Degree to which the affected transportation routes can bear the traffic that the proposed use may generate	10	1
13.	Availability of central sewer	8	8
14.	Availability of public water	8	8
Land Use Feasibility			
15.	Soil suitability for on-site disposal	10	0
16.	Size of site	10	3
17.	Future need for more land	5	5
Adopted Plans			
18.	a) Consistency with County "Comprehensive Plan"; or b) consistency with city/village plan if within 1.5 miles of city/village limits	9	9
SITE ASSESSMENT SUB-TOTAL		200	124

LAND EVALUATION WORK SHEET AND SUMMARY SHEET - OGLE COUNTY, ILLINOIS "L.E.S.A."

1 Soil Type	2 Agricultural Group	3 Relative Value	4 Acres	5 Product (Relative Value x Acres)
21C2	7	65	1.62	105.30
221C2	6	78	0.90	70.20
27C2	7	65	6.12	397.80
412B	4	88	0.90	79.20
414B	6	78	3.78	294.84
416C2	6	78	2.52	196.56
451	1	100	2.16	216.00
TOTAL	-----	-----	18.0	1,359.90

Note:
"Agricultural Group" is obtained from Table 1.
"Relative Value" is obtained from Table 2.
To calculate # acres, use a planimeter or dot grid on a soil survey map or consult with the Ogle county Soil and Water Conservation District or Ogle County Planning & Zoning Department.

1,359.90 / 18.0 = 75.55

Total of Column 5 / Total of Column 4 — **Land Evaluation Sub-Total (Maximum 100 pts. Possible)**

Site Assessment Sub-Total (Max. 200 pts.) = 124

Total Points Accrued (Max. 300 pts.) = 199.55 **(L.E.S.A. Score)**

In most cases, the site should be protected for agriculture when the points exceed 200. The following point scale should be observed:

0 - 199 = Low rating for protection
→ *200 - 210 = Medium rating for protection*
211 - 300 = High rating for protection

Petitioner: JNASA HOLDING, LLC

File No.: 09-09AM

Date: 11/17/09 Prepared By: M. REIBEL