

BOARD OF ADJUSTMENT
September 2nd, 2015 1:30 PM
COUNTY BOARD ROOM
POGREBA, WEGNER

Chairman Andre called the meeting to order at 1:30 PM.

Andre verified that the Open Meeting Law requirements had been complied with through notifications and posting.

Members present: James Andre, Gerald Hawkenson, Nancy Horton, Terrance Koxlien, and James Schwartz

Staff members present: Mark Carlson, Carla Doelle

Others present: Stephen and Jessica Pogreba, Jeff Wegner, Terry and Annette Rieck

Approval of Agenda - Hawkenson made a motion to approve the agenda, Koxlien seconded, motion carried unopposed.

No meeting minutes were approved at the meeting.

Public Hearing - Stephen and Jessica Lynn Pogreba, Independence, WI - Variance –Driveway Site Distance - Town of Lincoln Chairman Andre called the public hearing to order. Horton read the public hearing notice aloud. Stephen and Jessica Pogreba were present at the meeting. Carlson stated the reason for the request is that, according to the Comprehensive Zoning Ordinance, Chapter 6.05(13), a four hundred foot site distance is required in either direction for a driveway. Because the Pogreba's are unable to meet that requirement, they are requesting a variance for the reduced setback of 150 feet to the North and 267 feet to the South. Carlson has not received any correspondence by phone, letter or e-mail other than that from the Town of Lincoln. Carlson said the Town of Lincoln explains in their meeting minutes what the precautions would be. Carlson read aloud part of the correspondence from the Town of Lincoln, "I am enclosing a copy of the minutes of the meeting held on the 12th day of August for the Township of Lincoln stating that we have no objection to the location of the driveway on Gierok Road for the Stephen Pogreba new home. The first item on the Town of Lincoln agenda was a driveway approval for a new home being built by Stephen Pogreba. The previous driveway was not in a good location due to a 12 foot drop in the field. The Board agreed to the new location of the driveway and giving the variance required would require a sign noting that there is hidden driveway ahead. Motion carried with three votes for and zero against". Carlson pointed out for the Board on the overhead aerial map the request for the 150 feet and the 267 feet and had pictures of the site to show. Carlson stated obviously there is a corner there but there is somewhat of a field road there right now that has been used. Carlson showed multiple photos of the site/setbacks. Carlson pointed out that even if they decide to move the driveway to their property line, they still would be requiring a variance setback distance from both or either direction. Carlson pointed out that even if they moved their driveway, which is unfeasible because of the steepness, they still wouldn't be able to meet the 400 foot site distance requirement because of the nature of the hill and the road making its bend. Carlson added there are other driveways in the vicinity as there are two homes right there with the same type of situation. Carlson reiterated that he received no correspondence for or against the issue. S. Pogreba stated this is the driveway that they have been using for farming those hills. Andre clarified that it was the driveway along the line fence with Mrs. Gierok. Pogreba agreed and added they have been using that entrance for

about the past 22 years roughly. Pogreba commented the picture that Carlson has is a little older one and it doesn't angle out to the site anymore it goes straight out now. (Some inaudible text). Pogreba said the cars are not travelling at a high rate of speed there and right about where it says Gierok Road, across from the house there, is a culvert which the Town of Lincoln has there to drain water from the north side to the south side and that dropoff is roughly about 17 feet so a driveway in that area, besides being extremely steep, would also potentially wash out. Andre clarified that Pogreba was talking about the south property line. Andre called for any other questions from the Board members. Upon Andre questioning if Pogreba had anything to add, Pogreba responded he did not. Andre called for public testimony in favor.

Helen Gierok stated she has a problem because that driveway ends up on her property. Pogreba stated the current driveway is not on the property. Gierok said that according to the line here, it is. Pogreba agreed but added that whole thing/angle, which one can see in the picture is on Ms. Gierok's property, however with the current survey, the survey marker was right at the edge of the current driveway. Pogreba's pointed out the old driveway on the map for the Board. Gierok commented that the line fence is not in coordination with what it shows there. Carlson stated we are logged onto "online" mapping and one accepts that it may not be right where it supposed to be. Carlson added the actual red line is not a legal description of the property. That would be addressed with the survey and the deed of the property. Gierok said according to the way it was surveyed, the post was here as it was surveyed one day and then the stake that the surveyor put in was put back on the line fence the next day. Pogreba stated he drove the steel stake which is still right in the driveway. Hawkenson asked how much of Gierok's property, if it were off, did it involve. Gierok responded it is kind of on the edge of it. Pogreba commented, at that point when he measured it, it was 10 feet from the fence that is currently there towards the road and then down at the far, left hand side, away from the line fence that has been there at least 22 years, as far as Pogreba remembered, it was 13-14 feet from the line fence and the stake is still in the ground. Pogreba acknowledged that Ms. Gierok is correct in that the red line is pretty close to correct because the line fence that is there is not the legal survey. Hawkenson asked if Pogreba were to move that little piece, how long is it. Pogreba said that little piece is not being used. Carlson added the driveway now comes straight out. Schwartz asked how much is disputed. If the driveway now comes straight off is that being disputed as well? Gierok responded yes because according to that it is on her land. Schwartz asked Gierok how much of the current driveway did she believe was on her land. Gierok stated she didn't know but they said about 12 feet. Pogreba disagreed and stated none of the current driveway is on her land. Pogreba explained the stake is right at the corner, right on the edge of the current driveway that is there. Pogreba asked if any of the Board members had been out at the site. Andre, Hawkenson and Schwartz acknowledged they were out there. Pogreba continued that right when one pulls into the driveway, on the right hand side, the stake is probably two stones into the driveway. Andre stated we cannot determine property lines. We are only here to address the variance. Carlson commented they are here to address the site distance setback and it is up to them (Pogreba's) to stay five feet off of your (Gierok's) property with the driveway as five feet is the setback from a property line for a driveway. Carlson stated we are here to address the granting of a variance for site distance, the property line itself as Andre had said, has to be determined by the landowners, or an attorney or surveyor. Carlson thought that it sounded like that is what they did but it is still in dispute. Hawkenson asked Carlson if he had the picture that Pogreba has there. The question Schwartz had, was if Ms. Gierok's were to prevail, i.e. the lot went another 12 feet off of that north boundary, if that would change Pogreba's driveway plans at all. Pogreba responded no as they would just move the driveway over five feet because as one can see the stake is right on the edge of it. Schwartz asked if the stake there is where they both agree it should be. Gierok answered that is where the surveyor put it. Pogreba stated he didn't think that was accurate according to the last 25 years. Carlson commented the stake is accurate and the fences are not. Somone commented they can be 10-15 feet off from the old

style fence lines. Pogreba wasn't disputing that is where the stake is as that is where the survey is. Schwartz clarified that regardless of where it is the issue is still the same. Gierok and Pogreba agreed. Hawkenson suggested taking off that "pie" piece there. Pogreba said he would just add more gravel, etc. Schwartz commented when he was looking at that the other day, he noticed the top of that driveway where it is even with the road grade, if some of that vegetation were to be removed, going towards the corner there, he thought one would have almost 300 plus feet. Pogreba commented the one thing he talked to Town Chairman, Jack Speerstra about is trimming those trees back to the right-of-way. Schwartz clarified that was the town right-of-way. Carlson commented that if the town agreed to do that it would be fine. Schwartz asked if Pogreba would be elevating that end of the driveway. Pogreba responded not as it meets the road but as it comes down he would probably add six inches of gravel. Schwartz thought as one comes up on the driveway you're right by the road and still on a hill and in the winter one is going to have to get up on the road which might be dangerous. Andre said he drove back in there and then he drove out the driveway and driving out Andre thought there are concerns about what is coming from the left side. Hawkenson stated he thought Andre is right in saying that some of that vegetation could be cut back. Andre agreed and reiterated that if the town would cut some of the trees and brush back to the their town right-of-way that would give them a lot more site distance. Pogreba said they did cut the grass this past week so that did open it up quite a bit. Andre commented it needs more than just the grass cut. The brush and trees need to be cut back to the town right-of-way. Carlson did some measuring on the online mapping and it would be 200 feet from the driveway to where he measured to the woods. Carlson stated there wasn't anything in the Ordinance to make signage mean anything but sometimes there are signs along the road that say "hidden driveway", that way people are aware that something is coming up. Carlson agreed it would be nice if the town would clear the right-of-way especially if there would be a bus that is stopping there. Pogreba noted there is a school bus sign before the Alan Pogreba property. Andre clarified that Allan Pogreba lives in the house right across the road. The problem with putting up signs like "hidden driveway" is if you get too many signs out there then, unfortunately, nobody pays any attention to any of them. Gierok commented that school bus sign is the only one that is there. Schwartz commented there are a lot of other residences along that road that don't have 400 feet of site distance. Carlson agreed but wasn't sure how those were approved and added that some of them are fairly old but there is at least one that isn't that old. Hawkenson noted the neighbor right across the road. Carlson agreed that driveway should have been addressed at the time. Schwartz asked how long the "400 feet of site distance" has been in effect. Carlson responded one sees it quite a bit in other ordinances so it must be something that is pretty universal. Andre asked how long Trempealeau county has had it. Carlson replied that we adopted our Ordinance in 1972. Andre commented that it hasn't been enforced. Carlson responded he didn't know. He added that is probably assuming 55 miles per hour. Hawkenson stated it was enforced in his township (Chimney Rock) about 12 years ago or perhaps longer. Carlson explained how he found this one is that he was doing the zoning and he used the range finder and instead of assuming one knows where it is he took a look at it. Carlson added the rules are all in place for a reason and that is for sure for safety. There is nothing in the Ordinance that states otherwise as far as signs or slower traffic however we have seen the signs put in over by Blair on Hillcrest Drive. Hawkenson commented there is a sign over in the Town of Burnside. Koxlien commented the sign would be up to the township. Carlson stated part of the approval process was that a sign be installed. An unidentified person stated they didn't discuss clearing the brush with them. Carlson stated he never talked with the Town of Lincoln Chairman Jack Speerstra about that either. Carlson thought it would help but he still didn't think there would be 400 feet of site distance. Some discussion took place on the site distance. Schwartz questioned how many acres of land there is. Pogreba responded 3.11 acres which he acquired to build a residence. Horton questioned if the "x" marked is where the house is going to be? Pogreba answered the house would actually be way at the left hand side. Some discussion took place. Pogreba stated if they moved the driveway further south they are getting into a much steeper bank. Even moving it 10 feet, which Pogreba is still

thinking about, is about a 6 foot drop off and then we get close to the culvert that is draining the water from the north side of the hill so Pogreba was a little concerned about that as well. Andre questioned how far south Pogreba could go before he has problems with that culvert that runs across the road. Andre questioned from where the existing driveway is along the line fence, if one goes south, how far is it till one gets to the culvert. Carlson stated it is about 75 feet below the lot line so he is about 65-70 feet from the actual driveway. Hawkenson stated then you have a 9 foot drop right there. Andre stated if he moved that driveway 75 feet south Andre knew he wasn't going to get the 400 foot site distance but he would pick up some, especially if Pogreba gets the town to cut back the debris to the town right-of-way, Andre thought he would pick up a lot more site distance. Andre stated by moving it south you pick up site distance in both directions. Some discussion took place. Hawkenson didn't think he should move it quite that far. Pogreba commented he didn't want to get that close to the culvert. Hawkenson suggested going where you have a six foot drop – sort of half way. More discussion took place on where the driveway should be placed. Carlson stated if the town cleared out the debris the distance would be even greater. Andre stated this Board can't impose that condition, but Pogreba could work with the Town Chairman on that. Andre added that Pogreba should be aware that the town will have to cut that back yearly or every other year to keep the brush down.

Testimony in Favor - Andre called twice for any other testimony in favor of granting the variance.

Testimony in Opposition – Andre called for any testimony in opposition of granting the variance, noting Mrs. Gierok's testimony. Andre asked Gierok if she had any other concerns. Gierok stated she was to the lawyer and he said that fence is not correct and that needs to be corrected before the driveway would be put in. Andre re-emphasized that was something that Pogreba and Gierok need to work out between themselves either on their own or with legal counsel in order to decide the property line. Hawkenson suggested having someone survey it. There is some inaudible conversation. Andre called twice for any other testimony in opposition. Koxlien asked if when it comes to making a decision if the Board was just going to base their decision just on what is wrote here on paper or with the assumption that he will move the driveway for what is being requested. Andre responded it depends on how the motion is worded and added that the Board can vary from what the request is. Andre stated we can increase the setback to the North. Andre read the proposal as "150 feet site distance to the North" and said the proposal could be 200 foot site distance is required as the brush is now or move the driveway 50 feet south which gives them 200 feet and clearing the brush increases the site distance a little more yet. Koxlien clarified that all has to be in a motion. Andre agreed that could all be addressed in the motion. Carlson was asked to go back to the drawing to determine what the town right-of-way is going to the west. The question was raised, if we assume that they took all the brush out of there how far of a distance would we get? Carlson said the town right-of-way is usually 33 feet from the center. Andre stated one assumes it is a four rod road if it is not recorded. Schwartz stated if the town were to remove that brush at the very top of the hill there, he would think one would gain quite a bit of visibility. If the end of the driveway was raised up to road level like the last thirty feet or so, you don't just have to rush out on the road, one could actually stop and look. Carlson noted the driveway has to slope away approximately 6 inches from the road. Hawkenson noted the other driveway right across the road. The Board consensus was that people are used to watching for that driveway already. Gierok stated there are actually two driveways there because there is a field driveway there also. Schwartz stated he is all for increasing the visibility as far as we can. To move the driveway that is an awful steep drop there and a lot of fill would be needed to even it out so it doesn't erode. Schwartz was concerned about that part of it too for what we would gain. Carlson thought the best location for the driveway is where it is right now. Carlson commented that if the Board required it to be 200 feet, they wouldn't necessarily have to move their driveway, they could clear out the right-of-way and probably get that 200 feet. Carlson did measuring on the online aerial mapping. Carlson said one doesn't see too many of them maintained 33

feet, as it is like 5 feet. Carlson noted there is a cornfield planted within 5 feet of the shoulder. Carlson thought in talking with the town, instead of making them move their driveway, one could get better site distance by cleaning some of that stuff out of there. Andre stated he thought the best option is to clean the brush and trees out of there and move the driveway as far south as they can as that gives the most site distance. Andre asked for any other questions/comments from the Board. At this point Andre stated the Board will begin the 3 point discussion. Andre asked the Board to address “unnecessary hardship”. Hawkenson stated the unnecessary hardship is because it is on a curve and if one does move the road there will be chances of erosion washing out the road. Hawkenson stated he thought the best spot is where the existing driveway is. If there is a dispute on the property line between Gierok and Pogreba, then that is something they will have to work out with a Surveyor, etc. to get that driveway just 6 feet off the property line or whatever to get the clearance. Gierok stated she would have no problem with that moving if they move the driveway so it is off of Gierok’s property. Hawkenson commented that is only about 6 feet. Andre commented they need to do that anyway because the need to meet the property line setback. Gierok said if that line fence gets put in the way it is supposed to be put in, she doesn’t want his house next to her line fence or vice versa. Gierok stated she was sure he doesn’t want his house next to her line fence. Gierok continued that some day down the road, is she should decide to sell her farm and someone asks where the line is, she wants it correct because she has gone through a problem before, across the road, with a line fence. Otherwise Gierok stated she has no objection to it if the driveway gets moved that six feet so it is off of her property line. Upon Hawkenson asking if they would still be on the ridge, Pogreba responded yes. Carlson questioned if they moved the line fence to where the fence is if they wouldn’t be taking some of Gierok’s property away. Gierok responded the fence is not legal. Andre stated what Gierok is saying is that the fence is south of the actual property line. Hawkenson stated one could go upstairs and talk to County Surveyor Joe Nelsen and he will tell you how far off your property lines can be. (off of the old survey maps, etc.) Hawkenson said a lot of them are “right on the money” too but there are some that are off. Andre asked for any other discussion on the first point of unnecessary hardship. Schwartz pointed out that if they don’t the authorization, he wasn’t sure what other use it would have. It is too small and steep for farming. Andre moved on to the second point of “unique physical property limitations”. Horton stated the two curves in the road are there and that is unique to that property plus it is so steep further down. Koxlien agreed that it limits his options for a driveway because of the culvert and the other stuff but moving it south is an option there to increase safety. Koxlien didn’t consider that a hardship but it is more of a unique situation. The Board moved on to discuss the third point of “no harm to public interest”. Schwartz pointed that there are numerous driveways on that road. First of all it is a road that doesn’t have high speed traffic. There are other properties on that same road that don’t have the 400 foot visibility and Schwartz thought the Board has to consider the fact that it is a small road and traffic speeds tend to be lower. Schwartz questioned if the 400 feet also applies to the State highway. Carlson stated he was sure it does. Schwartz thought that given the nature of this road that it would be a great concern of public interest. Andre stated he would like to see the driveway moved as far south as possible. If staying to the north of that culvert is the best option, Andre would like to see that driveway moved south. Andre understood that it is going to be an increase in cost to rebuild that driveway, that there is a drop off, but it is something that can be done. Horton agreed with Andre on that because it is an awkward little triangle there, it is very awkward and if they could just move it down as far as they can, in the long run, it is just going to be easier to get in and out of there, plowing it out. Horton added you are going to live with it for a long time. It isn’t a field road that you come out of every now and then, you’re going to be living with that driveway as well as subsequent people who might own your house. Horton said they have one similar to that in the Ettrick township and it is tough for them coming in and out of there. The further you can get it down

Action Taken – Koxlien made a motion to approve the variance request, Severson seconded the motion. Horton took a roll call vote: Severson – yes, Everson – yes, Schwartz – yes, Koxlien – yes, Horton – yes. Schwartz announced the motion carried on a 5-0 vote and the variance is granted.

Public Hearing – Jeffrey L. & Betty A. Wegner, Ettrick, WI - Variance – Property Line Setback for Livestock Facility – Town of Ettrick

Chairman Andre called the public hearing to order. Horton read the public hearing notice aloud. Doelle stated Wegner is looking at installing a waste storage structure and he is fairly limited on his options as far as that the flood plain is to the north and a property line to the east and his existing structure sits to the southwest. Doelle explained he was able to get it positioned in there to meet the flood plain requirements so as not to be in there and therefore brings him here asking for reducing the setback from the property line from 350 feet to 192 feet. Upon Wegner being asked for any comments he had none. In looking at the elevations, Horton asked if Wegner was digging down 800 feet or is that just the elevation of the general land around there. Doelle responded that is the ground surface elevation that surrounds it. Doelle asked Wegner to give a brief description of the pit and its' size. Wegner responded the size is 150 feet by 250 feet. The capacity will be six months storage versus daily hauling now. The pit will be eight feet under ground and 12 feet above ground and all concrete. Horton asked if it was open on the top. The response was inaudible. Andre asked how many cows Wegner was milking now. Wegner responded 500. Andre clarified that the proposed structure would give Wegner six months storage. Schwartz asked if Wegner was going to be adding two more barns. Wegner responded right now it is one more, initially, and then long range there will be a spot for another barn. Schwartz asked if that was why Wegner couldn't build it closer into that property. Wegner stated that was correct. Hawkenson asked if that size would currently handle the two barns plus what Wegner has. Andre asked how many cows Wegner was looking at going to. Wegner answered 700 would be the max – or what he is permitted for.

Testimony in Favor – Andre called for any testimony in favor. Doelle stated she feels confident that the design that Wegner has provided meets the standards and specs for the NRCS 313 standard which is for animal waste storage and it has been checked and approved by our DATCP engineer to make sure that it meets the standards and specs so it gets a “second set of eyes”. Andre asked if anything was received from the township. Doelle read a letter dated July 27th, 2015 from the Town of Ettrick which stated the Town of Ettrick board has no objections at this time to the requested variance change provided all state and county requirements are met. Upon Andre's inquiry, Doelle verified that she did not receive any other e-mails or correspondence from the public. Andre called twice for any other testimony in favor of granting the variance.

Testimony in Opposition – Andre called for any testimony in opposition.

Terry Rieck stated he is the property owner to the east. Rieck was concerned because when he bought this property he had intentions of building a homestead out on that field and due to that project, Rieck felt it devalues his land. Rieck added that the lay of the land is such he is lower so if he were to bring in 12 feet of concrete (Rieck stated he has been in the concrete business a long time) and it would crack or break etc., he could get an erosion factor back onto his soil. We have had torrential rains in a few hours sometimes and no one knows what Mother Nature is going to do. Under the devaluation of his property, Rieck feels that it is not in his best interest to move it closer and that is why Rieck is here. Annette Rieck stated if the pit is open she is concerned about the smell and that big of a pit for six months being open. Andre asked if Doelle could address that. Doelle responded they didn't have anything to address on odor. Schwartz didn't think the distance would impact - that another 120 feet, etc. would have any impact. A. Rieck responded they are moving it over half way – closer to Rieck's

property. A. Rieck corrected herself saying not over half, almost half the distance closer. T. Rieck asked what the reason was for the setback to begin with; if it was for ground for the emissions of spillage. Rieck reiterated why did they bring forth the setback. Doelle responded she wasn't sure as DATCP (Department of Ag, Trade and Consumer Protection) had these setbacks in place when they wrote the Livestock Siting Standards. Doelle couldn't speak for the justification/reason of why they picked the number that they did. T. Rieck commented everybody knows and the Courthouse knows as well that when you apply manure to a given field you can only apply a small portion per acre. If an accident did happen and it went to a lower land, the lay of the depth of the land is Rieck's concern. Rieck stated if he had big money and worked with Wegner, we could raise that up and then maybe it would be no problem. As it stands right now, Rieck thought it was unsafe for him. It is detrimental to the value of the land. Rieck stated he was sure that he and Wegner could work this out in some other way/shape. Hawkenson asked where Rieck was planning on building, if he was going to, in accordance with the property line. T. Rieck pointed out on an overhead aerial photo where he was going to build and stated basically in the middle of that field. Upon Hawkenson asking how many acres Rieck owned, T. Rieck responded he owned 52 acres total. Rieck owns about 35 acres in that field in which Rieck rents out the crops. Wegner does get the crops off the property now. Rieck explained right there basically by Wegner's barn that is low land and it is next to Rieck's water table. Rieck stated that would have to be filled in. Rieck surveyed it with this eye (of which he said he is pretty good at) and it would have to be filled in 4 feet deep by a 250 foot radius which is a lot of fill to subject any moisture from silting back onto my property. According to T. Rieck, that would cost him \$100,000 to change that to secure himself for safety. Horton asked if there was any house on there now. T. Rieck responded no, that it is all proposed. Rieck said there are plans in the making. Koxlien asked for clarification on the map of where the permit is going to go. Wegner pointed out on the overhead aerial map where the permit would be located and stated it is 192 feet from the property line. Schwartz asked where the pit would be if it was the full distance of 350 feet to the west. Carlson provided that information. T. Rieck pointed out a red line, which was the property line. T. Rieck said when he purchased his property, his uncle Rick Heinz owned this property and there was a pine road (some inaudible sentences). When Rieck purchased this property they told Rieck, "Ok you own 200 feet of Wegner over here, etc". and Rieck said no, there was no way he was going to do that. Rieck added that a good neighbor fence is a fence that has been there for forty years so Rieck told the banker that he wouldn't jeopardize and go against Wegner. Wegner has a bigger organization than what Rieck has. Rieck just wanted a proposed house place. Rieck told the banker that we would have to talk to Wegner and if Wegner wanted to purchase that land, Rieck only wanted to buy where that fence and the pine row is to allow him (Wegner) to have all the rest of that property because it is foolish to move pine trees, etc. and Wegner needed land more than Rieck does and a good neighbor is a good neighbor. But on the same hand Rieck still has his plans set forth and they have an invested interest through the bank so they have a say in this as well. Rieck was sure that he and Wegner can work this out but Rieck stated he stands strongly that he does have a little bit of right even though I am just a little Wisconsin boy. Koxlien questioned if he is asking for a 60 foot adjustment? The Board clarified that he was asking for a little over 150 feet. T. Rieck was confused and asked Wegner exactly where it was going to be. T. Rieck asked if it was going to be by the white bag on the map? Wegner responded correct. T. Rieck said his building proposition is right there, right at the top of that rectangle box (on the map) so that Wegner's project is going to be right on top of Rieck's house. Schwartz clarified that 350 feet is where the blue dot is now (on the map). Carlson stated on this little sliver of land is 50 feet. Carlson pointed out where 350 feet was on the map and it would be another 50 feet if we could go off of this other point because he does own both properties. Andre commented if Wegner moved the proposed facility to the west then he has problems with infringement on the flood plain. Doelle responded that was correct because we can't even do the backfill for the pit. Horton asked if it couldn't be turned. Koxlien questioned, i.e. if he moved it back to the 300 foot mark, how that changes any runoff running an extra 100 feet. T. Rieck responded that, in

deep water, initially, the runoff from this field ran across the road onto his property and then ran down that pine road. Right now it is close to that grade, so the further that Wegner would go to the west would get his damage or any runoff out his way into his own fields. The more he brings it into Rieck's, it will back water and will create a bigger mud hole for Rieck. Koxlien asked if there was a ridge where the white hay bales are. Rieck responded that there is a hole there and that hole extends back into his property. The hole is basically from thousands of pounds of tractors and corn, etc. and the more he drives on it the more it pounds it down. What has happened is that it has created a big hole in Wegner's field so basically any disaster over there would flow back and Rieck is trying not to have that and secondarily, Rieck's prospective buyer is going to build a house right on top of a manure pit which devalues the property. Hawkenson inquired if Rieck was selling the property and not building on it. T. Rieck responded that he is in a couple of discussions here. Hawkenson stated he noticed that. T. Rieck stated all he was saying is that it is going to cost Rieck more money. Hawkenson asked where Rieck lived right now. Rieck answered that he lives up the hill, twenty acres away. Upon Hawkenson commenting that where the hay storage is was pretty level, Rieck agreed. Andre stated moving the proposed facility to the west isn't an option because then we infringe on the flood zone. Koxlien asked what the other options were – some kind of berm? Wegner commented the engineer has been working on where it has to go for almost a year. Andre commented that Horton had mentioned moving the facility/turning it the other direction so that it ran north/south along the longer distance. Andre asked Doelle if that was an option that was looked at. Wenger responded then we run into flood plain issues again. Andre clarified that it extends it too far north and then it is in flood plain. T. Rieck asked if there was a variance off the road as he saw he has a greater distance off the road than he does back there. T. Rieck asked how far from the highway he needed to be. Doelle responded 350 feet and it is the same setback from a road right-of-way or a property line. T. Rieck asked if he was asking for a variance from the road if that would be granted? Doelle responded T. Rieck needed to ask the Board. From Hawkenson viewing the property when he was out there, he thought if he goes closer to the road he is going to be in one of the barns. T. Rieck stated he wished it would have been brought to his attention when you first did this because he assumed that his other pit comes right off his barn so it is close for bobcat work. T. Rieck added he (Rieck) is pretty good at farming and he realized that Wegner would probably want to go right from the bobcat and scrape the manure right on through and get it right into the pit in the shortest distance, so Rieck was assuming it was coming straight off that barn right into there. Hawkenson mentioned there is an existing pit there. T. Rieck agreed and that it was back by the old barn. Hawkenson added it doesn't have the storage so that is why he wants to build now. T. Rieck responded that has been there many years so the only alternative then would be to jackhammer that out and dig it out deeper which would cost a lot more money. T. Rieck was sure he didn't want to do that. Andre called twice for any other testimony in opposition. As Schwartz took it, Rieck's greatest concern was that this facility would spill. T. Rieck agreed as he lives right there and sees the transfer of machinery and the movement around there. T. Rieck lives right there and he watches what goes on. Schwartz asked if it was the movement of the manure around or the crack in the pit that T. Rieck was concerned about. T. Rieck responded both and the runoff. T. Rieck added that he has given in to opposition already by giving up his dream and to let Wegner purchase the land so that Rieck has no say. That is as far as Rieck went. He knows he is going to lose \$100,000 worth of value on his whole property but in my life I have to look at what I can do here in the next 30 years, so Rieck has given in to that opposition. According to T. Rieck, his wife is also concerned about the sale value. We bought the property, obviously we've been paying the mortgage for this for many years to make money, not lose and that is T. Rieck's concern. Upon Hawkenson asking how many acres T. Rieck had, he responded it is about 35 acres to what he is already renting for his crop. Koxlien asked if there had been any issues with any spillage? T. Rieck responded he doesn't run over there every day to check it out. Koxlien questioned if anything had been reported. T. Rieck responded that everything is 400-500 feet from there so if it did happen it is back there. T. Rieck added he just wanted to maintain being a good neighbor.

Hawkenson said that by the looks of the operation there he didn't believe there has ever been a spillage to amount to anything. Koxlien thought that spillage would be the main concern. A. Rieck stated there is a few concerns: spillage – the value of our property going down with it being that much closer. They are moving it almost half the distance closer to our property. Hawkenson commented they do have an existing permit there right now. A. Rieck responded but that is way far away. Hawkenson said it isn't that much farther. A. Rieck thought this pit is going to be quite a bit larger and it is going to sit there for six months with no cap on it. T. Rieck added the biggest problem is that they are putting it on the only spot that Riecks' have to build, so Wegner can't move because he can't be in the flood plain and Rieck can't build anywhere else because he can't be in the flood plain so we are deadlocked with the same issue. T. Rieck added his dream nor mine goes forward. T. Rieck said we're not trying to be sticklers here. Rieck thought the best option would be to purchase the land at a fair market value, which Rieck has already offered and then there would be no issue. In addressing Rieck's building potential, Schwartz knew there was that little low spot there so Rieck couldn't build there anyway. T. Rieck responded there is already an existing road through there. Schwartz questioned, that if we're talking about 150 feet or whatever, could the potential building site be moved. T. Rieck pointed out on the map as to where the house has to be located as that is the only place that it will "perk" and that would put the pit within a baseball throw from that house. Upon Schwartz asking if that was the only spot on your property that works, T. Rieck responded yes, that is feasible because the town owns so much of the road, there is a divot in the soil there and that land up there perks. Upon Hawkenson questioning what road the town owned as he thought that was a field road going through there, T. Rieck said he was referring to County Road D. T. Rieck added that there is a grade issue coming off of Highway D and one has to maintain 150 feet or more off of the centerline to build a house and it is on a corner too so one wouldn't want a house on the corner in case someone ran off the road. Hawkenson commented it is pretty much a straight road there. Horton asked if there would be flood plain issues on that site there. In referring to the overhead aerial map, Carlson stated the only place that there are flood plain issues is where the "blue" color is so there is still a pretty good area that is left there. Andre stated the concern before the Board is to look at the setback for the proposed facility. We can't consider what may be, in a year or five or ten years. We are looking at the property as it sits today. Schwartz asked how far the manure pit has to be from the flood plain. Carlson answered he hasn't done manure pit designs for a few years now but obviously it has to be out of the flood plain. There is language that the top needs to be like 3 feet above the flood plain elevation. Upon someone asking if that was based on a 100 year flood plain, someone else responded yes. Schwartz asked if the "blue" dot on the map would be 350 feet? Schwartz asked why that isn't possible. Doelle responded that dot represents the setback from the property line, the pit isn't even figured in there yet, so one would have to take the pit 250 feet to the west which would take you into the flood plain. Doelle added that includes your back fill against the pit so you can't be filling in the flood plain either. Doelle stated they did research trying to see if there was a variance that we could get for the flood plain with Mark Stevens from DNR, but Doelle said there wasn't such an option. At this point the Board started the 3-point discussion. In addressing "unnecessary hardship", Schwartz questioned what other option does Wegner have. Schwartz clarified that Wegner was spreading manure now and during the summer months and not storing it. Schwartz asked, if Wegner added additional cows what would that imply. Wegner said they fallow some ground every summer just to save for manure storage and if it rains three inches you still have manure to haul. Schwartz asked Wegner if he didn't have a manure pit would he still add the additional cows anyway or would that be precluded. Wegner answered that without manure storage that would probably put an end to the expansion. Hawkenson thought the hardship is pretty much that he is hauling manure daily right now, depending on the road, etc. that would be considered an unnecessary hardship plus the fact that Wegner wouldn't have to fallow the land for storage. Wegner agreed and added that with this pit he could drag line instead of trucks and spreaders and it would be incorporated which is more efficient and less chance of spillage. Horton agreed that it is going to be hard for him to do what it is he is permitted to do

without this variance, if he is permitted for an expansion. Schwartz agreed it is because of the hardship. The Board moved on to addressing the second point which is “unique physical property limitations”. Andre stated that, as the present facilities sit, there really is no other place to put the proposed manure storage because he is restricted by the property line, by the existing buildings and by the flood plain. The Board addressed the third point “no harm to public interests”. Schwartz thought public interest is currently affected by the fact that we have constant spreading of manure and runoff issues that definitely impact the well being of the general public. Andre agreed and he thought the proposed facility increases the protection of the public by lessening the chance of runoff from daily spreading. Koxlien was of the same opinion that it does increase the safety. On the other hand it is kind of like trying to stuff 10 quarts of water in a 9 quart pail - there are times when we are bumping into limitations and we’ve run into them before. Koxlien thought Wegner would probably be maxed out right there with his capability of holding manure and his dairy herd size and his land to spread. That is assuming that Wegner has enough land to spread the manure on. (Some inaudible text). Koxlien added that Wegner’s situation is real and T. Rieck’s is a real assumption or a concern but it hasn’t happened. T. Rieck hasn’t had the issue, there is no history of it but there is a possibility that it could happen. A. Rieck commented that he does spread daily. T. Rieck asked if one man’s dream is worth more than a farmer’s dream. Koxlien inquired if T. Rieck was a farmer. T. Rieck answered that he tries to be but he rents the land to Wegner because he needs the acreage to spread on. Koxlien commented that in his township there are these same problems with residential people trying to move into the country for the scenery and aesthetics then all of a sudden they have odor problems. Koxlien stated they were well aware of that before they moved into the country. The scenery is pretty but they don’t like the smell. Sometimes that all goes hand in hand and although Koxlien is really concerned with Rieck’s issues there, it isn’t real, it is potential. T. Rieck responded that his is real as he has people that will not purchase his property now if this goes through and that is how real it is. This can happen within a month. This can happen quicker than his pit can go in. Second, when he moves that pit up there, T. Rieck said the Board is concerned about Wegner’s flood plain issue but if you look diagonal across there the flood plain issues are right at the same amount of footage from Rieck’s property to that property so you are putting him right there in the middle. T. Rieck reiterated that when he bought the property he let Wegner have that. He doesn’t want to dispute a working/farming man. We have always been good neighbors. T. Rieck lets Wegner use his field road for access because he owns the property and Wegner is land locking him. Wegner owns all the property past Rieck, he runs “free nature” a highway right through Rieck’s field. Rieck doesn’t say anything about it. According to Rieck he has been very nice about this whole thing and now Rieck has given Wegner the option to buy. Rieck stated if he doesn’t buy, then you’re taking away my dream of putting something out there that can help me – this is my 401K guys. Rieck added that he screwed his back up, so his future to earn existing money is limited now. This is my 401K. Hawkenson asked if that was a farm to the east. Rieck said no there is just a homestead there. Rieck said Wegner owns property to the east as a matter of fact he owns to the Rod & Gun. He wraps around all Rieck’s property. Rieck bought right in between him. Horton commented if he put this pit in he would not be spreading every day. Rieck responded that he didn’t concern himself with that and that he would rather have manure in the water than pesticides. Rieck’s Mom died due to the fact of chemicals in the water and Rieck is very anti to that. Rieck added that his fields on the other side are thirty years organic and they aren’t changing closer to his water. Rieck stated he doesn’t like any of it but he has to live with it and maintain and not get crazy so that is what he is trying to do. He is trying to work with everybody and just telling the Board that the little guy has a stand in this world too. Koxlien commented if you have been good neighbors to each other you probably can work something out, but we have to make this decision today. Rieck stated he didn’t know if he carried the right clout here to make the decision today. Rieck asked if he was supposed to contact the other owner to this property – who holds interest to this property? Rieck said the property is not paid for – doesn’t the banker have a say. Andre informed Rieck that is not this Board’s decision to make. T. Rieck stated he

didn't know because he has never been through this process before but he may not be the only guy that has the right to say. Hawkenson asked how long Rieck has owned the property. Rieck responded 10-15 years. Hawkenson clarified that Wegner's property was there long before T. Rieck purchased it. Wegner commented he has been there 29 years. T. Rieck said they have been on their's 25. A. Rieck said they purchased the rest about 10 years ago. Hawkenson said Rieck knew Wegner was there when he purchased the land. T. Rieck said yes, of course he did, that is why he gave him the field on this side of the trees. T. Rieck gave Wegner the option to buy and he bought that land as Rieck felt it was only fair. T. Rieck stated he and Wegner have worked with each other. T. Rieck has no problem with his organization and he is doing a great job over there. T. Rieck is just here to say that it is going to stop his 401K from producing for him what he needs to live when he gets older and if he wants to work with me he can farm right there on that property as Rieck wouldn't care. Andre stated we need to get back on track. The public input and discussion has been closed already so we are at the point where the Board is discussing the three point test. We discussed the first two and we're on the third which is no harm to public interest. Hawkenson made a motion to grant the variance, Koxlien seconded. Horton took a roll call vote; Andre – yes, Hawkenson – yes, Horton – yes, Koxlien – yes, Schwartz – yes. Motion to approve the variance carried 5-0. The variance was granted.

Andre reminded the members of a Board of Adjustment meeting on September 23rd, 2015. Hawkenson made a motion to adjourn, Schwartz seconded, motion carried with no opposition.