ZONING BOARD OF APPEALS AGENDA
Thursday, November 10, 2016
5:30 p.m.
Town Hall - 1900 W. Grand Chute Blvd

1. Call to Order and Roll Call.

2. Approval of Minutes – April 14, 2016 meeting.

3. **Public Hearing #1** – Variance V-05-16 requested by STB Investments LLC, 1000 S. Westland Drive, for a variance from Ch. 535-53 (C)(2) of the Town of Grand Chute Municipal Code to allow a front yard fence constructed at a height that exceeds 42 inches. **Action:** Hear testimony/close public hearing.

4. **Variance V-05-16** – Request by STB Investments LLC, 1000 S. Westland Drive, for a variance from Ch. 535-53 (C)(2) of the Town of Grand Chute Municipal Code to allow a front yard fence constructed at a height that exceeds 42 inches. **Action:** Approve/deny Variance V-04-16.

5. Adjournment.

A quorum of the Town Board, Park Commission, Police and Fire Commission, Board of Appeals, and Licensing Committee may be present at this meeting. No official action of these bodies will be taken. **Accommodation Notice-**Any person requiring special accommodation who wishes to attend this meeting should contact **(Administration at 832-1573)** at least 48 hours in advance.

TOWN OF GRAND CHUTE
ZONING BOARD OF APPEALS MINUTES
April 14, 2016

Members Present: Karen Petersen, Cheryl Ulrich, Kiersten Gustafson, Dan Schultz

Members Absent: Aaron Janssen

Also Present: Chuck Koehler, Town Attorney; David Schowalter, Town Chairman; Cary Nate, Chief Building Inspector; Michael Patza, Town Planner; Robert Buckingham, Community Development Director (Audience attendance: 9 approx.)

1. **CALL MEETING TO ORDER AND ROLL CALL**
   Chair Petersen opened the meeting at 5:30 p.m. and roll call was taken.

2. **APPROVAL OF MINUTES** – REGULAR MEETING OF MARCH 10, 2016.
   Motion (Ulrich/Schultz) to approve the minutes. Motion carried, all voting aye.

3. **PUBLIC HEARING #1**: REQUEST (V-04-16) BY JOSEPH E. AND KARLA J. BERKEN, DBA J&B HOME IMPROVEMENT, 3225 E. FIRST AVENUE, FOR THE APPEAL OF A DECISION BY THE TOWN BOARD OF SUPERVISORS OF THE TOWN OF GRAND CHUTE, OUTAGAMIE COUNTY, WISCONSIN, TO DENY A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW CONTRACTOR STORAGE USE OF A BUILDING ON PROPERTY ZONED AGD GENERAL AGRICULTURAL DISTRICT

   Chair Petersen opened the public hearing at 5:32 p.m. and asked first for testimony from the Town of Grand Chute.

   Attorney Koehler explained that the appeal being heard is for a special exception application not a variance application. If a variance proceeding were to be conducted for this case, it would be at a later date since a variance request is governed by a separate set of rules. He stated that the issue involves an application for a special exception to allow the commercial use of a specific structure in the AGD General Agricultural District, under Section 535-24 of the Zoning Code. He also stated that the special exception does not apply to the structure itself, since it is a legal structure if used for agricultural purposes. He noted that the Plan Commission and Town Board both denied the special exception application.

   Attorney Koehler provided the Zoning Code standards and requirements under which a special exception may be granted and he stated that Director Buckingham would provide greater detail on the four-part test that must be met in granting a special exception. He also informed the Board that technically under Section 535-24 (D) of the Zoning Code, a special exception for the commercial use of the structure cannot be granted. He quoted from the Code that "no such use or structure shall be located within 500 feet of an existing residential dwelling other than the owner's or within 500 feet of the exterior boundary of a recorded subdivision plat". Attorney Koehler stated that for the purpose of giving due process to the Berken's, the Town allowed this proceeding to continue. He also advised the Board that neither the Chief Building Inspector nor the Community Development Director have authority to grant special exceptions. The Board of Appeals has final authority at the Town over whether or not the special exception will be granted.

   Director Buckingham provided background on the issue and explained the process followed by the Town leading up to the appeal, noting the information previously provided to the Board in the agenda packet for this meeting. He stated that Mr. Berken's request for the special exception was made after-the-fact, when it was determined that this agricultural unoccupied storage building was being used for commercial storage purposes. He also noted that technically Mr. Berken's request for a special exception cannot be granted because of code restrictions for proximity of existing dwellings and a subdivision plat. Mr. Berken's structure lies within 300 feet or less of 4 residential dwellings and his building, along with 3 of the 4 residential dwellings are on lots in the recorded Clem Romenesko Plat.

   Director Buckingham explained the Town's procedures for reviewing building projects and issuing building permits. He said the Town follows an established process when reviewing commercial building projects, noting that dozens of projects are reviewed annually. He stated that agricultural uses and projects are not subject to this review process. He explained that when Mr. Berken applied for a permit to construct his

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building, the project was not put in the review process because he was informed that commercial storage use was not permitted unless the property was either rezoned or he was approved for a special exception permit. Director Buckingham provided supporting evidence of the approval steps explained to Mr. Berken, quoting from a September 15, 2014 email to Chief Building Inspector Nate, subject line "Joe Berken ag. Storage shed" as follows: "I met with Joe. He is developing plans for a non-commercial shed at the SW corner of French & First. It is Ag zoned. He should be able to stay under 4000 sf for drainage. I told him setbacks will be 25' front yard, 50' rear yard, 6' sideyard. Joe and Tim Lehrer (builder for the project) will be in for this meeting with site and structural plans. If this is presented as I understand it from Joe, we won't need to go to PC for site plan approval".

Director Buckingham said the project was represented to the Town as an agricultural storage building and therefore, was not subject to the project review and site plan approval process that would have been required if it was being considered a commercial storage building. Mr. Berken's building was approved as an agricultural unoccupied storage building, which was the use and description stated on the building permit. The building permit did not authorize commercial storage use for the building. Director Buckingham also stated that before the building permit was issued, he and Chief Building Inspector Nate jointly met with Mr. Berken at the department's front counter to explain the building could only be used for agricultural purposes. When asked what he intended to use the building for, Mr. Berken specifically said that a tractor would be stored there. Director Buckingham stated that in addition to himself and Inspector Nate, there were two other witnesses to this conversation. He also noted that neither he nor Cary Nate is authorized to grant permits or allow uses that are contrary to what the Code allows. As Town officials, they can only issue permits for uses allowed by Code, which is what was done in this case.

Director Buckingham stated that property owners also have a responsibility to follow the law. He referenced the applicant certification section on the building permit form, which is part of the signature block. It is a certification by the signatory that the work under the permit is subject to all applicable codes, laws, statues and ordinances, that the permit creates no legal liability on the state or municipality, and that all the information provided for the permit is accurate. In this case, the building permit and certification was signed by Tim Lehrer, Mr. Berken's contractor.

In reference to Plan Commission and Town Board consideration of Mr. Berken's special exception application, Director Buckingham provided detail on the four tests that must be met. He quoted directly from information provided in the Board's packet, as follows: "1. The establishment, maintenance or operation of the proposed Special Exception use or structure at the proposed location will not be detrimental or injurious to the use and enjoyment of existing uses on adjacent properties or properties in the vicinity". Director Buckingham stated evidence was provided that the test was not met. "2. The establishment, maintenance or operation of the proposed Special Exception use or structure, alone or in combination with other existing Special Exception uses and structures in the vicinity will not cause traffic hazards". Director Buckingham stated evidence was provided that the test was not met. "3. Adequate provision is made for surface water drainage, ingress and egress to the property, and off-street parking". Director Buckingham stated evidence was provided that the test was not met. "4. Adequate public facilities and services are available for the proposed Special Exception use of structure". Director Buckingham stated evidence was provided that the test was not met. He explained that the Plan Commission voted unanimously to recommend denial based upon findings of fact that supported denial of the special exception. The Town Board voted unanimously to deny the special exception, based on the Plan Commission reasoning and findings of fact. He also explained that the decision to be made by the Board of Appeals is whether to affirm or reverse the Town Board's decision to deny Mr. Berken's special exception application. Director Buckingham stated that staff recommends the Board of Appeals affirm the Town Board's decision.

Attorney Koehler noted for the record that Director Buckingham identified the Board of Appeals agenda packet as an exhibit, and that a copy of this packet has been provided to Mr. Berken's attorney, so he is aware of its contents. He asked Director Buckingham to identify those exhibits by number.

Director Buckingham identified the staff report dated April 8, 2016, which includes background information and numbered exhibits, the findings of fact determined by the Plan Commission in its recommendation to deny the special exception, and the staff recommendation to the Board of Appeals. The numbered exhibits

included with the staff report are as follows: Exhibit 1 – Overview map of the Berken property and surrounding neighborhood. Exhibit 2 – Copy of the building permit approved and issued to Joe Berken for a new agricultural unoccupied storage building at 3225 E. First Avenue. Exhibit 3 – Copy of an email issued by Chief Building Inspector Cary Nate on May 13, 2015, outlining the timeline and approval process for the Berken building at 3225 E. First Avenue, a copy of the final inspection report for the new agricultural unoccupied storage building, a copy of two photos of the building exterior upon completion. Exhibit 4 – A copied page from the Yellow Pages displaying an advertisement for J & B Home Improvement Co. Exhibit 5 - A copied photo from April or May 2015 that was provided by one of Mr. Berken's neighbors. The photo shows a semi tractor/trailer backed up to the new agricultural unoccupied storage building. Exhibit 6 - Copy of a letter from Town Attorney Koehler to Mr. Joe Berken, dated May 15, 2015, which addresses possible zoning code violations at 3225 E. First Avenue. A highlighted portion of the letter reads as follows: "The permit for this property and the zoning allows usage for agricultural storage only. This zoning classification does not allow commercial use or storage of other commercial products. If you are using this property for unauthorized purposes, we have been requested by the Town to direct you to bring the structure and usage into compliance immediately". Exhibit 7 – Copy of an Inspection Report filed by Chief Building Inspector Cary Nate, later verified to have been completed on June 1, 2015. This inspection of the new agricultural unoccupied storage building was completed with Mr. Berken present. Field notes recorded on the Inspection Report read as follows: "Storing Windows and Patio Door Accessories. Tractor & Trailer will be stored here after being used up north for a food plot". Included with the exhibit are copies of three photos taken during the inspection that shows different locations in the building where windows, doors, and accessories were being stored. Exhibit 8 – Copy of the minutes for the December 15, 2015 Plan Commission meeting. A highlighted portion is the motion and vote to recommend denial of the special exception requested by Mr. Berken, with written affirmation that the four tests/findings of fact were not met in this case. Exhibit 9 – Copy of excerpts from the Zoning Code, Chapter 535-24 AGD General Agricultural District Highlighted portions include a description of the purpose and intent of the district, reference to single-family detached dwellings being permitted uses, provisions that warehousing, storage and building supply uses are allowed only with a special exception permit and excluding such uses if located within 500 feet of an existing residential dwelling other than the owner's or within 500 feet of the exterior boundary of a recorded subdivision plat.

Town Attorney Koehler directed questions to Director Buckingham (summarized below with "Question" asked by Attorney Koehler, and "Answer" provided by Director Buckingham).

Question: In Exhibit 9, page 1, Chapter 535-24 (D) is titled Special exception uses and structures. Is that correct? Answer: That is correct.

Question: In Exhibit 9, beginning at the top of page 2 is a listing of the special exceptions allowed in that district. Is that correct? Answer: That is correct.

Question: In order for a special exception to even be granted, it would have to be authorized by this list. Is that correct? Answer: That is correct.

Question: Is Exhibit 2 the Building Permit Application for the Berken storage building? Answer: That is correct.

Question: Did the applicant indicate anywhere on the application that they were going to operate a windows, doors, and siding business out of that structure? Answer: No, that was not indicated anywhere on that permit.

Question: Was there any reference anywhere on that application of a business, identified in Exhibit 4 as J & B Home Improvement Co? Answer: There was no reference to that business and the permit was issued under the owner name of Joe Berken.

Question: Did Mr. Berken ever tell you personally during this application process that he was going to use this structure for a commercial business involving windows, doors and siding? Answer: No, he did not and

the information presented earlier from my September 15, 2014 email aligned with the discussions during the pre-application/pre-permitting period, when it was represented as an ag storage shed.

Attorney Koehler requested that the September 15, 2014 email from Director Buckingham to Chief Building Inspector Nate be marked as Exhibit 10 and added to the record.

Chief Building Inspector Cary Nate testified to information provided in some of the exhibits of record. He stated that Exhibit 2 was the building permit application that was signed by a representative from the Community Development Department. Referencing Exhibit 3, he noted that Mr. Berken applied for the building permit on October 6, 2014. On October 7, 2014 the Town issued the driveway access permit. The building permit was issued on October 10, 2014. He noted the series of inspections made and other permits issues for the building. He stated that this building was reviewed as an agricultural storage building. It was not looked at as a commercial building. Chief Inspector Nate added that if it had been presented as a commercial building, it was of a size that would require submittal of plans that were stamped and signed by an architect or engineer. These plans would then have been subject to building plan review and approval, by either the Town or the State of Wisconsin. He stated that no building plan review was completed because this was looked at strictly as an agricultural storage building and the Commercial Building Code exempts agricultural buildings from going through that process. Because the plans presented were for an agricultural storage building, it did not require Site Plan approval from the Plan Commission. Chief Inspector Nate stated that a heating permit was issued for the building on the basis that it was a non-commercial installation. If this had been a commercial building project, plans prepared by a licensed heating designer would have been required and these plans would have needed approval by the State of Wisconsin. He stated that electrical inspections and the mezzanine installation were also approved on the basis of this being a non-commercial building. Chief Inspector Nate stated that notes from the final inspection report on March 26, 2015 indicate that the building was complete and ready for use as an unoccupied agricultural storage building. He also directed the Board to Exhibit 7, the inspection report from his site visit on June 1, 2015. He clarified that the address provided on the form was incorrect, but that he personally visited the property at 3225 E. First Avenue that day and took the photos that are included in the packet.

Attorney Koehler directed questions to Inspector Nate (summarized below with “Question” asked by Attorney Koehler, and “Answer” provided by Chief Inspector Nate).

Question: Did you have any conversations with the applicant during the time the permit was being processed regarding what the purpose of the building was going to be? Answer: Yes. Mr. Berken said it was going to be used to store a tractor that he currently had up north, but that would be brought down here for use on his land north of this property.

Question: That is what he told you? Answer: That is what he told me.

Question: Did he ever tell you he was going to use the building for his windows, doors and siding business? Answer: No, he never told me he was going to use it for his windows, doors and siding business.

Town Chairman Dave Schowalter testified that the Grand Chute Town Board acted on the Berken special exception application at its January 5, 2016 meeting. He stated that the Plan Commission had provided the Board with a unanimous recommendation to deny the special exception application based on the action taken at its December 15, 2015 meeting. He said the Town Board considered the four requirements for granting a special exception and denied the application, adopting the Plan Commission’s conclusions as grounds for denial. He stated that the Board’s vote to deny the special exception was unanimous.

Chair Petersen announced that this concluded the Town’s testimony. She asked if there were any neighboring landowners in opposition who wished to speak.

Ron Ebben, 3217 E. First Avenue, said that in one of the packets there is a letter stating that Joe Berken contacted him about a letter. The letter concerned Mr. Berken wanting to set the storage shed back further from the road. Mr. Ebben stated that he signed the letter, but afterwards he found out there are restrictions

on the land and also that Mr. Berken was using it as a commercial building. He no longer considers the letter applicable and he is opposed to Mr. Berken being granted a permit for a commercial storage building.

In response to a question from Board member Gustafson, Mr. Ebben confirmed that the letter he referenced is the one dated September 14, 2014. Mr. Ebben added that Mr. Berken came to him and another neighbor with a letter that he (Mr. Berken) had already written, and they both signed the letter. He said that had he known there were restrictions on the land, things would be totally different. He noted he was not educated to that fact until a later date.

In response to a question from Attorney Koehler, Mr. Ebben said that his permanent residence is directly west and approximately 90 feet from Mr. Berken's storage building.

In response to a question from Attorney Koehler, Mr. Ebben said he sees commercial trucks coming and going, loading and unloading building products all the time. He recalled one time when a truck driver approached and asked him (Mr. Ebben) to move his vehicle so the truck could be backed up to Mr. Berken's building. Mr. Ebben stated his belief that Mr. Berken planned all along to run his business from the new building and that may be why he wanted the building set further away from the road so semis could get in there.

In response to a question from Attorney Koehler as to how often he has seen trucks coming and going from Mr. Berken's site, Mr. Ebben stated that Mr. Berken's work truck backs in daily. He said he has not seen a semi in quite some time but he is at work all day. He said since the last hearing was held, he maybe saw a semi once, but his neighbor has taken a picture of the semi so that has gotten better.

Board member Ulrich referenced the September 14, 2014 letter in asking Mr. Ebben what Mr. Berken specifically had done to keep him informed regarding the storage building. Mr. Ebben said the first time he met Mr. Berken, he was shown a whole plan for how the vacant ag land to the north would be developed. The plan showed where all the buildings would be placed. Mr. Berken's storage shed was shown going on land at the northwest corner. Later it sounded like Mr. Berken had a disagreement with a property further to the north, so he must have decided not to build the storage shed to the north and it ended up in its current spot. Mr. Ebben said at that point, he thought he had no grounds against it because it was approved already. He did not question it.

In response to a question from Board member Ulrich, Mr. Ebben stated that he was not made aware of what was going to be stored in the new building, only that it was a storage building.

Melba Dorn, 3111 N. French Road, said they live across the street from the Berken building. Mrs. Dorn said she brought along copies of the restrictions for the Romenesko Plat that state what can and cannot built on those lots. She also showed pictures of the semis coming in and out of the building. She said they were never contacted by Mr. Berken ahead of time so they did not know about the building being put up or what it was going to be used for. They came home after wintering in Florida and saw this building in the middle of the subdivision. She stated her opinion that the building is way out of place and they are not happy about it. She said they remain opposed to granting of the special exception permit.

Mrs. Dorn presented the documents she had referenced in her testimony. Attorney Koehler requested that the photos be marked as Exhibit 11 and that the Romenesko Plat restrictions be marked as Exhibit 12, and that both exhibits be added to the record.

Bob Hoh, 3117 French Road, stated that his biggest concern was Mr. Berken's land behind their home. He stated his opinion that Mr. Berken's future plans would land lock both theirs and Dorn's properties to the point where their properties would be worthless. He stated his concern that if the special exception was granted and Mr. Berken continued constructing additional buildings, it would negatively affect their property values.

In response to a question from Attorney Koehler, Mr. Hoh said he is against granting the special exception permit, unless Mr. Berken would like to buy their property. Then it would not matter to them.

Chair Petersen announced that this concluded the opposing landowners' testimony. She asked for testimony and rebuttal from the applicant.

Attorney Bob Sweeney, representing Joseph Berken, stated that within the Board's packet was the applicant's submittal packet. Attorney Sweeney referenced his letter, dated March 4, 2016, and said there were two things he was hoping would have been accomplished tonight: 1. Action on the variance applied for; 2. Action on the appeal of the Town Board's decision to deny Mr. Berken's special exception permit. He referred the Board to the variance application after it had been processed/receipted by the Town. He pointed out that the applicant paid a $500 fee and submitted the required number of copies of the application materials. Attorney Sweeney stated that while he cannot find wording in Town ordinances that appeals of Town Board decisions require a $500 application fee, he did in fact pay that fee when filing the variance application because they were requesting action on the appeal and on a variance. He explained that when he received the agenda packet for tonight's meeting he noticed that only the appeal of the special exception was posted. He contacted Director Buckingham to ask why the variance was not on the agenda. Attorney Sweeney requested to have tonight's hearing continued to a future date so that the variance request can be properly noticed and placed on the Board's agenda. He said he has been told consideration of these two requests are based on two different standards and the Town is not going to consider them together at the same time and that only the appeal of the Town Board's decision will be considered at tonight's meeting. He stated for the record that he takes issue with this determination because the applicant clearly made a request for a variance on the Town's application form and paid the required fee, but was not provided the opportunity to a hearing on a variance.

Attorney Sweeney referred to Director Buckingham's testimony with regard to the special exception permit for storage not being allowed because it is within 500 feet of a residential dwelling. He read to the Board the powers granted it under Section 535-96 of the Zoning Code, as follows: "The Board shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done." Attorney Sweeney stated his opinion that the Board has the power to grant a special exception and the ability to grant a variance for a use that is not necessarily in conformance with the uses that would be allowed under the ordinance. He again stated that he would like to reserve the right to a future hearing on Mr. Berken's request for a variance.

Attorney Sweeney stated that Mr. Berken purchased lots in the Clem Romenesko Plat in 2010. He purchased Lots 1 – 5 in Block 2, and Lots 1 – 8 in Block 3. He stated that when he purchased the lots a Vacant Land Disclosure was prepared, which confirms what lots were purchased.

Attorney Koehler requested Mr. Berken's applicant packet be marked as Exhibit 13 and added to the record, and that the Seller Disclosure Report-Vacant Land be marked as Exhibit 14 and added to the record.

Attorney Koehler requested that a two-page document provided by Attorney Sweeney, consisting of Grand Chute GIS maps that depict the Plat in question, be marked as Exhibit 15 and added to the record.

Attorney Sweeney stated that the covenants provided by Mrs. Dorn (Exhibit 12) were covenants on the Romenesko Plat. He pointed out that at item 18 of the Sellers Disclosure Report (Exhibit 14) the sellers indicated that they were not aware of any restrictive covenants affecting the property. Mr. Berken received this report when the transaction went to closing

Attorney Sweeney provided a copy of the title commitment for Mr. Berken's land purchase. Attorney Koehler requested that the document be marked as Exhibit 16 and added to the record.

Attorney Sweeney directed the Board's attention to Schedule B, Exception #8 in the title commitment document. This exception indicates that restrictive covenants for the Clem Romenesko Plat did exist and lists the dates of execution and recording of these covenants. He said Mr. Berken will testify that when he

closed on this transaction, he was not provided a copy of the title commitment by the attorney representing him at the time. Mr. Berken will testify that he did not even know any covenants existed.

Chair Petersen recognized Board member Schultz, who told Attorney Sweeney that instead of seeking relief from the Board of Appeals it appears this matter would be more appropriately taken up with the individuals who sold the land to Mr. Berken.

Attorney Sweeney responded by noting that the predicament Mr. Berken finds himself in is that neighboring property owners are seeking to enforce provisions in the covenants that restrict land use to only single family homes, while the Zoning Code does not allow single family homes in the Ag district. He reiterated that Mr. Berken bought the land without knowledge that covenants existed, based on the sellers' representations. Attorney Sweeney also noted that Mr. Berken first became aware of the covenants after he built the storage shed and received a letter from the Ebbens' attorney in March 2015. He stated that the letter Mr. Ebben had signed in support of Mr. Berken's plans was from September 2014, meaning whether or not Mr. Ebben knew that covenants existed, he indicated that he was ok with the building plans.

Attorney Sweeney said the genesis of how this building came to be built on this lot can be better understood by looking at Exhibit 15 and Exhibit 13. He noted that Mr. Berken and his builder, Custom Creations, approached the Town in 2012 to discuss plans to build a window showroom and facility on the northwest corner of the Clem Romenesko Plat, Parcel Nos. 110100 and 110000. He said his client wanted to have a loading dock, a showroom and offices in the building and met with Director Buckingham. Attorney Sweeney provided the Board with copies of Director Buckingham's notes from those meetings, which were provided from a public records request.

Attorney Koehler requested that a two page document of Director Buckingham's meeting notes be marked as Exhibit 17 and added to the record.

Attorney Sweeney noted that Exhibit 17 references discussing site development and meeting with Joe and Tim Lehrer on January 5, 2012. He also directed the Board's attention to the reference of this development occurring on the northwest lots and stated that the development did not occur because it would have required the vacation or removal of E. Florida Avenue, and the north side of Bonita Street. Attorney Sweeney asked Mr. Berken to testify why this did not happen.

Mr. Berken addressed the Board and said he would have had to take the road back, which he wanted to do, but the neighbor to the north had different feelings on what should be done with the road. Mr. Berken said because the neighbor did not want the road anymore, he decided to not go that route.

Attorney Sweeney again referred to Exhibit 17, pointing out the notes stated contractor shop or possibly mini-storage or small business rental suites. He then referenced the portion of the notes dated March 6, 2012 stating voicemail message requesting meeting and call was returned. Attorney Sweeney noted that Director Buckingham attached a copy of a business card for J&B Home Improvement, with a tagline "We Specialize in Windows". He also noted that what was discussed at the time in 2012 were windows and doors, showroom, etc., noted on the email the address of jbwindows@yahoo.com. Attorney Sweeney stated that Mr. Berken and Tim Lehrer of Custom Creations will testify that at all times it was discussed that there was going to be storage of windows. Attorney Sweeney asserted that what wasn't discussed was that it would be solely Ag storage. He noted that the meeting occurred in January 2012 and that process was advancing, and that Director Buckingham also sent an email to the builder in March 2012. Attorney Sweeney quoted from that email as follows: "Thanks! It was a good meeting, I really enjoy working with a builder and property owner to plan out a project from scratch. Joe seems very sincere about doing things the right way. I hope everything works out!"

Attorney Koehler requested that the referenced email from Director Buckingham be as marked Exhibit 18 and added to the record.

Attorney Sweeney again asked Mr. Berken to explain why the building on the northwest corner did not work out.

Mr. Berken said there were a couple of different situations there, but the biggest one was that in order to do what he wanted the road would have to be vacated and made a private road. He said it was one of the big snags and that every step he and the builder took was done after asking Director Buckingham, because they did not know the answers. They kept leaning on Director Buckingham and the Town for answers on what to do.

Attorney Sweeney directed a question to Mr. Berken, asking how the project planning shifted from the northwest corner to the location of the current building that was constructed at the intersection of First Avenue and French Road.

Mr. Berken stated that when he realized the abutting property owner north of the road was not going to cooperate, he went back to Director Buckingham to ask what could be done so he could construct a building for storage. Mr. Berken testified that Director Buckingham came up with a plan to put a building over there for storage. Mr. Berken said he had no idea what to do and that is why he went to the Town and all their suggestions were to put the building there and how to do it. After that, Mr. Berken said he went back to Mr. Lehrer to get the building plan together.

In response to a question from Attorney Sweeney, Mr. Berken testified that Mr. Lehrer came in on the meetings.

Attorney Sweeney stated that Mr. Berken then went about to visit with the neighbors, to make sure he was doing right and not creating any discord. He first visited with Clint DeKeyser, and reading from the letter signed by Mr. DeKeyser and incorporated in Exhibit 13, Attorney Sweeney quoted as follows: "To Whom It May Concern: Joe Berken came to me on September 14, 2014 and explained to me the future plans for his land. He also explained to me that he wishes to build a storage building now. I am ok with Joe Berken building 10 feet from the north side of my property. Will require some sort of drainage to French Road so run off does not run off to our property." Attorney Sweeney said that Mr. Berken did inform Clint DeKeyser that he was going to build a storage building. Attorney Sweeney read from the letter of Ron Ebben, dated September 14, 2014, as follows: "To Whom It May Concern: Joe Berken has been keeping me informed on his building. I also feel if we could set the building back as far as possible it would be better for maximum land use in the future." Attorney Sweeney pointed out to the Board that Mr. Ebben's letter says building and does not say single-family home.

Attorney Sweeney explained that then a permit was taken out. The permit application initially was taken out by Mr. Lehrer and said there were two applications submitted and he provided the Board with the application completed and signed by Mr. Lehrer.

Attorney Koehler requested that the application copy signed by builder Tim Lehrer be marked as Exhibit 19 and added to the record.

Attorney Sweeney said Mr. Lehrer will testify that the application was completed by him, signed by him and that it is dated October 6, 2014. He referred to the Approval Conditions/Description section and noted there is nothing that indicates that it is for an Ag storage structure. He said the application was not completed in that fashion. He stated that when the permit application was ultimately signed by the Town, the description was for an Ag storage structure. He reiterated the preface of all the discussions was not that it had to be solely an Ag storage structure.

Attorney Kohler requested that the building permit issued for the building and noted as Application No. 11557 be marked as Exhibit 20 and added to the record.

Attorney Sweeney reiterated that when the signed building permit was issued it stated "New Agricultural Unoccupied Storage Building" and on the applicant signature line it stated "Signature on File". He noted that Mr. Lehrer did not sign for that because the discussion was not about having an Ag storage structure solely. Attorney Sweeney also noted that when the actual permit, the placard placed in the window was issued, it stated "new Building – Storage". It says nothing about it having to be solely Ag, and Mr. Berken will testify

that there was discussion he was going to put a tractor in there for the purpose of keeping the weeds down on his adjoining property, but not that it was going to be used solely for Ag.

Attorney Koehler requested that the building permit no. 11557 card or placard be marked as Exhibit 21 and added to the record.

Attorney Sweeney stated that Mr. Berken constructed his building to commercial standards, not because he was trying to run a commercial business from there, but because the Town Comprehensive Plan has this property ultimately going to the type of zoning classification that would allow its use in this fashion. It was after he had completed construction of the building that the Ebbens' attorney, David Winkel, contacted the Town.

Attorney Koehler requested that Attorney Winkel's March 24, 2015 letter be marked as Exhibit 22 and added to the record.

Attorney Sweeney stated that the letter was to complain that a storage building was not allowed to be built there. He noted for the sake of argument that this was incorrect since if it had been built as an Ag storage building, it was permitted. He referred to a letter Mr. Berken received from Attorney Winkel, dated May 29, 2015 that is included in Exhibit 13. Attorney Sweeney stated his opinion that since the letter acknowledged it was a "new agricultural unoccupied storage building", which is allowed by code, the Ebbens' did not like the building there so they relied on the covenants. He again referred the Board to Exhibit 12, the covenants for the plat, and quoted an excerpt as follows: "All of the lots included in the foregoing description shall be known and sold as residential lots and no structure shall be erected, altered, placed, permitted to remain upon any of the said property other than one and two-family dwellings with a restriction". Attorney Sweeney stated that when looking at Exhibit 9, the permitted uses allowed in the Town's Ag zoning, Section 535-24(B)(3) states "Single-family detached dwellings and mobile homes, unrelated to any farm operations, as a principal use and structure on individual lots which are not part of a recorded subdivision plat as defined in Chapter 475, Subdivision of Land, of this Code." He said Mr. Berken's property is a lot in a plat and it is zoned for Ag. The prevailing covenants say you have to build single-family homes, but Town Code says you can't do that. Attorney Sweeney stated that the Ebbens' are complaining that Mr. Berken has an ag structure there even though initially Mr. Ebben signed a letter saying that was ok. Then Attorney Winkel's letter says the Ebbens' lost $30,000 in property value and that if Mr. Berken pays them that amount, they will let it go, otherwise that will pursue the matter in court.

Attorney Sweeney directed questions to Mr. Berken (summarized below with "Question" asked by Attorney Sweeney, and "Answer" provided by Mr. Berken).

Question: You are storing windows in there and on one occasion a semi came and attempted to make a delivery. Can you explain this? Answer: You have a picture that shows a semi out in front. They have not unloaded there since meeting with the Board. Mr. Berken said he made the mistake in the beginning allowing trucks to deliver there, but he told the Board it would not happen anymore and it has not. "I don't allow it and I won't allow it." Mr. Berken noted that he has made special arrangements for windows to be off-loaded at another site.

Question: Do you have an office in the building? Answer: No.

Attorney Sweeney then stated that after receiving letters from the Town and Attorney Winkel, Mr. Berken again met with Director Buckingham, who suggested he apply for a special exception to store his windows and doors there and he doesn't have an office. Relying on Director Buckingham's advice, Mr. Berken applied for the special exception. Attorney Sweeney explained that now it has been determined that a special exception in that zoning classification for warehouse storage and building supply cannot happen because it is within 500 feet of the exterior boundary of a recorded subdivision plat or it is 500 feet from an existing residential single-family dwelling. He noted that Mr. Berken paid the fee, applied for a special exception and then it got denied. So next Mr. Berken made a variance request. went through the whole process, and it got denied before the Board so now we made a variance request. He said his client went through a series of processes, built a building for storage, not office, and not occupied that wasn't solely

related to Ag storage. Attorney Sweeney reminded the Board the permit application that was submitted doesn't say it was for Ag storage, the card that was generated in relation to the permit, doesn't say it was exclusively for Ag storage, the application that was ultimately completed by Director Buckingham or Chief Inspector Nate does state Ag storage even though that was not the discussion that took place as far back as 2012. Attorney Sweeney stated that the discussion Mr. Berken had with Director Buckingham was that it was to be used for windows. He said that his client was in the window business and had presented a business card and the notes of Director Buckingham reflect as much.

Attorney Sweeney directed questions to Mr. Berken (summarized below with "Question" asked by Attorney Sweeney, and "Answer" provided by Mr. Berken).

Question (partially audible): There was some discussion regarding 2012 and the reason why you went away from that location. Is that correct? Answer: Correct.

Question (partially audible): Then in 2014, tell the Board the discussion you had with Mr. Buckingham concerning what you wanted to do with the structure. Answer: Mr. Berken stated that he went to Director Buckingham because he did not know what else he could do there to store his windows and that Director Buckingham said, "You could build a storage unit for Ag". Mr. Berken said he had no idea what that meant but he did what Director Buckingham told him to do and got Tim Lehrer to put plans together. Mr. Berken said he is not knowledgeable about "this stuff" at all so he relied on Director Buckingham's help.

Question: Not all neighbors are necessarily opposed to this, are they? Answer: No.

Question: Clint DeKeyser is not opposed to your structure, is he? Answer: No.

Attorney Sweeney referenced a letter from Clint DeKeyser dated December 14, 2015 that is part of Exhibit 13. He stated the Plan Commission held a public hearing on the special exception before the DeKeyser letter was written, and after the hearing was closed, Director Buckingham spoke to all the neighbors and produced a packet Mr. Berken did not have a chance to rebut. He stated that it said all neighbors are in opposition to the structure that is situated there. Attorney Sweeney said he showed that to Mr. DeKeyser, who then wrote his letter. Attorney Sweeney quoted a portion of the letter, as follows: "Once again, please do not use the phrase 'all the neighbors' when referring to the storage unit. It is my understanding there will be no office in the building and no semi traffic onto First Street. With that said, I support its use to store home improvement materials, nor do I have a concern with granting a permit for that use." Attorney Sweeney said the material provided to the Board wasn't comprehensive to what Mr. DeKeyser actually indicated, but the testimony was closed and there was no opportunity to present at that point in time.

Attorney Sweeney directed questions to Tim Lehrer (summarized below with "Question" asked by Attorney Sweeney, and "Answer" provided by Mr. Lehrer).

Question: You are Mr. Lehrer, correct and what business are you in? Answer: Correct and we are a design build general contractor for commercial buildings.

Question: In 2012 did you meet with Bob Buckingham? Answer: Mr. Lehrer said he met with Bob Buckingham, Cary Nate and Joe Berken.

Question: What was the purpose for the meeting with Bob Buckingham and Cary Nate? Answer: Joe hired me to develop plans and build his commercial building. We were looking at designing a facility that would fit Joe's company to store and sell windows up in the corner of his property.

Question: At that time did you indicate to Mr. Buckingham what type of business Mr. Berken was in? Answer: Yes…and that Joe was looking at putting his business in there and what type of business he was.

Question: The window business, storage of windows? Answer: Yes, storage of windows and he was a replacement window installer so he would be storing windows in there and pulling them out and installing them.

Question: You wanted to build a showroom with an office, correct? Answer: Correct.

Question: And how did the 2012 plan in the northwest corner originate and then fall apart, if you will? Answer: We had several meetings and we ran into a lot of obstacles. Some were the cul-de-sacs, two roads being dead-end roads. We were dealing with cul-de-sacs and we were trying to figure out how we could fit this building with putting the dock, truck maneuverability. Then we had a meeting to maybe omit the road and work with the neighbor. We had several meetings on this particular corner and this particular project.

Question: So with those complications, what occurred in advance of going down to the current location of the structure? Answer: When this all happened Joe got frustrated and said he was going to stop, wasn't going to do nothing, and when that occurred we both asked Cary Nate and Bob Buckingham what could we do? What could we do to get him in a building? We both were instructed if we, Joe just wanted to store windows in there, and were instructed that we could go and put this building in this area where it is now if it was under an Ag classification. We asked, well what does that take? We never changed the use what we were using this building for. We never said that we weren't going to store. I mean why would we want to build a building if we were not going to store windows in there? We were instructed because it was getting late in the fall, and we were instructed if we went under the Ag building we would not have to go under site plan approval. I've been in business for 25 years and don't know the ordinances for every Town so we rely on the community developers and inspectors to guide us to get the approval. Joe and I both told them what use and what we were using the building for and that never changed. The only reason why the Ag building was because we were getting late in the year and then we didn't have to go through any kind of site plan approval and that was instructed from Bob Buckingham and Cary Nate.

Question: You were told that there could not be an office in there? Answer: Yes and the other thing is we could not put a bathroom in there because we did not have a sanitary permit.

Question: On October 6, 2014 did you complete the Uniform Building Permit Application and when you completed it, did you complete it with the intention that the building was only going to be used for Ag storage? Answer: Yes and it was going to be used for storage.

Question: There was no indication on the Uniform Building Permit that you completed, the application, that it was going to be used solely for Ag storage, true? Answer: True.

Question: And you signed that application? Answer: Correct.

Question: Subsequently what came back, and at a later point, that you saw but didn't know at the time that you completed it, was the permit indicated that it was for Unoccupied Agricultural Storage, correct? Answer: Correct.

Question: But the permit card itself doesn't indicate that it is for Unoccupied Agricultural Storage, correct? Answer: Correct, and it's just for storage.

Question: Just for storage and you saw that permit card? Answer: Right.

Question: And was that right in line with what your intentions were for the building? Answer: Yes.

Question: And so you are aware that the neighbors started complaining, correct? Answer: After Joe told me, yes.

Question: Were you part of the process of coming before Mr. Buckingham with the suggestion that it should be applied for a Special Exception? Answer: No, that was between Joe and Bob.

Question: In your mind, do you have any doubt that the structure was only to be exclusively used for agricultural storage purposes? Do you understand my question? Answer: No.

Question: In other words no, it was not just limited to agricultural storage? Answer: No it was not.

Attorney Sweeney said he had nothing more to present before the Board.

Board member Schultz asked Mr. Lehrer when he saw the new building permit application for Ag Storage on it, did that not send up a red flag.

Mr. Lehrer said he did not receive that application until well into the project. He said he was told they could continue to work and that he could come and pick it up. He said he thought it was a month or two later, so he called Chief Inspector Nate and told him, "I probably should have a building permit". Mr. Lehrer said he thinks it was mailed to him.

Board member Schultz said when he drove out there to look at it, seeing all the houses around it made him think you would want to make sure everything being done was legal. He stated his opinion that as the builder, it would have been good to do a little more checking, which would have gone a long way.

Mr. Lehrer responded by asking who would he have checked with? He said he checked with the professionals, the Town professionals.

Board member Schultz stated that Mr. Lehrer must have had a copy of the building permit.

Mr. Lehrer responded by saying they were told from Director Buckingham that "we would not have to go through rezoning if it was put in the Ag".

Board member Schultz stated his opinion that Mr. Lehrer should have known from that statement that it should be for Ag then.

Chair Petersen asked for rebuttal testimony from the Town.

Attorney Koehler opened with remarks in response primarily to Attorney Sweeney. He said everyone here realizes this is not a court of law and that the Town is lenient with giving applicants a lot of latitude in presenting information so their complete story is told.

Attorney Koehler stated that private restrictive covenants are not binding on a Town and the Board is not here to make any rulings or determinations based on what prior landowners put in their covenants. He said the Town has no obligation to enforce them or to honor them or to take them into account when issuing permits. He stated if property owners in that subdivision elect to enforce them, that is entirely their decision. The Town is to follow and enforce the Zoning Code.

Attorney Koehler addressed the $500 application fee, stating he had communications with Attorney Sweeney and Director Buckingham to advise that if they wish to pursue a variance hearing at a later date under the variance ordinance, they certainly have a right to do that. Separate procedures and notices will be provided. Attorney Koehler stated that the Town is not trying to foreclose or keep Attorney Sweeney or Mr. Berken from applying for the variance alternative, but the decisions on this special exception were decided months ago by the Plan Commission and Town Board. He said it would be best to keep a variance request as a separate procedure from this hearing because we are too far along in this process to start adding another feature to it.

Attorney Koehler noted that when Attorney Sweeney mentioned the powers of the Board of Appeals, he was actually referring to Ch. 535-96 Variance Powers and this is not a variance proceeding and should not be applied in this situation.

Attorney Koehler also noted there was testimony and evidence provided about what was represented to Mr. Berken in a title commitment when he bought the property. He reminded the Board that whether or not Mr. Berken received the restrictive covenants is not relevant to this hearing. He advised that seller

representations on the property condition report are not germane to the Zoning Code and what is it at issue today.

Attorney Koehler said there was a great deal of testimony regarding activities from 2012 that was two years before application for the building permit now being discussed. He also said there was discussion on what that building was to be used for on what was called the "far northwest corner of the property", which is a completely different location than where the building was finally constructed. The northwest property is nowhere near as close to the residential structures as the constructed ag storage building. Attorney Koehler noted that on repeated occasions there was testimony stating that the building was not intended to be solely for agricultural purposes, but the intent of the Code was not that "you could put 1 garden hose in the building and fill up the rest of it with siding, windows and doors" to completely circumvent the ordinance by saying it is at least partly used for agricultural purposes". He reminded the Board that up to this point, there has been no mention of a tractor being stored in it. Attorney Koehler referenced pictures that have been marked as Exhibits to this proceeding. He stated that although they show more than one semi or large box truck, it appears clear that these pictures also show a J & B Home Improvement truck and an ABC Roofing & Window Supply Co. truck parked there. He advised that these photos seem to indicate the usage up to this point is consistent with what the neighbors say and they show primarily, if not exclusively, commercial use of the property.

Attorney Koehler reiterated the fact that Director Buckingham presented the four factors that have to be satisfied for this commercial use to be allowed, and that the Planning Commission and Town Board both found those four factors were not met. He noted that these same factors need to be taken into account by the Board if the special exception appeal is to be granted. He said that as Attorney Sweeney indicated, the permitted special exceptions for AGD zoned properties are listed in Ch. 535-24 by number 1-17. He reminded members that the Board of Appeals does not have the right to rewrite the Zoning Code as part of granting a special exception. He stated that the Board would have to grant one for a use that was allowed by Code. He also referenced Ch 535-84, which defines a special exception and states that a special exception can be granted only if specific provision for such use or structure is made in that district. He also reminded the Board that it has to take into account the Ch 535-24 special exception provisions, which only allow warehouse, storage, and building supply establishments if they are more than 500 feet from plat boundaries or existing residential homes.

Attorney Koehler commented on Mr. Lehrer's testimony. He noted that from the testimony provided discussions on what the building was going to be used for in 2012 may have, in fact, involved windows and doors. However in 2014 there was a great deal of testimony about Ag District, Ag Use, Ag Storage and what was ultimately written on the permit that was granted. Attorney Koehler advised that Director Buckingham will testify to what is done with that document when issued. Attorney Koehler provided comments in regards to Mr. Lehrer's testimony that he has been in commercial construction for 25 years. He noted that Chief Inspector Nate testified to what design plans and approvals are required for a commercial building of this type. He stated that if in fact this building was going to be used for commercial purposes rather than Ag, Mr. Lehrer's 25 years of experience would have provided him knowledge for what these requirements are, because those are state requirements not necessarily Town of Grand Chute requirements. Attorney Koehler concluded that this structure was apparently constructed without complying with any of the requirements for a commercial building as opposed to an agricultural building.

Chair Petersen directed questions to Director Buckingham and Chief Inspector Nate (summarized below with "Question" asked by Chair Petersen, and "Answer" provided by the name indicated).

Question: How many discussions on building permits do you see within 2-1/2 years, and do you recall your conversations about each one of them? Answer/Buckingham: We have averaged 150 project reviews annually over the past 3 years. Chief Inspector Nate can answer more on the number of building permits, but the volume is significant. Director Buckingham also stated the Site Plan Review process is a structured and effective routine, applied uniformly in all cases.

Question: Chair Petersen said that she was thinking that he (Buckingham) cannot possibly remember every single conversation on every building permit project. Answer/Buckingham: He replied that no, he cannot.

Question: Chair Petersen asked Chief Inspector Nate how many building permits are issued within 2-1/2 years. Answer/Nate: He replied 400-500, for projects ranging from fences to large commercial buildings.

Question: And you can't possibly remember details on each one of those? Answer/Nate: Not each one, no.

Attorney Koehler said that Director Buckingham has some rebuttal testimony and for the benefit of everyone in attendance, the rules don't apply for cross-examination by the parties. He explained that Attorney Sweeney does not ask him questions and he does not ask Attorney Sweeney questions. He advised that if the Board wanted to, the opportunity for cross examination could be provided, but this setting is a little different than a typical court room proceeding.

Director Buckingham provided rebuttal to testimony from the applicant. He referenced testimony given about meetings between the applicant in 2012 and again in 2014, and stated the importance of understanding the fact these were two distinct discussions on two different locations. He noted that the project and site location discussed in 2012 had Ag zoning and his meeting notes (Exhibit 17) contained two separate entries concerning rezoning being needed, as follows: "Would seek IND or CL designation", and "Zoning decision CL or Ind". Director Buckingham said it would seem highly unlikely we were having zoning discussions for Mr. Berken's building to the north in 2012 and then suddenly we did not have that same discussion to the south in 2014 because that lot also had Ag zoning. He stated that in fact, that same discussion was held in 2014.

Referring to Mr. Berken's earlier testimony, it was stated that he (Director Buckingham) had come up with the idea to build at the southwest corner of French Road and First Avenue. Director Buckingham said that is not correct. Mr. Berken came back to the Town asking what he could do at this new location because he needed to put up a building. He was told directly that if he was thinking of a building for his window business, the property would either have to be rezoned to Commercial or a special exception permit would have to be approved.

Director Buckingham referred to testimony from Mr. Lehrer, Mr. Berken and perhaps Attorney Sweeney concerning the building permit application prepared by Mr. Lehrer. They stated that their permit application did not say Ag Unoccupied Storage Building in the Approval Conditions/Description section. Director Buckingham explained that this section was left blank by the applicant. He stated that the Ag Unoccupied Storage Building description was included in the actual approved building permit issued by the Town and was as a result of the plans received for approval. The Town was provided plans for an Ag building, not a commercial building.

Director Buckingham referred the Board to Exhibit 10, consisting of an email he issued to Cary Nate on September 15, 2014. He quoted from the email as follows: "I met with Joe. He is developing plans for a non-commercial shed at the SW corner of French & First. It is Ag zoned. He should be able to stay under 4000sf for drainage…Joe and Tim will in for this meeting with site and structural plans." Director Buckingham had also referenced the setback standards that he had provided Mr. Berken. He also noted that the subject of the proposed meeting was "Joe Berken ag. storage shed". He stated that this project description provided the underpinning of discussions the Town was having with Mr. Berken at that point.

Director Buckingham said there was testimony to the effect that the building permit card stated something different than the building permit. He clarified that the building permit is the legal document that specifies the allowed project and approval conditions. The card is issued with the permit and is supplementary. He noted that the building permit in this case very clearly stated what type of building/use was approved for construction.

Attorney Koehler said for the record that the building permit card is Exhibit 21 and the actual building permit for the New Unoccupied Agricultural Storage Building is Exhibit 20. He asked Director Buckingham if that was correct.

Director Buckingham said that was correct.

Director Buckingham referenced discussions about whether the project was submitted as a commercial or ag building. He noted that Attorney Koehler provided an explanation for what plans would have been required had this been submitted as a commercial building.

Referencing testimony about correspondence from the Ebbens' attorney complaining that business activity was occurring in Mr. Berken's Ag storage building, Director Buckingham informed the Board that the Town initially pushed back because the approved permit and use was for Ag storage only. The Town informed the Ebbens' attorney that the final inspection showed the building was finished as an unoccupied agricultural storage building, that we had no evidence to suggest a business was in operation, and that we would have to explore the matter further.

Director Buckingham noted that Attorney Koehler already explained that covenants are not enforceable by the municipality, but that he wanted to rebut a statement made by Attorney Sweeney that the Zoning Code does not allow single-family homes in the Ag district. Director Buckingham explained that in this particular case, all of the existing residences in the plat were built 35 -40 years before the Zoning Code became effective. He stated that the homes are all characterized as nonconforming and nothing prohibits them from being there. They can continue to be occupied and maintained for that purpose.

Director Buckingham explained the discussions with Mr. Berken that took place after we discovered business activity being conducted from the ag storage building. Following Chief Inspector Nate's inspection on June 1, 2015 (Exhibit 7), Mr. Berken approached the Town asking what he could do at that point. Director Buckingham said his advice to Mr. Berken was that the only option would be to plead his case for a special exception permit. He said he also made it very clear to Mr. Berken that the likelihood of getting the permit was slim, particularly if the residential neighbors were not in agreement with the commercial use of the building. Director Buckingham noted the significance of neighbor consent, since impact on surrounding properties is a key consideration in determining findings of fact when granting a special exception permit.

Director Buckingham stated that when Mr. Berken approached him in 2014 asking what he could do on the lot at the corner of French Road and First Avenue, he was told that a building could be placed there but only for Ag use. Director Buckingham noted for the record that Mr. Berken testified that he heard that explanation.

Director Buckingham said that Attorney Sweeney and/or Mr. Berken testified that he (Director Buckingham) had reported to the Plan Commission that all the neighbors were in opposition to the commercial use of the building and to the granting of a special exception permit. Director Buckingham said that is not correct and that he did not say all the neighbors objected, as reported in his December 10, 2015 memorandum to the Plan Commission.

Attorney Koehler requested that Director Buckingham's December 10, 2015 memorandum be marked as Exhibit 23 and added to the record.

Director Buckingham quoted the referenced section of Exhibit 23, as follows: "Subsequent to the hearings, I reached out to the four owners of residential properties that are adjacent to or in the vicinity of the Berken property. I was able to speak to 3 of the 4 owners (I was unable to speak to Mr. and Mrs. Ebben, 3217 E. First Avenue, but they have clearly stated their opposition to the Special Exception Permit, both in written correspondence and hearing testimony). Of the three owners I spoke to, one is strongly opposed to granting the Special Exception Permit. That owner subsequently wrote a letter to the Town to confirm their opposition and provided photographic evidence that semi's continued to deliver to the Berken property as recently as November 4, well past the date Mr. Berken told the Commission such deliveries had ceased. The other 2 owners, after hearing public testimony and gathering more facts, said they do not support the Special Exception if Mr. Berken violated Town codes by operating a business without proper approvals. Both of these owners are concerned about the value and welfare of the investments in their homes if commercial uses are allowed to operate near them." Director Buckingham said that by this report it is clear he did not say all four neighbors were opposed.

Director Buckingham provided additional background on the neighbors' initial reactions when Mr. Berken applied for the special exception permit. He noted that at the Plan Commission public hearing, the neighbors expressed confusion over the intent of the proceedings. There may have been an impression on their parts that the Town had originally approved commercial use for the building, only to retract that approval after receiving neighbor complaints, followed by providing advice to Mr. Berken that he could come forward and get it approved. Director Buckingham explained that the actual sequence of events was clarified at the hearing. He also stated that during his phone discussions with Mr. DeKeyser and Mrs. Hoh, both stated that if Mr. Berken had followed the law and the Town had made a mistake, then shame on the Town. And, they stated that if the Town was right and Mr. Berken had not followed Town standards, then shame on Joe. Director Buckingham stated that those are not statements indicative of "all objected". Of the four neighbors, two were opposed and two indicated a lack of support based on conditions.

Director Buckingham referred to testimony from Attorney Sweeney stating that Mr. Berken was not provided an opportunity to rebut statements from Exhibit 23 because the memorandum was issued after the public hearing was closed. Director Buckingham noted that the Plan Commission's action was in the form of a recommendation to the Town Board. He stated that Attorney Sweeney and/or Mr. Berken could have appeared at the January 5, 2016 Town Board meeting to address their concerns during public forum. He noted for the record that no one representing the Berken request attended that Town Board meeting.

Director Buckingham addressed testimony from both Mr. Berken and Mr. Lehrer to the effect that they totally relied on Town staff because they did not know the codes and/or did not know what to do. Director Buckingham explained that a property owner has a responsibility to complete all work under a building permit in compliance with applicable codes and laws. He paraphrased from the permit certification section, which provides an owner/applicant certification that the work will be done subject to all applicable codes, laws, statues and ordinances, that the issuance of the permit creates no legal liability, express or implied, on the state or municipality, and that all the information provided for the permit is accurate. Director Buckingham stated that this information and process seems quite fundamental in this case.

Director Buckingham requested that Chief Inspector Nate be allowed to provide rebuttal testimony.

Attorney Koehler asked that he first be allowed to further question Director Buckingham.

Attorney Koehler directed questions to Director Buckingham (summarized below with "Question" asked by Attorney Koehler, and "Answer" provided by Director Buckingham).

Answer: Referring to Exhibit 17, Attorney Koehler showed 2012 meeting notes to Director Buckingham, and asked him if it was correct that the notes referenced Industrial or Commercial rezoning. Answer: Director Buckingham said that was correct.

Question: So at that time in 2012 that property was still zoned agricultural? Answer: It was.

Question: So why did you bring up rezoning to Industrial or Commercial in connection with the 2012 discussion? Answer: Because the commercial use for window storage would not be allowed in the Ag District.

Question: So your notes verify that Mr. Berken was told that in 2012, correct? Answer: That is correct.

Question: So let's move ahead to 2014. Was any application applied for or made by Mr. Berken to rezone this new lot where the building now exists, to rezone it to Industrial or Commercial? Answer: No.

Question: So no such application was filed before the building went up, correct? Answer: Correct.

Question: Was there any application for a special exception permit in 2014 before the construction started? Answer: No there was not.

Question: Could there have been an application to rezone had Mr. Berken chosen to do so? Answer: Yes there could have been.

Question: Could there have been an application filed for a special exception permit before construction began? Answer: Yes there could have been.

Question: Neither one of those efforts were taken before the construction began, is that correct? Answer: That is correct.

Attorney Koehler thanked Director Buckingham for clarifying information from his meeting notes.

Director Buckingham asked Chief Inspector Nate to respond to testimony from Mr. Lehrer with regard to timeframes of when work began and when he received the permit.

Chief Inspector Nate said the permit application was filed by Tim Lehrer on October 6, 2014.

In response to a question from Attorney Koehler, Chief Inspector Nate stated that the document he was referring to was Exhibit 2. He explained the permit application process consists of reviewing all plans and information and generating the approval conditions/description for what can be approved with the permit. Then the permit is issued. He explained that in this case, we were approving an unoccupied ag storage building as he noted on the permit. He noted that he provided his approval initials at the bottom of the form and forwarded to the Department Secretary for final processing and issuance once payment for the permit was received by the applicant. Chief Inspector Nate stated that there would be no reason the permit was not issued on the date noted at the bottom of the form. He said he was unsure if the permit was paid for by Mr. Lehrer or Mr. Berken, but either way the permit was approved as of the date of payment and would have been issued at that time.

Board member Gustafson asked Chief Inspector Nate to clarify whether the date of October 10, 2014 listed at the bottom of the form would have been the date of approval.

Chief Inspector Nate said that would be correct.

Attorney Koehler directed questions to Chief Inspector Nate (summarized below with “Question” asked by Attorney Koehler, and “Answer” provided by Chief Inspector Nate).

Question: Exhibit 2 was the actual permit, correct? Answer: Correct.

Question: Now is that actual permit provided to the applicant? Answer: Chief Inspector Nate said the applicant receives a copy of the permit, the card, and a receipt for payment.

Question: So they get what we call the building permit card and the building permit at the same time, correct? Answer: Correct.

Question: And they are supposed to have that before they start construction, correct? Answer: Correct.

Question: Exhibit 19 was the permit application actually signed by Timothy Lehrer and is dated by his signature October 6, 2014. So your permit was actually issued, according to Exhibit 20, on October 10. That would be 4 days later, correct? Answer: Correct.

Question: So there was no delay in doing that permit? Answer: Not after we received the application, no.

Attorney Koehler thanked Chief Inspector Nate for answering those questions.

Attorney Koehler told the Board that this concluded the Town’s response testimony, but he wanted to address one more detail. He explained that Director Buckingham’s staff report to the Board was the first

document of the agenda packet. He requested that this memorandum be marked as Exhibit 24 and added to the record.

Motion (Gustafson/Ulrich) to close Public Hearing #1 at 7:37 p.m. Motion carried, all voting a***ye***.

4. **ACTION ON APPEAL (V-04-16)** - REQUEST BY JOSEPH E. AND KARLA J. BERKEN, DBA J&B HOME IMPROVEMENT, 3225 E. FIRST AVENUE, FOR THE APPEAL OF A DECISION BY THE TOWN BOARD OF SUPERVISORS OF THE TOWN OF GRAND CHUTE, OUTAGAMIE COUNTY, WISCONSIN, TO DENY A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW CONTRACTOR STORAGE USE OF A BUILDING ON PROPERTY ZONED AGD GENERAL AGRICULTURAL DISTRICT. SAID APPEAL PURSUANT TO CHAPTER 535-95 OF THE TOWN OF GRAND CHUTE MUNICIPAL CODE.

   Motion (Ulrich/Schultz) to affirm the decision of the Town Board of Supervisors of the Town of Grand Chute, Outagamie County, Wisconsin, to deny the request by Joseph E. and Karla J. Berken, dba J&B Home Improvement, 3225 E. First Avenue, for a special exception to allow contractor storage use of a building on property zoned AGD General Agricultural District. Motion carried, all voting aye.

   In affirming the Town Board decision, the Zoning Board of Appeals determines the following finds of fact to be accurate in this case:

   (1)The establishment, maintenance or operation of the proposed Special Exception use or structure at the proposed location will be detrimental or injurious to the use and enjoyment of existing uses on adjacent properties or properties in the vicinity; (2) The establishment, maintenance or operation of the proposed Special Exception use or structure, alone or in combination with other existing Special Exception uses and structures in the vicinity will cause traffic hazards; (3) Adequate provision is not made for surface water drainage, ingress and egress to the property, and off-street parking; and, (4) Adequate public facilities and services are not available for the proposed Special Exception use of structure.

   Evidence was also presented, on behalf of the Town in opposition to the Applicant, that the Applicant's requested use is not one of the "special exception" uses permitted in the AGD General Agricultural District under § 535-24 D. due to the restrictions in subsection D.(1) for the reason that the structure is located within 500 feet of existing residential dwellings and also within 500 feet of the exterior boundary of a recorded subdivision plat, which was not contested at the hearing of this appeal.

5. **ADJOURNMENT**
   Motion (Gustafson/Ulrich) to adjourn the meeting at 7:38 p.m. Motion carried, all voting aye.

Respectfully Submitted,

Tracy Olejniczak
Community Development Secretary/BB

DRAFT

Town of Grand Chute
Variance Request
STB Investments LLC

To: **Zoning Board of Appeals**

From: **Robert Buckingham, Community Development Director**

Date: **November 3, 2016**

Address: **1000 S Westland Drive** **App. #: V-05-16**

REQUEST

Applicant requests a variance to allow a front yard fence at a height of 6 feet. The Sign Code restricts front yard fences to a maximum height of 42" (3' 6"). The portion of fence in question has already been installed, without Town approval or a permit. Pending the outcome of the variance request, a fence permit will be required and modifications to the installation are required in at least one portion of the property.

ANALYSIS

Staff maintains a long-standing position that a variance request of this type be denied. This is a request for an "after the fact" variance, which in and of itself is grounds sufficient for denial, on the basis that the applicant installed a non-compliant fence without a permit, thus imposing a self-created hardship on the property.

Any other grounds for consideration of the variance would be secondary and would have to be viewed as if the fence had not yet been installed. From that standpoint, this would be viewed as a request lacking justification based on the standards of the Zoning Code. Staff would also recommend denial if those were the circumstances in which a variance was being requested. The applicant's case for granting the variance suggests the benefits of better security, improved appearance of the property and better traffic control. While these may be legitimate factors for the applicant, the Board of Appeals' consideration of a variance is limited to the narrow parameters established in its role of upholding the area and dimensional provisions of the Zoning Code as it relates to land, structures or buildings.

Discussion on the merits of the variance request and the applicant's justification for approving same would be in vain since this is an "after the fact", self-created hardship. Also, as in all cases presented for consideration, the Board is not empowered to consider economic hardship or cost to install/remove property improvements as justification for granting of a variance. Furthermore, the Board does not have authority to approve a variance for anything other than what was requested in the application for a variance. The Board would not be allowed to entertain any alternate fence height or location other than what was requested (the height of the fence as installed).

Upon denial of the variance, the applicant will need to make a choice on what changes will be made to the fence along the Timmers Lane frontage so that a permit can be issued for this work. There are several possible options, each of which would by allowed under the Zoning Code:

1. Reduce the height of the fence along Timmers Lane to 42 inches and it can stay in the same location as currently placed.
2. Move the fence along Timmers Lane to a location at least 25 feet from the property line and re-install it at a height of no greater than 6 feet.
3. Abandon the driveway/access to Timmers Lane, request that the Town officially designate this frontage as "No Access", and retain the fence as currently installed at 6 feet in height and 31 inches from the property line.

FINDINGS OF FACT IN GRANTING OF A VARIANCE

1. **The variance is not contrary to the public interest and that such variance will be in general harmony with the purposes and intent of the Zoning Ordinance.** *Not Found.* This is an "after the fact" request. The extent of variance requested far exceeds the purposes/intent of the code.

2. **The variance will not permit the establishment of a use, which is not permitted or permissible in the district.** *Found.* This is not a use variance. The property is entitled to a legally installed fence.

3. **Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.** *Not Found.* There is sufficient space on the property to build a code-compliant fence, either with no setback and 42 inches in height, or with a 25 foot setback and 6 feet in height. The option also exists to designate the frontage in question as "No Access" and then retain the 6 foot high fence along Timmers Lane as currently installed.

4. **The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.** *Not Found.* The subject property has equal access to uses and structures that are allowed on all properties in the district.

5. **The hardship is not shared generally by other land or buildings in the area.** *Not Found.* The Town finds no hardship unique to the property. The applicant incorrectly states that a hardship exists because the construction of the buildings in 1987 pre-dated 2010 fencing regulations limiting front yard fences to 42 inches in height. These front yard fence height restrictions have been enforced for at least 25 years. The fence regulations were last updated in 2010 and the front yard height restriction was retained without change.

6. **The hardship results from the strict interpretation of this ordinance and is not the result of self-created or self-imposed circumstances.** *Not Found.* See Finding #1 above. The circumstances that generated the variance request were self-created and in violation of both the Zoning Code (fence regulations) and the Building Code (constructed without a permit).

RECOMMENDATION

Staff finds in opposition of granting a variance and recommends Board denial of the request of STB Investments LLC, 1000 S. Westland Drive, to allow a front yard fence constructed at a height that exceeds 42 inches.

STB Investments LLC
PO Box 11623
Green Bay, WI 54307
920-540-0095
dallen@tgr56.com

APPLICATION FOR VARIANCE

PLEASE NOTE THAT THE FENCING ALONG WESTLAND AND TIMMERS IS INSTALLED. WE WILL REDUCE THE HEIGHT ALONG WESTLAND TO 42". WE ARE REQUESTING A VARIANCE FOR TIMMERS. THESE FENCES ARE INSTALLED BECAUSE THE CONTRACTOR ASSUMED THE OWNER HAD RECEIVED A PERMIT FOR THE INSTALLATION AND PROCEEDED WITHOUT PROOF. THE OWNER ASSUMED THE CONTRACTOR WAS RESPONSIBLE FOR THE PERMIT AND THAT ONE HAD BEEN OBTAINED.

We sincerely apologize for the errors.

The Applicant believes that the Timmers fencing (installed inadvertantly) significantly improves the security of the neighborhood and the appearance of the property. If the variance is not granted and the fence is removed or reduced in height the Applicant believes there is less benefit for all. While these statements are not part of the requirements of hardship the Applicant believes them to be true.

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STATEMENT OF HARDSHIP FOR VARIANCE APPLICATION-RE: FENCE AND GATE TIMMERS LANE

The applicant has applied for a fence permit to enclose Applicant's entire property which is comprised of PIN 101134101 and 101134100 (1000 S Westland). The entire Property runs from Timmer's Lane west 659' to Westland and north 132' between the single family residential neighbors to the south and mixed use (retail/multi-family) owners on the north.

Applicant's property is improved with 4 industrial buildings (3) ministorage and one large shop building. The easterly two ministorage buildings are approximately 30 feet setback from the west side of Timmers Lane. These two buildings were constructed in the 1980s.

Applicant is eliminating deferred maintenance on the property, improving lighting and using fencing to restrict access to the property to tenants and their invitees/customers. The overall goal is to have the Property be an attractive and safe environment.

Because the Property runs between Timmers Lane and Westland it is often used as a "cut through" for transiting between the two streets. This places Timmers Lane in the position of receiving increased traffic for which is not designed and which is likely distressing to the single family residents on the street.

The Applicant's permit requests a keypad controlled gate on Westland and a locked gate and fence that seals off Timmers Lane except for Owner and emergency access. The Applicant believes their fences and gates will be a benefit to themselves, their tenants and invitees and especially to the residents of Timmers Lane.

The problem, and the reason for this Variance Application, is that the current fencing code (535-53) adopted in 2010 requires that all fencing within 25 feet of the street Right Of Way is not to be higher than 42 inches. The Applicant's ministorage buildings that face Timmers land are approximately 30' setback from Timmers Lane. These were constructed before the code changed and the 30' setback has been used for snow placement and grass. A fence at the 25 foot fence setback would not allow room for snow removal and would require mowing operations to be constructed outside the fence rather than contiguous with mowing operations on all the other grass areas of the Property. Using a 42" fence and gate in this area, thereby allowing a fence and gate set back 31"foot from the ROW is not a good option since the security provided by such a low fence would be minimal and Timmers Lane is isolated and not well lit in this area despite the fact that the Applicant has installed additional lighting.

Applicant requests variance to allow 6' fence height and typical gate height at 31" offset from Timmers Lane ROW

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1 The variance is not contrary to the public interest and that such variance will be in general harmony with the purposes and intent of the Zoning Ordinance.

The fencing ordinance has an exception for "Industrial Sites" . The Applicant believes the exception is intended to allow industrial sites to decrease the impact on neighbors. The Property is zoned commercial (CL) but has an industrial character because of storage and shop use. the public interest is served when the Property's impact on the Timmers Lane residential properties is reduced.

Also, the ordinance requires the Property to consider Westland and Timmers both as "frontage" with the attendant 25' fence setback. However the ordinance contains a frontage designation exception for streets that are "no access" or "restricted access'. Timmers Lane south of Subject is all single family residential and has no outlet or property that cuts through west to Westland. While not designated as "no access" or "restricted access" the residential homes there would likely support reducing access so as to preserve their privacy.

2. The variance will not permit the establishment of a use, which Is not permitted or permissible in the district.

The existing uses will not change

3. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.

Commercial Local zoning (CL existing) has a current minimum building setback of 35' to a residential area. Subject has only 30 feet and was constructed at a time when the current fencing ordinances were not in effect. Therefore snow removal vis a vis fencing setbacks was not a consideration when the original site plan was approved

4.The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district

The fencing setback requirement will not allow applicant reasonable access to the east side of their buildings (the frontage facing Timmers) for plowing. A five foot or less strip would remain. The use of property from the ROW to buildings for snow storage is necessary and common.

5.The hardship is not shared generally by other land or buildings in the area.

A review of all CL zoned properties from Nicolet east to Bluemound, Prospect north to College shows no other property where buildings were legally constructed so close to a residential street and where they have

STB Investments LLC
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dallen@tgr56.com

no option to push snow. Therefore, those properties would not have issues with access or plowing.

6. The hardship results from the strict interpretation of this ordinance and is not the result of self-created or self-imposed circumstances.

The code changes 535-53 in 2010 created the hardship The buildings were constructed in 1987.

Town of Grand Chute, WI
Tuesday, October 11, 2016

Chapter 535. Zoning

Article VI. Supplementary District Regulations

§ 535-53. Fences and hedges.

[Amended 10-5-2010 by Ord. No. 2010-11; 2-17-2011 by Ord. No. 2011-08]

A. Definition. For the purposes of this section, "fence" is herein defined as any partition, wall, structure or gate consisting of vegetation, wood, stone, plastic, or metal that is erected as a barrier, enclosure or divider marker. For the purposes of this section, the term "fence" shall be construed to include plantings such as hedges.

B. Permit required. No fence shall be built, enlarged, altered or replaced within the Town unless a permit therefor is first obtained from the Building Inspector.

C. Fence height.

(1) Any fence placed in the rear or side yard of a property shall not be more than six feet in height, measured at ground level of the yard, except that hedges may be permitted to grow to their natural height.

(2) Any fence placed in the actual front yard of the property or in the first 25 feet from the street right-of-way, whichever is less, shall not exceed 42 inches in height, measured at ground level of the yard. On lots with double frontage, fences shall conform to the front yard requirements for both streets, except where one street is officially designated "No Access" or "Restricted Access."

(3) Fences and hedges shall comply with vision corner regulations as defined in § **535-47A**.

D. Materials.

(1) The finished side of the fence shall be erected to face the adjoining property. The side of the fence with protruding support posts or studs shall face the building on the lot responsible for the erection of the fence.

(2) Barbed wire fences, electrical fences, and single-, double- and triple-strand fences are prohibited, unless specifically permitted by this section.

E. Exceptions. Protective security fences and boundary fences on industrial sites, publicly owned lands, or semiprivate lands such as places of worship, educational institutions, utility substations, etc., are excluded from the provisions of this section, except that where such fences incorporate the use of barbed wire, such barbed wire shall not be less than seven feet above the ground level and shall not extend over any roadway, sidewalk/trail, or adjoining property. In addition, such fences otherwise excluded from the provisions of this section shall be a minimum 2/3 open to vision, equally distributed throughout the fence length, and shall maintain the height restrictions of this section when located within the defined vision corner.

TOWN OF GRAND CHUTE

ORDINANCE, SERIES OF 0-11-2010

AN ORDINANCE AMENDING EXISTING CHAPTER 27 OF THE CODE OF GENERAL ORDINANCES FOR THE TOWN OF GRAND CHUTE, OUTAGAMIE COUNTY, WISCONSIN BY REPEALING AND RECREATING SECTION 27.06 (12) WHICH PROVIDES FOR REGULATION OF FENCES AND HEDGES.

WHEREAS, Chapter 27 of the Grand Chute Municipal Code provides for regulation of fences and hedges; and,

WHEREAS, it is determined that the public's interest is best served by adopting updated regulations governing fences and hedges in the Town.

NOW THEREFORE BE IT ORDAINED by the Town Board of Supervisors of the Town of Grand Chute, Outagamie County, Wisconsin, that Section 27.06 (12) is hereby repealed and recreated to read as follows:

Section 27.06 (12). Fences and Hedges.

a. Definition. For the purposes of this subsection, a fence is herein defined as any partition, wall, structure or gate consisting of vegetation, wood, stone, plastic, or metal that is erected as a barrier, enclosure or divider marker. For the purposes of this subsection, the term fence shall be construed to include plantings such as hedges.

b. Permit Required. No fence shall be built, enlarged, altered or replaced within the Town unless a permit therefore is first obtained from the Building Inspector.

c. Fence Height.
   1. Any fence placed in the rear or side yard of a property shall not be more than six (6) feet in height, measured at ground level of the yard, except that hedges may be permitted to grow to their natural height.

   2. Any fence placed in the actual front yard of the property or in the first twenty-five (25) from the street right-of-way, whichever is less, shall not exceed forty-two (42) inches in height, measured at ground level of the yard. On lots with double frontage, fences shall conform to the front yard requirements for both streets, except where one street is officially designated "No Access" or "Restricted Access."

   3. Fences and hedges shall comply with vision corner regulations as defined in Section 27.06 (6) (a) and (b).

d. Materials.
   1. The finished side of the fence shall be erected to face the adjoining property. The side of the fence with protruding support posts or studs shall face the building of the lot responsible for the erection of the fence.

   2. Barbed wire fences, electrical fences, and single, double and triple strand fences are prohibited, unless specifically permitted by this subsection.

e. Exceptions. Protective security fences and boundary fences on industrial sites, publicly owned lands, or semi-private lands such as places of worship, educational institutions, utility substations, etc. are excluded from the provisions of this subsection, except that where such fences incorporate the use of barbed wire, such barbed wire shall not be less than seven (7) feet above the ground level and shall not extend over any roadway, sidewalk/trail, or adjoining property. In addition, such fences otherwise excluded from the provisions of this subsection shall be a minimum two-thirds (2/3) open to vision, equally distributed throughout the fence length, and shall maintain the height restrictions of this subsection when located within the defined vision corner.

If any provision of this ordinance is invalid or unconstitutional, or the application of this ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the above provisions or applications of this ordinance, which can be given effect without the invalid or unconstitutional provision, or its application.

Approved and adopted this 5 day of October, 2010

Town of Grand Chute

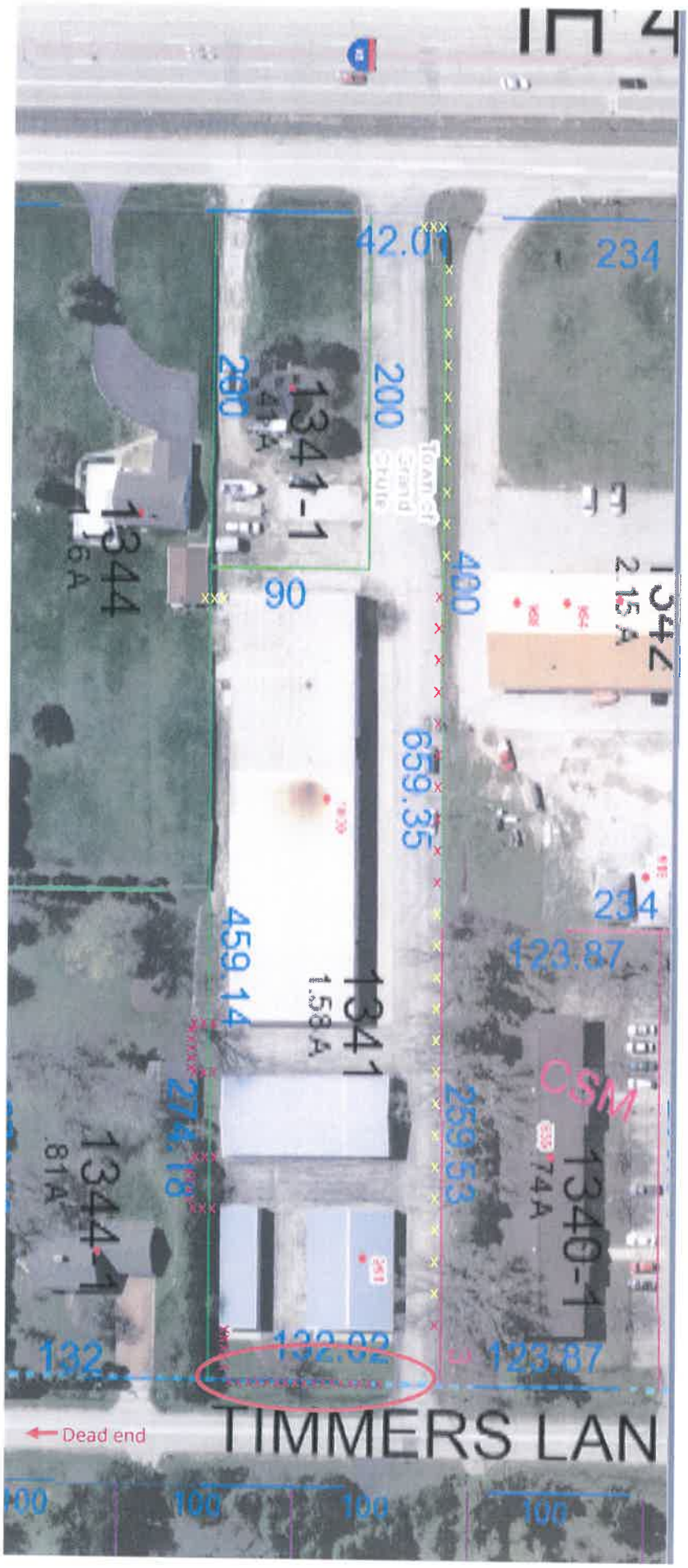
Michael A. Marsden
Town Chairman

Karen L. Weinschrott
Town Clerk

Number Voted For 4
Number Voted Against 0

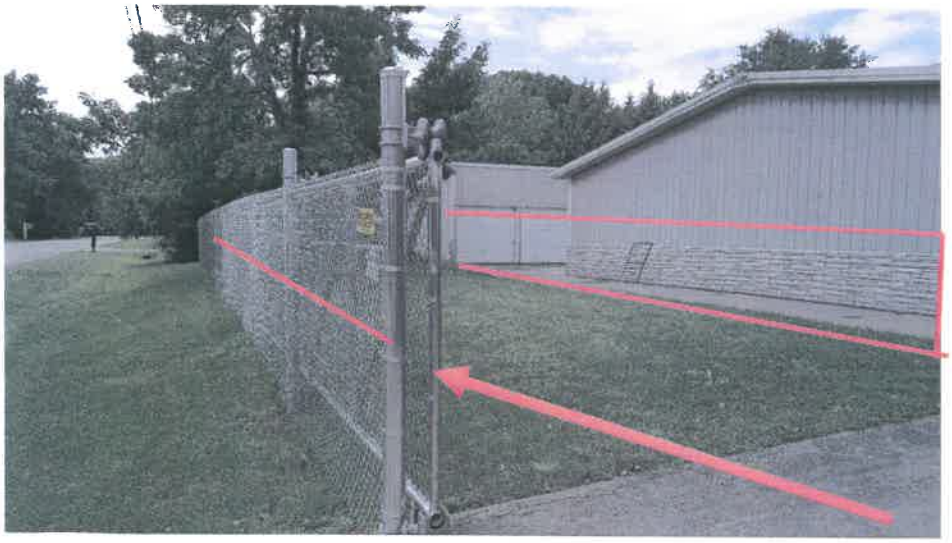
Approved as to form:

Greg Curtis, Town Attorney
Herrling, Clark, Hartzheim & Siddall, LTD
800 N. Lynndale Drive
Grand Chute, WI 54914
(920) 729-7366



Variance request area

Current fence inadvertently installed is setback 31" west of Timmers ROW. It allows for plenty of green space on both sides and is attractive



Approximate location if @ 25' setback. No room for snow removal. Trees and grass outside the fence cannot be easily maintained

If height reduced to 42" security is reduced

Current Timmers location inadvertently installed