

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, July 12, 2019, with Chairperson Carol Schlueter and members Emily Geertz, Charles Clark, and Barry McManus present, Bill Tharp was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Elizabeth Hackett, Jeff Hackett and Dave Tometich.

Carol Schlueter: Okay it is 10 o'clock and I will open this public hearing. But first we have some business to take care of. We need to elect a chairperson and a vice chairperson for the coming year. I will take nominations for a chairperson.

Emily Geertz: I will nominate Carol for a chairperson.

Barry McManus: I'll second it.

Carol Schlueter: Okay it's been moved and seconded that Carol be elected chairperson. All in favor please say Aye (4) Opposed (0) Absent (Tharp).

Emily Geertz: Do we have to close the nominations?

Eric Furnas: Well you probably should ask if there are any other nominations.

Carol Schlueter: Oh I'm sorry, okay.

Eric Furnas: Well I don't think there was going to be though.

Carol Schlueter: Alright... so now we need nominations for a vice chair. Any nominations? I will nominate Emily for vice chair. Is there a second?

Barry McManus: Second.

Carol Schlueter: Are there any other nominations? Okay, not hearing any others we have a motion to elect Emily for vice chair and it has been seconded. All those in favor of that motion please say Aye (4) Opposed (0) Absent (Tharp). Good we are done with that. Before we get started I have to read this opening statement. The Zoning Board of Adjustment is a quasi-judicial board appointed by the Muscatine County Board of Supervisors. The Board's purpose is to interpret the Zoning Ordinance and to allow certain limited exceptions and variances where special conditions and hardships exist. We are an independent volunteer board of citizens and not part of the county administration. There are five members on the Board. State law requires three affirmative votes to approve any appeal under consideration, no matter how many members are present. If fewer than five members are present, the appellant has the opportunity to have the appeal delayed until the next meeting. This request must be made prior to Board deliberation of that case. As a Board of the County, we welcome all testimony. We make our decision based on facts and evidence under county code, presented in open meeting. We ask that if you wish to speak, please give your name and address. Okay we have minutes to approve, right Dixie?

Dixie Seitz: No, it was tabled.

Carol Schlueter: Okay, that was the only meeting? Okay so today we only have four people here. So that means if it's a tie vote, it is a no vote. So again, whoever the applicants are, you have a decision, if you would like to table your request until next month, and again we don't know who's going to ... we don't know how many is going to be here, it's just a volunteer board. But hopefully everybody will be here. But they have to table it before we vote, right, or before we make the motion?

Eric Furnas: Yes they could wait to make that request to table right up until you take the vote.

Carol Schlueter: Okay, everyone understand? Okay, Eric will you please read the first request?

Eric Furnas: Case #19-07-01. An application has been filed by Jeff M. or Elizabeth A. Hackett, Record Owners. This property is located in Seventy-Six Township, in the SE¼ of Sec. 2-T76N-R3W, South of 231st Street, containing approximately 41.50 acres and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to approve the farm exemption appeal, that was previously denied by the Zoning Administrator, in order for the Hackett's to build a shop for seed and fertilizer storage, and farm equipment with housing attached on this property.

Carol Schlueter: Okay any correspondence in regards to this?

Eric Furnas: No ma'am.

Carol Schlueter: Okay, is the applicant here? (Yes) Okay please state your name and tell the board what you are asking for.

Elizabeth Hackett: Elizabeth Hackett. May I use the podium?

Carol Schlueter: Yes you may.

Elizabeth Hackett: 2310 Burlington Road, Muscatine, Iowa.

Jeff Hackett: I am Jeff Hackett, 2310 Burlington Road, Muscatine.

Elizabeth Hackett: Our application was denied and we are requesting or asking the board to approve it. I believe that everything we submitted, in the way the application says what they are supposed to follow, we proved that this should meet farm exempt for the building. The paper that I was given at the last meeting was... what I understood is part of the reason that it was denied, is that correct? You know that paper that you guys gave me?

Eric Furnas: I would have to know which one you are referring to.

Elizabeth Hackett: The one you made a copy of.

Eric Furnas: The one from the Department of Revenue?

Elizabeth Hackett: Yep.

Eric Furnas: That was part of the basis for the denial.

Elizabeth Hackett: I created a packet for you. So if you would go to the Iowa Department of Revenue... this is on paying income taxes on what you do for farming. That states that ... oh I hope I didn't... I think I might not have copied the second page. Let me look ... there might have been a backside and I didn't copy. So on the backside and I did not realize that it was both sides, I apologize. I hadn't copied the backside, but what was highlighted was this is what I understood was part of why we were denied. It states land placed in the federal government's Conservation Preserve Program (CRP)...

Emily Geertz: Yes it's actually in our packet, we already have it.

Elizabeth Hackett: Okay, so that is saying that CRP is not tax exempt but what it's telling me is that I am required to pay income on that. That is income producing land. I am not able to say that I don't have to pay taxes or

consider my income on it. That is what this form is for. The form that you state on your application is the next one that I have in the packet, which is the classifications and that's what it states on your application that this is what you... You will then have an email... I contacted Iowa State, Kristin Hedrin, she is with the Center for Agricultural Law and Taxation. I sent her an email and you will have a copy of my email and I said this is what they are using to justify not giving us farm exemption. That is ... you will see that email and it's on the second page. So this is what I sent her and then I sent her a copy of the tax thing that I only gave you half of. And her reply, and what I blacked out is the information of some attorney's that she had advised us to contact if we needed assistance if this doesn't get approved. So her response, I believe if you would read, says this is what the application states that the determination should be made of 71.1 Paragraph 3. And her response to that is that the ordinance says you can show tax evidence from a certified tax professional and that the fact that your CPR income is Schedule F income, profit loss from farming, and you pay self-employment tax on it, it should be all you need to qualify for farm exemption. And on our application we did submit a copy of that form that shows that we are paying, Schedule F, that we are paying you know all of that. Do you need me to get that out at all? This is my 2018 ... and right under agricultural 4a you will see program payments. All right at this point do you have any questions for me? I have more information that we can go over.

Emily Geertz: Okay I guess I am just going to go back to the beginning here and with just the basic ... what are you proposing to build and what do you mean when it says that housing is attached to it?

Elizabeth Hackett: So this is...

Carol Schlueter: Which is in the CRP?

Elizabeth Hackett: This is CRP, this whole section.

Carol Schlueter: Okay, everything is in it? Okay?

Elizabeth Hackett: It is.

Carol Schlueter: I thought it was only so many acres in.

Barry McManus: Well they also have attached... other acres.

Carol Schlueter: Okay, so this is the 17 ... how many acres is in there?

Jeff Hackett: 20 is in the set aside.

Carol Schlueter: Okay, all of this that is outlined in blue, Eric is that...

Eric Furnas: That is the parcel that has a certain amount of CRP in it and then I believe that they have other parcels also that have CRP.

Jeff Hackett: Well this parcel is attached... the whole farm is a little over ...

Elizabeth Hackett: So this kind of gives you a better... so here is the field that is off of 231st Street. Here's where we live.

Emily Geertz: And where is that on here?

Elizabeth Hackett: Well so this is the timber so this kind of matches up like about here. So we own this whole piece runs from Burlington Road all the way up to 231st Street.

Carol Schlueter: Okay, so it is all attached?

Elizabeth Hackett: Yep it is.

Carol Schlueter: And you live down here on Burlington Road?

Elizabeth Hackett: I do.

Carol Schlueter: Okay, so on this property...

Elizabeth Hackett: We want to take a section of it out of CRP and build right about in this area.

Emily Geertz: And this is where you live right now?

Elizabeth Hackett: And this is where we live right now.

Emily Geertz: I guess I'm kind of confused about what you are wanting to build.

Elizabeth Hackett: We're building a building to store our equipment in it... well we've already been broke into at our home place with my house right there. I don't know what year it was, but you know, so we installed a security system. So we need another building and I don't want it down here, it's congested enough. I'd like to build it up where it's not a good CSR anyway on this farm. I'd like to build it here but because that building sitting out there by itself is like... okay who wants to break in while they're not here, there is no one living there... We've decided to attach a little bit of a living quarters on it and our son who is involved in helping us will be living there.

Emily Geertz: At this...

Elizabeth Hackett: That's our plan. He will stay in the living to keep the safeguard of, you know, our possessions.

Emily Geertz: Can I just ask a quick question, I'll ask Eric. If there weren't housing attached with it, would it be a problem? But because there is housing attached, is that the ...

Eric Furnas: Could they build a pole barn without ...

Emily Geertz: Yes.

Eric Furnas: Yes we have a provision for that property that accessory structures, a pole building ... They could still file for a farm exemption so as not to have to obtain a building permit.

Emily Geertz: Right.

Carol Schlueter: Okay so the farm exemption they don't have to obtain a building permit?

Eric Furnas: There is a process for applying for a Special Use Permit to build a house in this area as well. But the issue is, farm exemption or not. Whatever their reasons are for requesting a farm exemption, whether it's a building permit or setbacks... they are exercising their rights to appeal for farm exemption.

Carol Schlueter: And the farm exemption means that they have to have no building permit, is that correct?

Eric Furnas: Well it means that there is no zoning or building regulations when they apply.

Elizabeth Hackett: We will be required to get an electrical permit from the state, which we will do so. We will also have to have the septic permit and then inspection, even going farm exempt. But it allows us... our setback... we have a little bit of an issue on the 750 foot. You know, this allows us not to have to worry about that setback.

Carol Schlueter: So how big of a building is this going to be?

Jeff Hackett: It would be 60 x 96.

Carol Schlueter: And that includes the living space?

Jeff Hackett: No, no.

Carol Schlueter: The house will be...

Jeff Hackett: ...on the end of it. So that will be an additional... I don't remember...maybe 1,400 or 1,600 square feet, something like that.

Carol Schlueter: But that is going to be like a permanent place for someone to live?

Jeff Hackett: Yes.

Carol Schlueter: For your son?

Jeff Hackett: Yes.

Carol Schlueter: And you have access to get into this property and everything?

Jeff Hackett: Yes.

Elizabeth Hackett: In 2008 ... we built this building before we owned land. Isn't 2008 we had acquired farm ground and we farmed and we built this building. In 2008 I applied for this application and received the approval for farm exempt on this building. In 2014 we added a lean-to onto the building. Again I applied for an application for a farm exempt and I received it. Do you need a history of what we farm and how many acres we have?

Emily Geertz: No I'm just...

Carol Schlueter: No the only thing that we are saying here why you are not getting the farm exempt is because according to Eric the CRP is not considered farm income, right?

Eric Furnas: We consistently, Muscatine County, has never considered CRP ground active current agricultural activity, income producing ag activity. That's been our stance, our interpretation from Muscatine County since the farm definition started.

Carol Schlueter: And I know that you have to pay income tax on it and that's different.

Emily Geertz: So you could build without the farm exempt also? I'm kind of confused.

Eric Furnas: They could build a pole building, a storage building for a seed warehouse without a farm exemption, it would require a building permit.

Emily Geertz: Yes that's it though.

Eric Furnas: And then residential quarters would require either a farm exemption or a Special Use Permit for a rural residence and obviously building permits.

Elizabeth Hackett: In your packet you also have ... this is the lady at the USDA office, you know who... I've spoke with them and I've spoke with them and both of them are saying that we are following what ... on the application, the application states that you have to follow that 71.13... that you have to meet those requirements and that is what we meet. We show that we have farm income. I mean, this building is going to assist us in all our farming, even though it is on CRP ground we are still farming actively on this.

Carol Schlueter: Okay so you say for seed and fertilizer... are you a seed and fertilizer sales person?

Elizabeth Hackett: No what we purchase to apply into our fields.

Carol Schlueter: Okay so it's just what you are going to store and what you plant and that?

Elizabeth Hackett: Yes. There was just a recent application that was approved, so may I ask what that application had on it, other than the pieces are in CRP?

Eric Furnas: Are you asking me?

Elizabeth Hackett: Yes.

Eric Furnas: I don't know which farm exemption you are referring to. I am not prepared. I don't have anything in front of me.

Jeff Hackett: It's Greg and Kelly O'Toole.

Eric Furnas: I would have to look at the records, and I'm not sure of the relevancy of other cases. I mean, you are charged with my interpretation of the code. I would have to see what has been submitted from the professor from Iowa State. This is the first that I have seen of this. I don't doubt her credentials, obviously I have not had the opportunity to look into this, I know at a glance she is quoting classification and assessment. There are different rules that can apply for land use regulations. I guess I would probably rather have the county attorney's opinion since we are quoting law and I have not had the opportunity to get his opinion on this and our policy of not recognizing CRP, if that's the only activity has been our interpretation. However, in light of another legal opinion, I think he will be willing to take a look at it but I have not had the opportunity for him exam this.

Emily Geertz: I mean I would also prefer for him to look at this before we made a motion on this and I would want to make sure that what we have in our county policy aligns with the state.

Eric Furnas: Well the state... Chapter 335 of the state code simply says that no building or zoning regulations can apply to land that is ... and I'm not going to get this exactly right, but is actively farmed and that is primarily adapted by lot and size and use for reason and nature for farm activity. Then each and every jurisdiction, cities and counties, can adopt their own farm definition. There has been many many court cases and many definitions that has had to change with court challenges, ours has changed, I don't believe, since it was started in 2004. So state code says you can't apply zoning and building regulations to farms but it allows each jurisdiction to define what a farm is. However, I still think it would be appropriate for the county attorney to look

over this and to see if he believes in light of this opinion to see if our ordinance and opinion are...

Emily Geertz: That would be my preference.

Carol Schlueter: Yes mine also because I don't understand all the legal parts of it.

Barry McManus: Well if we took her legal opinion out of it, I mean, I have no doubt that these folks are actively engaged in farming. This is not their only parcel. I can certainly understand why the county has this rule because if a person wants to go out and buy 40 acres and 30 of it is in CRP and thinks he can build a house without any kind of a building and zoning, I understand that that can't be. But it would appear that these folks are actively engaged in farming.

Eric Furnas: May I respond?

Barry McManus: Yes please.

Eric Furnas: I want to be clear, I have never made that claim that they are not engaged in farming. Clearly they have active income producing ag activity on multiple parcels and multiple parcels would qualify, have qualified in the past for different reasons. Our definition specifically says a parcel must be shown. There is no objection to their claim that they are engaged in multiply places in active farming, I want to make that clear. We are not saying that they are not farmers.

Barry McManus: Can you define that again? A parcel must be shown to do what?

Eric Furnas: A parcel must be shown by the owner or occupant to be in current active income producing farming or agricultural use to be described as a...

Barry McManus: Does that mean, the parcel that they are building on or any parcel?

Eric Furnas: Our interpretation would be and has always been it is the parcel on which the exemption is being requested upon. You are asked to clarify on what part of your property you are wanting to put a building. We have a space that asks you to list the parcel number on the application form. We don't ask you to submit proof that you own a multiply properties, including rental properties in town... It doesn't entitle them to farm exemption on every property they own. That has been the policy and our interpretation has been.

Jeff Hackett: We're... just down the road from us, and I know that Eric doesn't have the stuff in front of him, but in 2016 her brother and my brother-in-law and his wife build a home on theirs and they were farm exempt. It's timber, no income producing property and they were farm exempt. Down the road another three or four miles is our neighbor Rodd McNeal, Rodd and Kathy, they were farm exempt and they are in the timber side. They had no income producing property and I had mentioned that to Eric and I had a conversation before all of this and he mentioned well there is farm ground across the road. Well that farm ground across the road isn't Rodd's, it's in a trust. So it's just that there is just several others that were farm exempt that don't follow this.

Elizabeth Hackett: I have those examples if you would like to see them.

Jeff Hackett: You know, they aren't income producing properties and they get to do that. Scott Eichelberger just did it a couple of years ago, he just put a house up on a piece that's not. And know I just feel we're having to jump through some hoops and for other people... like we mentioned our friends, Greg and

Kelly O'Toole just purchased 38 acres from Furlong and they applied after we did and they got approved.

Carol Schlueter: But none of that... those are all different situations but I think we are questioning this because this ground is in CRP and the Muscatine County rules say that it's not really farm income when you get a government payment. That's Muscatine ... am I right on this Eric?

Eric Furnas: That is Muscatine County's interpretation of the code, so let's be clear... You have the code in front of you.

Jeff Hackett: But the ASCS office says the government is just renting that property. We could rent it to anybody and you could... as farm income and you could choose whether you planted it in wildflowers or hay or crop land. You could choose what you do. The government is just renting it and basically that is what Iowa State Revenue says too.

Carol Schlueter: Okay, does anybody else here have any comments or concerns with this request? If you do, please state your name if you would like to say anything in regards to this. Okay... I still...

Barry McManus: Yep got one in the back.

Carol Schlueter: Oh okay, I'm sorry. Alright state your name please.

Dave Tometich: Dave Tometich, 2215 High Prairie Road. I guess I would just be an advocate that the code be followed according to the current application. If they want to go into the other examples, I guess that they mentioned, I guess I could talk about several of those examples. Scott Eichelberger was instantly... after the conversation that I had with Scott Eichelberger after the last month's meeting, but the issue with the county, according to Scott was actually the location of the house. It was never whether he was farming. Actually that parcel touches a parcel that he farms. It is my understanding that this parcel does not touch a parcel that is actively farmed. We go into the O'Toole's and I know right where that is located too. Their parcel that they currently own is right across the road, which I would guess touches that parcel. I'm not exactly positive on that but I would guess it is. As far as Rodd McNeal I'm pretty confident that he does farm that trust. So I don't know, you know, currently I guess he doesn't own it, but he farms it and he has active income from that ground that is in the trust I would assume. I guess at least the certain people that I've talked with has certainly followed this current interpretation. It is clear that the Hackett's do farm and it is clear that they can build a house or can build a shed but it's just a matter of a permit.

Carol Schlueter: Thank you sir.

Elizabeth Hackett: Can I address something?

Carol Schlueter: Yes, please?

Elizabeth Hackett: I do have one more picture. So this is how the USDA addresses this farm, this is the farm number. Here is the area and here is what we actively farm. Yes there is timber in between but it is considered one farm. We also own this farm now.

Barry McManus: So your farm basically touches your farm land?

Elizabeth Hackett: Minus the trees, yeah there is different parcels. Now I did inquire whether I wanted to make this one parcel because that was brought up at least meeting. After talking with Scott Eichelberger, of which his

interpretation of the conversation with Mr. Tometich was totally different than what I got... because we even spoke then again after the meeting and he had expressed his conversation with me and with Mr. Tometich... but he said I don't advise it because it is going to change the value of my CRP by adding all of this non-productive timber into it and it would not be wise to do.

Carol Schlueter: But owning all of this that you have, which is wonderful, you do have other places that you could put this building and that wouldn't be in the CRP ground, right?

Elizabeth Hackett: I could but why would I take productive good high quality ground and ...

Carol Schlueter: I understand. So there is nothing else that is all productive good ground and of this?

Elizabeth Hackett: This is the field that we own that is the least productive, the less involving upon someone else's property. You know, it's easy access, we're on a hard surface road.

Carol Schlueter: Okay, thank you. Eric do you have any other comments?

Eric Furnas: I would just like offer an opinion on why I believe the current code specifics a parcel. I would agree that FSA considers that one tract after purchasing it at the same time. But I believe that the intent of our code to call out each individual parcel would be to help support the zoning office and consider CRP as active income, each one of those parcels that the Hackett's own if they could get a farm exemption on they could build a house and sell that off. That is not the intent of the farm exemption. The reason is to not apply burdensome zoning and building regulations on farmers and farming activity. That is why each parcel has to be examined. Because if CRP was to be considered as income, there are three or four parcels there that have a small amount of acreage if they didn't want to separate the house they could build the house and sell those off immediately. I am not saying that that is their intent at all, I don't believe that that is the case at all. I want to make that clear. I don't believe that that is what they are trying to do. But that could be an unintended consequence of examining multiply parcels within what FSA considers a farm tract. I believe that that is why our code looks at each parcel.

Carol Schlueter: Okay, any other questions or concerns from the board members? I would really would like to have Eric take this, what she brought in from the attorney, and have that looked at before I can vote on this. I think, that's me personally.

Emily Geertz: That's how I feel that way as well. I mean, I'm sorry but it's probably to your benefit.

Barry McManus: The only thing that I would interject into that is her opinion is just that they truly are actively farming. I don't know that this has any barring because we all agree that they are actively farming.

Emily Geertz: Right, that's true.

Barry McManus: I don't think that we need to bother with the lawyer because we all agree that they are actively farming now.

Carol Schlueter: Right, but she said... maybe I'm not ... but they are saying that CRP is farm income. According to ours, it is not.

Emily Geertz: Right.

Charles Clark: I've been involved in farming all my life but if it's something for the government ... the value of that ag land... you know, the government is paying you to set aside and to not use it. And you folks are not using it and wisely because it's not suited for prime agricultural ground. So it's my thought that the ordinance as long as it's not the case that you are farming it, than you can't do that. Now if you are willing to reverse that in some way, you know, make it actively produce an income, work with FSA or whoever these other folks are, and classify it as actively producing income...

Elizabeth Hackett: It's in a program, it will expire.

Emily Geertz: In 2025.

Elizabeth Hackett: And when it expires we can actively farm it again.

Charles Clark: Okay and then that's what ...

Elizabeth Hackett: But if I take it out now than I am penalized and I have to pay back.

Charles Clark: Okay than if I were you I'd...

Emily Geertz: But they could build without the farm exemption.

Eric Furnas: There is a process for that, there would be some preliminary examination on whether it would qualify, obviously the ??? would be a barrier. And I'm not sure the relevancy on that, they have the right to appeal for a farm exemption because there are stipulations on setbacks if you go through that process. If they are farm exemption they don't have to abide by those and they have the right to appeal to try and be farm exemption instead. But there is certainly a process for that.

Carol Schlueter: Thank you for your impute Charles, I appreciate that.

Charles Clark: You are welcome. I respect these folks opinion on the tractor, if you will. My prospective it's not ...

Jeff Hackett: The ASCS office says that the government is just renting it and we have a schedule F on it and where it is income producing property.

Elizabeth Hackett: We have to pay income taxes on that.

Carol Schlueter: You have to, I agree. I do too. (everyone talking at the same time)

Charles Clark: But it's like I said, it's not farmed ground.

Jeff Hackett: What if I rent that to you, I rent it to you it would be ag income producing...

Charles Clark: Well I wouldn't have anything to produce... I think that the way the ordinance states that that's the way it is. I mean I respect these folks opinion, like Barry said. But if you folks want to take it out of the program or wait until it expires, either way and come right back. But I mean, it's not actively producing as defined as what I know to be a farm.

Elizabeth Hackett: But the application cites 71.3, that's what we have to prove... this on your application, I need to provide you a 156 EZ Form or a Schedule F, which I did. And it's taken from the Iowa Department of Revenue and Finance's regulations found at Iowa Administrative Code 701-71.1(3). That is why Iowa State Agricultural, the lady from that organization stated that we are actively farming, we meet ... and we have provided you with the 156... the

Schedule F form. We provided that and we have followed the 701-71.1(3)... that's her... I mean she is saying that those two things were met.

Jeff Hackett: So we are meeting all the requirements.

Charles Clark: But Jeff are you taking a crop off this ground?

Jeff Hackett: No.

Charles Clark: Okay.

Elizabeth Hackett: Have we in the past? Yes. We have actively farmed it in the past.

Charles Clark: Are you willing to take it out of the program and then...

Elizabeth Hackett: We will be taking the building site out of the program.

Charles Clark: No, no...

Elizabeth Hackett: And then we will... at the point that it expires, obviously, you know for financial reasons to pay back that income on it does not make sense.

Charles Clark: Okay, well that fact is a contract with these people.

Barry McManus: You are referring to the CRP people?

Charles Clark: Yes and that is what this ordinance addresses.

Barry McManus: Yeah but I think what they are saying is that even though they have a contract with the CRP people can the county allow them to build a structure on it. And if so, can they build it with the farm exemption. And in my opinion these folks are farmers. They've got property that touches this, you know, it ain't like Eric said where they are trying to come into town and they are trying to build a house without a permit and I agree with him completely on that. In my opinion these folks are farming, they are actively farming and they are paying their taxes and they are doing everything that they need to be doing and now they want to build and add onto their farm and increase its value. I guess I would like to ask if, if I may, if ... have you got a plan B? I mean, if we all say no... I know that you own some ground elsewhere but...

Jeff Hackett: We have consulted an attorney so we would probably take legal action.

Barry McManus: Okay.

Jeff Hackett: Oh and that's another thing that is kind of a bunch of crap, is now I am a tax payer, we're tax payers and so I have to pay both attorney's...

Barry McManus: So you have to pay both attorney's...

Jeff Hackett: Yeah I have to pay an attorney or whatever to sue and in a roundabout way I get to pay it, I get to pay both ways. So I mean it just... somehow it doesn't seem right but that's...

Carol Schlueter: Yeah sometimes life is just not fair. It's not, I agree.

Jeff Hackett: Yeah I understand that, I see that now.

Carol Schlueter: Okay, I think that we have heard all the testimony, Eric anything different?

Eric Furnas: I would like to add, since maybe it will come up again, I will probably still take this opinion to the county attorney. Because I mean I think it is a topic that's worth discussion.

Emily Geertz: I agree.

Eric Furnas: And if there opinion is that CRP does apply...but that hasn't been our standing for years, I'm sure that he would read this and give his interpretation. I think it's worth examining just because another opinion has been offered.

Carol Schlueter: Okay, I guess I am going to ask them – do you want us to go ahead and make a motion and vote or would you like to table it again?

Elizabeth Hackett: If you make a motion and vote and your vote is no and Eric still takes this to the county attorney and he agrees with us, do we wait the six months or do you reverse your decision?

Eric Furnas: My opinion, and how I think he would advise me to proceed would be in light of a new opinion or if he says CRP and this opinion is correct and should be proof of active incoming producing ag activity I would have you fill out the same form and consider it a new case under new legal guidance. We'd put a new date on it and it would be considered a new application.

Elizabeth Hackett: So it wouldn't require the six months?

Eric Furnas: I don't know, I believe it would be a whole new case. I don't believe that we would require the six months.

Elizabeth Hackett: So if they vote and they vote no we need to pursue this and to continue...

Carol Schlueter: But you are not saying for sure – right Eric?

Eric Furnas: I'm just saying that's my guess of how he would advise that but no I can't say that for sure.

Carol Schlueter: Is that the attorney's call too that they have to wait six months or who's call is that?

Eric Furnas: I will take his advice on how he would tell us to...

Carol Schlueter: Okay, so that we don't know on that.

Elizabeth Hackett: I can cite another case where they went through this and proceeded to build without a farm exemption but they did take it to court and they did win. Ryan Goddard is a prime example of ...

Emily Geertz: If we table this today and you got his opinion, could this be on the August meeting?

Barry McManus: In all honesty, it wouldn't matter, they could reapply and it would be a brand new case and we'd be totally out of it.

Eric Furnas: Most likely he would, I would hope, that he would offer a legal opinion and perhaps a legal review of my interpretation as well. Although I believe that that has been studied already in years past, the guidance to you folks to make a decision.

Carol Schlueter: By next month?

Emily Geertz: We can't guarantee it but maybe...

Carol Schlueter: Okay, so I guess it's still in your ballpark.

Elizabeth Hackett: Well we can keep the process going.

Jeff Hackett: Yep go ahead and vote on it and we'll go from there.

Carol Schlueter: Okay is there any other questions or concerns from the board members? If not, I would entertain a motion for this request.

Dixie Seitz: Can I add... the motion should be made in the positive no matter how you vote.

Carol Schlueter: Yes it's going to be a positive motion.

Eric Furnas: Yes any motion should be made in the positive.

Carol Schlueter: Yes, does anybody want to make a motion?

Barry McManus: I'm a little new here, do we make a motion to vote, is that what you are saying?

Carol Schlueter: You are making a motion to approve this request as written.

Barry McManus: I will make a motion to approve the request as written.

Carol Schlueter: Okay, is there a second to that?

Emily Geertz: I'll second it.

Carol Schlueter: Okay it's been moved and seconded that the request to approve the farm exemption appeal that was previously denied by the Zoning Administrator in order for the Hackett's to build a shop for seed and fertilizer storage, and farm equipment with housing attached on this property, this case was tabled from the last meeting on June 7, 2019. Should I have a roll call vote?

Eric Furnas: Yes.

Barry McManus: Aye.

Carol Schlueter: Am I last?

Eric Furnas: It doesn't matter.

Carol Schlueter: Okay, Nay.

Emily Geertz: Nay.

Charles Clark: Nay.

Carol Schlueter: Okay, so the vote is three to one, denied.

Emily Geertz: I will just add that I am saying Nay because I want this to be reviewed by our county attorney. I think that is a clear way to handle it.

Carol Schlueter: Yes I think it should be reviewed by the county attorney also.
Okay, thank you for coming.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Zoning Administrator

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, July 12, 2019, with Chairperson Carol Schlueter and members Emily Geertz, Charles Clark, and Barry McManus present, Bill Tharp was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Sherry Van Laarhoven-Estrada.

Carol Schlueter: Okay, moving on... next case Eric please?

Eric Furnas: Case #19-07-02. An application has been filed by Sherry F. Vanlaarhoven-Estrada, Record Owner. This property is located in Montpelier Township, in the NE¼ of Sec. 1-T77N-R1E, Parcel F, East of Zale Avenue, containing approximately 3.10 acres and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance to allow an outbuilding to remain that was built only seven feet from the front lot line instead of the required 50 foot setback.

Carol Schlueter: Any correspondence?

Eric Furnas: One, I believe you should all have that attached to your packet. This one is very short and it's from James L. Getman. It says: Ladies and Gentleman, I vote nay. Thanks for asking.

Sherry Van Laarhoven-Estrada: We are neighbors and I figured that they might be against it because we have a problems with them.

Carol Schlueter: Okay, please state your name?

Sherry Van Laarhoven-Estrada: Sherry Estrada. I wanted to ask... it's one of the biggest mistakes that I've made in my life. I... we talked to... after my mom died we had stuff stored at their place and after she died we needed to build something to move this... you know, because we had to get our stuff out of her property. So we were going to build something. So I thought about it for two years that we could put a building on our property. So I don't know if you've looked at the land here. It's just a real long narrow piece. And so I said that the only piece that I see we can put it is over here. That was the plan and we have all timberland. With the property right here, it is 50 feet from there but because there is an easement than I guess I didn't realize that the property line is back there. So we never checked with anything about that. We checked with the utilities and they said how far back we had to be and we said okay and we planned on that. I thought that the contractor was getting all the paperwork done. We go to Florida for the winter because we are retired and we left and we never heard anything from the contractor so I thought everything was being taken care of. Apparently I was supposed to get the permit and I completely failed. When I came home and I got the letter, which was just shocking to me that there was no permit, I quickly went through my file through all the paperwork and I found a little tiny paper with a little tiny box where it said, owner of property will get the permit. So we would have ... not knowing about this. My feeling on this is that we would have been in the same boat because we would have had to come for a Variance because there is no other place on the property where it could go. It's all timber, this is a hill, I don't know if you have all been out there and looked at it. That's the only flat spot. This is all wet here from the farmer's field. This is a pond, there is a hill there.

Carol Schlueter: And there's no place here either?

Sherry Van Laarhoven-Estrada: That's our backyard and there's really no room because it's all trees and this is all wet from drainage from the farmers field and that's the road.

Carol Schlueter: And this is your property line so that's why it's in front of your property?

Sherry Van Laarhoven-Estrada: Right.

Carol Schlueter: And how many feet is it back Eric?

Eric Furnas: From the parcel line it's approximately seven feet. I also measured from the traveled portion of the road and that's approximately 42.

Carol Schlueter: And it's supposed to be how many?

Eric Furnas: Fifty feet from the property line.

Emily Geertz: But there's no where to go.

Sherry Van Laarhoven-Estrada: Right. And I brought pictures for you. I'm not sure why... what is the setback for?

Eric Furnas: What is the purpose of a setback?

Sherry Van Laarhoven-Estrada: Yes.

Eric Furnas: Well there's multiply reasons. It's for aesthetic and uniform location in the neighborhood and probably most important, in certain areas, is site distance issues for pulling out onto the road. If you have a large shed in the front you can't see around it to pull out.

Sherry Van Laarhoven-Estrada: That's why we have it turned that way so we wouldn't have that problem. So you could go in and not have to come out straight. If you look ... let me show you a picture... this is the neighbor...

Barry McManus: So both of these parcels are yours?

Sherry Van Laarhoven-Estrada: Yeah I got this one first, my parents gave it to me, it was on the hill so that I could have a place to build close to them. I took care of my mom. Then I said, you know, this is all just timber, could I have that too so I'm not just sitting in the middle of the piece, you know? So then I got that.

Carol Schlueter: So you owned all of this too, your parents?

Sherry Van Laarhoven-Estrada: They had owned that, they had owned all of it and they gave me that to build on and then I got the rest of it, you know?

Carol Schlueter: Okay and this is where your neighbor lives to the south of it here?

Sherry Van Laarhoven-Estrada: Yes.

Carol Schlueter: Is that the one that wrote the letter?

Sherry Van Laarhoven-Estrada: Yes. This is the picture. You can see there are trees and it's really set back from everything that goes down the road. There fence is out way past ours and all sorts of stuff. And next door they have the, the ones who said no, they have a teenage son and they have great big dogs and the great big dogs come over and they poop on my property all the time where I mow. I've asked them to train their dogs, they don't do anything about it. Their kid has people over all times of the night and using profanity ... I can hear them clear over in my yard. So I kind of like this thing to be there, well maybe this will keep their dogs from coming over, if we are over

there. Sometimes being active ... they are the bad neighbors of the neighborhood, that's all I can say.

Carol Schlueter: Okay the building, what is it used for?

Sherry Van Laarhoven-Estrada: It's going to be... it's like I said we are retired and we have a little utility trailer and I inherited a little mule for the farm for the work around there. Then we've got a... right before I got the letter, two weeks before I bought a motorhome.

Carol Schlueter: So it's just for personal storage? Just toys is what I say.

Sherry Van Laarhoven-Estrada: Yeah.

Carol Schlueter: Okay does anyone else have any questions from the board? If not, Eric what are your comments please?

Eric Furnas: I really don't have anything other than what I put in the development report in your packets. It would appear that there are factors...

Sherry Van Laarhoven-Estrada: Can I say one more thing? I never thought of how close it was because everyday we drive by a barn that's just like a truck length off the road and that's I think maybe even county roads. So I didn't think anything about that that was too close.

Carol Schlueter: Okay, go on Eric.

Eric Furnas: They have heavy timber and there is some slope to the rear. This is not a county maintained road at that point. This is a privately maintained road. So I think the burden is fairly light that you would be creating a public safety issue by allowing this, just based on the typical speeds in that neighborhood. The area has a lot of 10 acre tracts, like hobby farms.

Sherry Van Laarhoven-Estrada: Except for ours... ours is the smallest.

Eric Furnas: Right, one of the burdens for a Variance is to make sure that you are not altering the character of the neighborhood.

Sherry Van Laarhoven-Estrada: Yeah our farm and then the one next door, they have a riding ring in the front yard, it's awful. I've had neighbors come over and say, oh that barn is so nice looking and they are wondering why it's not done.

Carol Schlueter: Right. Okay, how far is this building from the next property line, I guess to the south. I'm not sure which way I am looking at this.

Sherry Van Laarhoven-Estrada: There is a fence in between.

Eric Furnas: I don't know the answer exactly but it is far enough that it would meet the side setbacks. She's not having to ask for a side setback Variance, it's just the front lot line. That's the only issue.

Carol Schlueter: Okay, is there anyone else here that has any questions or concerns and wishes to speak in regards to this request? If there is no one else that has questions, I would entertain a motion for this request.

Emily Geertz: I will make a motion that we grant the request for a Variance in order to allow the outbuilding to remain on this property that was built closer than the 50 feet setback.

Barry McManus: I will second it.

Carol Schlueter: Okay it's been moved and seconded that we approve this request for a Variance to remain that was built on this property only seven feet from the front lot line instead of the 50 feet setback. All in favor please say Aye (4) Opposed (0) Absent (Tharp). The motion is approved, the request is approved.

Sherry Van Laarhoven-Estrada: Okay, thank you.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Zoning Administrator

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, July 12, 2019, with Chairperson Carol Schlueter and members Emily Geertz, Charles Clark, and Barry McManus present, Bill Tharp was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Bob Howard.

Carol Schlueter: Eric would you please read the next request?

Eric Furnas: Case #19-07-03. An application has been filed by Troy A. and Kelly Jo McKim, Record Owners. This property is located in Montpelier Township, in the SE¼ of Sec. 1-T77N-R1E, Auditor's Plat, Farm 2, 1655 Zale Avenue, containing approximately 9.50 acres and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order for the Record Owners to build an outbuilding 25 feet from the front property line, instead of the 50 foot requirement, and in front of the existing dwelling.

Carol Schlueter: Any correspondence?

Eric Furnas: We did receive an email, it's in your packet. Given the length of it, I will assume that you have all read it and it will be made a part of the minutes.

Good Afternoon: Regarding the Case #19-07-03, please submit my comments below to the Board of Adjustment members for their upcoming meeting on Friday, July 12th at 10 a.m. To Whom It May Concern: I am a neighbor directly located to the south of the McKim property who is requesting a variance to construct an outbuilding 25 feet from the front property line instead of the required 50 foot front yard setback. I oppose this variance request as I believe a 25 foot front yard setback is much too close to our roadway and the construction of such a large outbuilding would look aesthetically out of line with the rest of the homes within our small subdivision. I am fairly confident that the 50 foot front yard setback requirement could be met; however, some additional clearing of the McKim property would need to be performed in order to meet this requirement.

After receiving my notification letter regarding this variance, I visited the Muscatine Zoning & Environmental Office in order to obtain more detailed information regarding the construction of the building. The notification letter did not state the size of the proposed building, square footage, height or design and I was not provided with any answers to these questions. I was told that the construction of the proposed building would house an RV that the McKim's own. I do not know the dimensions of the motor home, but I would estimate it to be comparable to a large Greyhound tour bus. This will not be the construction of a small outbuilding by any means; this will be a very large outbuilding to house a very large RV motor home located very close to our road. I asked if the applicant submitted a detailed drawing with his variance request and I was shown a square drawn with red magic marker in the corner of his property on a piece of paper. No other information was provided or known by the Zoning Office. The gentleman I spoke with was very helpful and he urged me to attend the meeting and to ask questions at that time. I am submitting my comments via email as I am unable to attend this meeting.

All of our properties within our subdivision are zoned Ag-1 yet we are all taxed R-1 as the use of the land is entirely residential. At this time there are no farm animals within our residential subdivision and there are no pole barns, garages, sheds, accessory buildings or any other structures located in the front yards of our homes or within 25 feet of our roadway. All out buildings, garages, etc. are located and spaced evenly with the front of the homes or are located behind the homes. This variance, if allowed, would be the first and may set a precedence within our subdivision for allowing huge pole barns or outbuildings to be erected in the future in the front yards. I am cautioning the Board to carefully base it's decision not only on the applicant's variance request but also take into consideration a neighbor's concerns for the unappealing aesthetics this would bring to our residential subdivision for such a large outbuilding to be allowed to be constructed so close to our road. Lastly, I would like to reiterate that I believe the 50 foot front yard setback requirement could be met and a hardship may not exist in this case.

Respectively submitted, Roberta Perreault, 1661 Zale Avenue, Blue Grass, IA 52726 (563) 381-8028

Carol Schlueter: Would the applicant please state your name?

Bob Howard: I am Bob Howard. I am the applicant's father. He couldn't be here today so he asked me to step in for him. Now Eric quoted the Variance that we are looking for here. I am here to try to answer any questions the board has regarding that request. I heard earlier you were asking folks about usage.

Troy is putting this building up, if accepted, to store equipment and he too has a motorhome that he wants to get in out of the weather. It's basically for storage. So I would be more than happy to answer any questions. And if you have a map I can point out a little bit to you.

Carol Schlueter: Okay I think we have a map and I think it's marked. This is what we have been given right here.

Bob Howard: Okay, so this is the entry road and this is the entry road into and out of his property. So he wants to put the building here. Right behind this is a retaining wall and I don't know... they have only owned this property five years and I don't know when this retaining wall was put in. But my guess is that when it was put in it was to maintain a level property here because basically all of this goes down. So there is a little opening here, you can see between these buildings and this property where this wall is and that's an opening where you can drive down and reach the vast majority of the property in the back. You have to drive over this neighbor's retaining wall, or not retaining wall but a dam, for his pond. There is a series of ponds down here, so you have that. Then this shed right here that sets back off of this also has a retaining wall. Now one of the reasons that he felt that there was no where else to go with this, here is the house and here's the shed and this area in between here is the septic system including the field. And he really didn't want to place it here right in front of the home.

Carol Schlueter: But he still would have to get the same setback if it were here.

Bob Howard: Well yeah he could probably make it happen but you would never see the house. So here you are looking at about 25 foot in the front, there is more than adequate space in the back.

Carol Schlueter: And along this lot line for these neighbors.

Bob Howard: Yes.

Carol Schlueter: How is he going to access this building? Where is he going to drive into it at?

Bob Howard: If I understood him correctly the entry would be here.

Barry McManus: Off of the driveway?

Bob Howard: Yeah he would come in off the drive. He has multiply pieces of equipment that he uses... these are on the Scott County and Muscatine County line. These are all like 10 acre properties and they are very narrow and they go straight back. I don't know, but this shows it pretty good but this is all downhill so there's really... that's way too steep ... and even if he was able to maybe put it back here you would never get equipment across this dam.

Barry McManus: So he needs to leave some space here to drive through here to get to the back?

Bob Howard: Oh yeah.

Barry McManus: And the building is how much space? How close will it be to his driveway here?

Bob Howard: I'm not totally sure on that. It's a 50 x 50 building, I believe.

Barry McManus: I was just wondering if he could drive around the building this way going clear to the back all the way. Yeah pull it all the way up to here is what I was saying.

Carol Schlueter: All we have to worry about is just the setback here, we're not worried about this. This is the setback that we are talking about here the 25 feet, it's supposed to be 50.

Emily Geertz: So the road in front... is a private lane just to a few houses?

Carol Schlueter: Yeah it's the same neighborhood that we just talked about, right?

Barry McManus: Yeah just two doors down. So these folks also have the same neighbor.

Carol Schlueter: Yeah they do.

Bob Howard: Yeah this individual with the riding ring out in front of the house, it's a big arena... it's ... well fortunately there's trees that divide that. Then you go the next step up and then you are with the lady that wrote that letter.

Barry McManus: Okay so Zale Avenue and then you have this private drive?

Bob Howard: Yes they have two going in.

Eric Furnas: Yes they have Zale but then they have this other is a privately maintained portion of this.

Bob Howard: Yeah the last meeting the young lady said that she didn't understand that it was that close and I understand that because right where you come in to this whole subdivision back in there... and of course it's older than dirt, this building has been there probably only about eight to ten feet... that's been there probably before there were Variances.

Carol Schlueter: Okay this lady that wrote this letter, this Roberta, does she live here?

Bob Howard: I don't know.

Dixie Seitz: It's just south, the next lot south.

Bob Howard: This one here? Oh okay – if that's who it is they share this pond. And I won't say a word.

Carol Schlueter: Okay so 1661 Zale Avenue is her address.

Bob Howard: So I will answer any other questions you have.

Carol Schlueter: Okay any other questions from the board? Eric what are your comments please?

Eric Furnas: It's very similar to the case we had before this, the neighborhood is the same. It's somewhat agricultural... there's a septic drainfield, a pond, there are slopes, it appears that there are limiting factors that make it very difficult to put a building in the rear yard. So I guess your real burden is if it's typical of the characteristics of the ... this general location as a whole ... and would the public health and safety be adequately protected should this Variance be granted. So if it were 25 feet from the property line and then another 42 feet from the traveled portion of the county road, it's a good distance. I don't see that there would be any sight distances issue.

Carol Schlueter: Because this one is back 25 feet more than the last one.

Eric Furnas: Well the other one was seven feet. And I believe that they've made every effort to have this go back as far as they can before they started encountering any of those limiting factors. So I believe that this Variance, if approved, would just be granting the minimum relief necessary.

Carol Schlueter: Okay are there any other questions or comments from the board? If not, I would entertain a motion for this request.

Charles Clark: So moved.

Carol Schlueter: Is there a second?

Barry McManus: Second.

Carol Schlueter: It's been moved and seconded that we approve this Variance to build this outbuilding only 25 feet from the front lot line instead of the 50 foot requirement and in front of the existing dwelling for Troy and Kelly McKim. All in favor of the motion please say Aye (4) Opposed (0) Absent (Tharp). The motion is approved, the request is approved.

Bob Howard: Thank you.

Carol Schlueter: You're welcome.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Zoning Administrator

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, July 12, 2019, with Chairperson Carol Schlueter and members Emily Geertz, Charles Clark, and Barry McManus present, Bill Tharp was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: David Carstens and Kamella Harris.

Carol Schlueter: Eric would you please read the next request?

Eric Furnas: Case #19-07-04. An application has been filed by Willis J. and Kamella N. Harris, Record Owners. This property is located in Seventy-Six Township, in the NE¼ of Sec. 34-T76N-R3W, Hillside Addition, Lots 10 & 11, South of US Hwy. 61, 1960 Hwy. 61, containing approximately 2.29 acres, and is zoned R-1 Residential District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order for the Record Owners to build a 40' x 96' shop on Lot 10 that would be in front of their existing residence on Lot 11.

Carol Schlueter: Any correspondence?

Eric Furnas: No ma'am.

Carol Schlueter: Okay if the applicant would please state your name and tell us what you are asking for.

Kamella Harris: We are wanting to build an outbuilding on the lot that we own that is adjoining our house. We cannot build it any other place because there is a ravine in the back.

Emily Geertz: So do you mean right up here?

Barry McManus: I think it's over here.

Eric Furnas: I have a better drawing that their surveyors prepared just recently. I will need to explain some things on that too.

Kamella Harris: Yeah this is all ravine here.

Carol Schlueter: Okay but it's on this lot here?

Barry McManus: Yes.

Carol Schlueter: And where do you live?

Kamella Harris: Just right next door.

Carol Schlueter: Okay, so you live here and you want to build an outbuilding next to you on this lot?

Kamella Harris: Yes.

Emily Geertz: So it's not quite right in front of your house. And is this off of a private road?

Eric Furnas: Yes there are a few things that I need to cover with you that makes this one a little unique. The maps that I provide show the parcels as they are right now. There were some, I believe, some mistakes made when the highway was realigned in that area. The DOT replaced that drive for that subdivision. As you can see, the drive is outside of their parcels, outside of the subdivision, I believe that was a mistake. The Willis have already begun

the process of obtaining the extra right-of-way from the DOT. Otherwise they couldn't be asking for a Variance because this building would actually be in the DOT right-of-way. They've done that so I want you to understand and realize that any Variance that you may consider should be made conditional on the final recording of that right-of-way acquisition. That is moving forward but it just takes time to get the DOT to have that done. I told them that we'd entertain the consideration for a Variance while they are working through that with the DOT. I didn't want to hold them off anymore during the building season. So once the rest of that is done... so the survey has been completely by Martin & Whitacre and it is submitted to the DOT for all of their signatures. Once that has been completed and they have the formal DOT right-of-way they will own all of that property and they will adjust the building by a half of a foot to meet the 50 foot setback so the only Variance they are asking for is because it would be in the front yard space with their house on the adjoining lot. So right now that is still owned by the State DOT and it's not their property, but all indications are that it shortly will be. They will be getting rid of some of their extra right-of-way. So there are pretty steep slopes and there really is nowhere else on these lots to locate an outbuilding in the backyard. So I just wanted to clarify that this should be a conditional ...if you so choose to grant this Variance. We wouldn't issue a building permit until that's done, but I wanted you to be aware of that.

Emily Geertz: Okay, got it.

Barry McManus: A friend of mine was the engineer on the four lane and he says that the original drawing that they had their driveways going straight up and they didn't realize...

Charles Clark: Going straight up the hill?

Barry McManus: Yeah it's like here you go folks, Merry Christmas. So you already lost like 45 feet of property to get your access in there. That might have been before any houses were built, but still...

Carol Schlueter: Okay are there any questions from the board members? If not, I would entertain a motion for this request?

David Carstens: May I say one thing?

Carol Schlueter: Oh I'm sorry, yes, please state your name. I'm sorry.

David Carstens: My name is Dave Carstens, I'm their neighbor. I am the next house over. Where they are going to build I can't even see the building from my house because of the way the ravine is and the trees are hiding it. So me and my wife don't have a problem with them doing that up there. We are the only two houses up there. I don't see anybody else having a problem.

Carol Schlueter: Okay, thank you for the information. Okay now I would entertain a motion for this request.

Barry McManus: I move that we go ahead and vote on the request.

Emily Geertz: It needs to be phrased ...

Eric Furnas: The motion needs to be say a motion to approve.

Barry McManus: Okay, a motion to approve.

Eric Furnas: And I would request that it is also subject to the final DOT approval of the right-of-way.

Barry McManus: Okay, that it also be subject to the final DOT approval of the right-of-way.

Carol Schlueter: Okay is there a second for that motion?

Emily Geertz: I'll second it.

Carol Schlueter: It's been moved and seconded that we approve this request subject to the final DOT approval of the right-of-way, all in favor please say Aye (4) Opposed (0) Absent (Tharp). The motion is approved, the request is approved subject to the right-of-way.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Zoning Administrator