

STATE OF ILLINOIS)

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COUNTY OF DEKALB)

ORDINANCE 2006-11

**AN ORDINANCE DENYING A USE VARIATION
FOR A NEW SINGLE FAMILY HOME
ON ONE ACRE ON THE WEST SIDE OF EAST COUNTY LINE ROAD
IN CORTLAND TOWNSHIP**

WHEREAS, Leonard and Judith Baumgartner, the property owners, have filed an application for a Use Variation to allow the construction of one single-family home on a vacant one-acre parcel located on the west side of East County Line Road, approximately 2,000 feet south of Barber Greene Road, in Cortland Township, said property being zoned A-1, Agricultural District and legally described as shown in Exhibit "A" attached hereto; and

WHEREAS, following due and proper notice by publication in the Daily Chronicle not less than fifteen (15) nor more than thirty (30) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least ten (10) days prior thereto, the DeKalb County Hearing Officer conducted a public hearing on March 2, 2006, at which the petitioners presented evidence, testimony, and exhibits in support of the requested Use Variation, and no members of the public testified in favor of or in opposition to the petition; and

WHEREAS, the Hearing Officer, having considered the evidence, testimony and exhibits presented has made his findings of fact and recommended that the requested Use Variation be denied, as set forth in the Findings of Fact and Recommendation of the DeKalb County Hearing Officer, dated March 8, 2006, a copy of which is appended hereto as Exhibit "B"; and

WHEREAS, the Planning and Zoning Committee of the DeKalb County Board has reviewed the exhibits and testimony presented at the aforesated public hearing and has considered the findings of fact and recommendations of the Hearing Officer, and has forwarded to the DeKalb County Board this Ordinance to deny the requested Use Variation; and

WHEREAS, the DeKalb County Board has considered the findings of fact and recommendations of the Hearing Officer and the Planning and Zoning Committee, and has determined that granting the Use Variation to allow the construction of one single-family home on the subject property would be inconsistent with the requirements and intent of Section 10.02.C of the DeKalb County Zoning Ordinance;

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

SECTION ONE: The Findings of Fact and Recommendation of the DeKalb County Hearing Officer, Exhibit "B" attached hereto, is hereby accepted, and the findings of fact set forth therein are hereby adopted as the findings of fact and conclusions of the DeKalb County Board.

SECTION TWO: Based on the findings of fact set forth above, the request for a Use Variation by Leonard and Judith Baumgartner to allow the construction of one single-family home on a one-acre property located on the west side of East County Line Road in Cortland Township, said property legally described in Exhibit "A" attached hereto, is hereby denied.

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

PASSED BY THE COUNTY BOARD THIS 17TH DAY OF MAY, 2006, A.D.

Chairman, DeKalb County Board

ATTEST:

County Clerk

Legal Description of Subject Property

A PART OF LOT 130 IN SECTION 13, TOWNSHIP 40 NORTH, RANGE 5, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF COUNTY CLERK'S SUBDIVISION FILED IN THE OFFICE OF THE RECORDER OF DEKALB COUNTY, ILLINOIS ON MAY 15TH, 1903, IN BOOK "D" OF PLATS, PAGE 1 TO PAGE 4 IN DEKALB COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT AN IRON STAKE IN COUNTY LINE ROAD MARKING THE SOUTHEAST CORNER OF LOT 130 OF THE COUNTY CLERK'S SUBDIVISION IN SECTION 13, TOWNSHIP 40 NORTH, RANGE 5, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SAME IS RECORDED IN THE COUNTY RECORDER'S OFFICE OF DEKALB COUNTY, ILLINOIS ON MAY 15TH, 1903, IN BOOK "D" OF PLATS, PAGE 1 TO 4; RUNNING THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 130, AT AN ANGLE OF 90 DEGREES 29 MINUTES MEASURED COUNTERCLOCKWISE FROM THE EAST LINE OF SECTION 13 AND BEING THE EAST LIN OF SAID LOT 130, A DISTANCE OF 208.72 FEET TO AN IRON STAKE; RUNNING THENCE NORTHERLY, PARALLEL WITH THE SAID EAST LINE, 208.72 FEET TO AN IRON STAKE; RUNNING THENCE EASTERLY, PARALLEL WITH THE AFORESAID SOUTH LINE, 208.72 FEET TO AN IRON STAKE ON THE EAST LINE AFORESAID WHICH IS 208.72 FEET NORTH OF THE PLACE OF BEGINNING; RUNNING SOUTHERLY ALONG SAID EAST LINE 208.72 FEET TO THE PLACE OF BEGINNING. ALL LYING AND BEING IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 5, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DEKALB COUNTY, ILLINOIS.

P.I.N.: 09-13-200-010



**DeKalb County
Planning/Zoning/Building Department**

MEMORANDUM

TO: Planning and Zoning Committee

FROM: Paul R. Miller, AICP
Planning Director

DATE: April 6, 2006

SUBJECT: Baumgartner Use Variation, Petition CO-06-02

Leonard and Judith Baumgartner, the property owners, have filed a petition for a Use Variance for a vacant one acre parcel located on the west side of East County Line Road, approximately 2,000 feet south of Barber Greene Road, in Cortland Township. The petition is to allow the construction of one single-family detached dwelling on an agriculturally-zoned parcel of less than 40 acres in size. The subject property is zoned A-1, Agricultural District.

A public hearing on the requested Use Variance was held by DeKalb County Hearing Officer Kevin Buick on March 2, 2006. The petitioners indicated that the vacant one-acre parcel had originally been a buildable lot when acquired by their parents, and that Mr. Baumgartner's mother had given the lot plus one other to the petitioners as compensation for their 10 years of labor on her farm. The petitioners built their house on one lot, and would like to give the other to their daughter and son-in-law as a buildable lot. Staff recommended denial of the request, on the basis that there was no financial hardship associated with the request. Staff asserted that financial hardship, in the form of a premium price having been paid for a buildable lot, is the key finding in granting a Use Variation, and the testimony and evidence did not meet this criteria. The petitioners maintained that "price paid" does not require it be money, and that a premium price was paid in the value of their labor. Staff responded that this is a novel interpretation of the regulations which has not been cited in any previously granted Use Variation. No members of the public spoke in favor of and none in opposition to the request.

The Hearing Officer has submitted his Findings and Recommendation, in which he recommends **denial** based on failure to meet the specific particular hardship requirement for Use Variations. The Planning and Zoning Committee first considered this request at its meeting of March 22, 2006, and tabled action to the scheduled April 26 meeting. The Committee is requested to forward an ordinance for approval to the full County Board, and may recommend approval, conditional approval or denial of the proposal.

cc: Leonard and Judith Baumgartner
Richard Schmack, attorney for petitioner

PRM:prm

Leonard and Judith Baumgartner
Use Variation
CO-06-02
March 8, 2006

FINDING OF FACT

This matter came before the DeKalb County Alternate Zoning Hearing Officer on March 2, 2006 for a Public Hearing with respect to a Petition filed in accordance with the requirements of Sections 10.01.C and 10.02 of the DeKalb County Zoning Ordinance seeking a Use Variation to permit construction of a single-family residence on a parcel that is less than 40 acres in size.

The application of the Petitioners was duly filed in accordance with DeKalb County Code. The Petition and its attachments are incorporated into the Record of Proceedings herein by reference. A Staff Report dated February 15, 2006, prepared by Planning Director Paul R. Miller is also incorporated, as is a Response to Staff Report prepared by Petitioners' attorney, Richard Schmack.

Publication of Notice

The Notice of Public Hearing was duly published in accordance with the DeKalb County Code in the Daily Chronicle on February 2, 2006.

Location of Subject Property

The parcel is a vacant one-acre parcel located on the west side of E. County Line Road, approximately 2000 feet south of Barber Greene Road, in Cortland Township.

Site Characteristics

A. Location-Access

The subject parcel totals one acre and is presently zoned A-1, Agricultural District. The property is currently being used agriculturally, in connection with the farming of the adjoining 100 acre farm parcel owned by Petitioner, Leonard Baumgartner and his sister Betty Reingart. Access to the property would be from E. County Line Road.

B. Soils-Drainage

No soil report was provided by Petitioners, but the soil condition and drainage issues would appear to be immaterial. Soils support agricultural use and would also support a septic field for a single family dwelling if the Use Variation were granted.

C. Proposed Use

The Petitioners proposed to construct a single-family detached dwelling on the property if the Use Variation is granted.

D. Water Supply/Sewage Disposal

There are no facilities located on the parcel at the present. Bob Drake, Director of the Environmental Health Division of the DeKalb County Health Department, indicated that the size of the parcel and the soil would be satisfactory for the installation of a private sewage disposal system, provided that the septic system was located on the western portion of the lot and the well for water service would be located on the eastern portion of the lot.

Correspondence

Correspondence was received dated February 23, 2006, from Bob Drake as referenced in the preceding paragraph. Mr. Drake's correspondence identified particular locations for any proposed septic system and well for the parcel if a single-family residence were to be constructed upon the parcel.

Correspondence was also received from DeKalb County Engineer William Lorence dated February 9, 2006. Mr. Lorence indicated that if the Use Variation were to be granted, he would be requesting a provision eliminating access to E. County Line Road when alternative local street access becomes available. Mr. Lorence further noted that because E. County Line Road is rapidly approaching arterial status, a minimum set back of 100 feet from the existing right-of-way would be appropriate from the County's perspective. (50 feet additional added to the existing 50 foot requirement).

Site Visit

The undersigned viewed the property on March 1, 2006.

Persons Appearing on Behalf of the Petitioner:

Petitioners Leonard and Judith Baumgartner were present at the Public Hearing and appeared through their attorney, Richard Schmack. Mr. Schmack elicited testimony from his client with regard to the facts in support of the Petition for Use Variation.

Leonard Baumgartner, 21981 E. County Line Road, Maple Park, testified that he and his wife acquired the subject one acre parcel from his mother in 1969, when he was 24 years of age. He stated that he and his wife provided labor to Leonard's mother Esther Baumgartner's farm during the late 1960's and early 1970's while he was simultaneously working full time with the Elburn Packing Company in Elburn, Illinois. He testified that he worked 55 to 60 hours per week at Elburn Packing Company, but because he worked third shift he was able to do work on his mother's farm at the same time. This work included planting, cultivating, milking cows, and doing chores. Mr. Baumgartner testified that he worked approximately 30 hours per week in support of the family farm operation.

Judith Baumgartner, 21981 E. County Line Road, Maple Park, testified that she and her husband lived in a farm house on the corner of Barber Greene Road and E. County Line Road. She testified that she also provided labor for the farm operation for Leonard's mother. She indicated that she and her husband stopped working on Esther Baumgartner's farm in 1974, when Esther Baumgartner remarried.

Leonard Baumgartner testified that his siblings also worked on his mother's farm. He stated that his mother purchased a pick up truck for his sister as recompense for the work provided for Esther Baumgartner's farming operation. Leonard Baumgartner testified that his recompense was this one acre parcel. Mr. Baumgartner also received another one acre parcel on the corner of Barber Greene and E. County Line Road, where he built a house and where he and his wife now live.

Mr. Baumgartner testified that the minimum wage for farmers at the time was approximately \$1.00 per hour. He estimated that he had provided approximately 23,400 hours of labor in support of his mother's farm operation. He stated that his mother never had to hire outside laborers, and that his mother kept the proceeds from the farming operation and did not share them with her children. He testified that the way the farm operation worked was as "a family matter . . . my mother was a farm wife, and this was her understanding." [that Leonard and Judith would receive this land in exchange for their work on the family farm]

Mr. Baumgartner stated that based upon his and his attorney's review of the figures, farmland had a value of \$1,921.00 per acre in 1969. He estimated the value of his and his wife's labor therefore to be approximately \$23,400.00 in exchange for the parcels. He introduced a copy of the deed dated February 5, 1969, which conveyed the

subject parcel to him. There was a notation on the deed reflecting the recording fee of \$3.50, but no indication on its face as to transfer tax stamps or what transfer tax might have been paid at the time of recording of the deed. There was likewise no indication on the face of the deed that the transaction was exempt from transfer tax due to minimal consideration or for any other reason. Mr. Baumgartner testified that he was not aware of any transfer tax paid at the time of conveyance, but he was not aware that any transfer tax was not paid. He simply felt that his mother's attorney, Wayne Wilson, had taken care of everything in connection with this transfer.

William Ring, 702 Willow Street, Maple Park, testified that he is the son-in-law of Leonard and Judith Baumgartner. He stated that he and his wife, the Baumgartners' daughter, had plans for a 2100 to 2500 square foot ranch house with an attached garage that they would construct on the subject parcel if the Use Variation were to be granted by the County Board. He testified that the construction of this house would not diminish property values, and stated that he felt that the house would be far enough away from the farming operation that there would be little impact on the crop.

Attorney Richard Schmack asserted that the Petitioners have met all of the criteria necessary to support a Variation pursuant to 10.01.C and a Use Variation pursuant to 10.02, with one possible exception. He felt that the key question was whether or not the property was "purchased." Mr. Schmack argued that the property was purchased with labor by Mr. and Mrs. Baumgartner, and submitted his belief that nothing in the relevant section of the Ordinance requires the "purchase" to be exclusively based upon cash as an exchange medium.

In response to questions asked by Paul Miller, DeKalb County Planning Director, Mr. Baumgartner stated that the property has been used for row-crop agriculture for the past five years. Previously, the property had been used as pasture land for cattle.

Mr. Miller inquired as to whether the yield for this acre was "substantially poorer" than other acres on the adjoining farmland. Mr. Baumgartner stated that the yield for this acre was not as good because of the nature of the property as the "corner" of the farm field. He indicated, however, that the quality of soil on this particular parcel was the same as the neighboring farmland.

Mr. Miller inquired as to whether the subject parcel produced as much revenue for the farm as any other random acre of the farm. Although the yield was slightly different because of the area available due to its "corner lot" status, Mr. Baumgartner conceded that the subject parcel was as productive as any other acre for farm purposes.

Testimony or Comments from Other Interested Persons at the Public Hearing:

There were no comments in favor of, nor opposed to, the proposed Use Variation by those in attendance at the Public Hearing.

Staff Input

Paul Miller, DeKalb County Planning Director, recommended denial of the Petition because of what he characterized as Petitioners' failure to meet the key criteria of the Use Variation requirements.

Mr. Miller noted that "nothing in the testimony of the Petitioners indicated that, had there *not* been a promise of acquiring this lot, [Petitioners] would *not* have worked on Esther Baumgartner's farm and provided the labor that the Petitioners testified was provided." He stated that the testimony of the Petitioners demonstrated that the grant of the acre of land was "simply a grant of that one acre of land, as opposed to something that was conditioned upon the work that was done."

Next, Mr. Miller stated that he believed that there was nothing in the testimony offered by Petitioners to the effect that they worked as long on this farm operation as they did because of the "buildability" of the lot. Absent demonstration of these matters, said Mr. Miller, neither the intent nor the letter of the regulations instituted in Section 10.02 of the DeKalb County Zoning Ordinance have been met by Petitioners.

Mr. Miller reviewed the background and history behind the creation of the Use Variation provisions in the

DeKalb County Zoning Ordinance in 1993. After the County established the “40 Acre Rule” in 1991, Mr. Miller identified that some individuals successfully petitioned the County Board for mitigation of the harshness occasioned by the institution of the requirement of 40 acres for a residential dwelling in the A-1 District. According to Mr. Miller, the intent of the Use Variation provisions revolved around the recognition in 1993 of a limited class of individuals who could argue the following: “I bought a parcel of land to build a house on, I paid a premium price for that land because of its buildability, and now my investment is lost because of what the County has done in requiring a minimum of 40 acres of land for construction of a residential dwelling.”

The specific hardship addressed by the Use Variation provisions, according to Mr. Miller, was the outlay of initial cash and the loss of investment by these individuals. Mr. Miller stated his belief that the Use Variation provisions are not intended to apply to “other situations in which land exchanges hands, for whatever reason, including for the particular reason as was laid out by Petitioner where it was ‘inside the family’ gifting one or two parcels from the farm owner to the children who worked the farm.” Mr. Miller felt that this situation, “where you have the children of the farm family working the farm, and the parents giving them land as a consequence of their efforts in that regard is not what the County intended in establishing the criteria for Use Variations.” Mr. Miller stated his belief that the financial aspect regarding individuals who had invested in the “buildable” agricultural lot prior to enactment of the Forty Acre Rule in 1991 was the driving force behind defining the specific criteria to be met with regard to the Use Variation provisions.

Mr. Miller disputed Petitioners’ contention that their labor “purchased” the property. He conceded that the Petitioners’ testimony unequivocally demonstrated that Petitioner owned the property prior to 1976, but did not believe that the testimony demonstrated a “purchase” of the property. Responding to Attorney Schmack’s contention that the absence of language limiting “purchase” in Section 10.02.C.1 to cash purchases in the explicit language of the ordinance meant that the County Board implicitly intended to include noncash purchases within that definition, Mr. Miller argued that the opposite was true. He felt that because there was no indication that the Board had ever contemplated noncash purchases in 1993 or again in 2000 when the Code was amended again, it was clear that the specific limited class that the County Board intended to include in the Use Variation provisions did not include situations such as brought forth by these Petitioners. The County Board’s intent, he said, was focused upon the remedying the “financial” harm suffered by a limited class of people as result of the County’s zoning changes. He felt that it was a “stretch of the letter of these regulations” to characterize the labor amount performed by Petitioners as somehow meeting the premium price element of Section 10.01.C.3. He further characterized Petitioners’ attorney’s arguments as an “invention of the intent” of the County Board.

Mr. Miller offered comments regarding the issue of precedent, and felt that the granting of the Use Variation under the circumstances set forth by these Petitioners would establish a set of cases that have not been available to employ use of the Use Variation procedure previously. He requested that the Hearing Officer and the County Board consider the nexus between the working of the farm and the buildability of the property, stating that (in his opinion) there was no logical connection between the two. Finally, Mr. Miller characterized Petitioners’ arguments as “quite a novel interpretation” of the regulations and disagreed with Attorney Schmack’s assertion to the contrary.

Petitioners’ Final Word

In response, Attorney Schmack stated that he did not hear Mr. Miller say anything in his comments to the effect if the property were purchased for cash instead of for labor, there would be anything else wrong with Petitioners’ application that would violate any of the other criteria set forth in the DeKalb County Zoning Ordinance. He stated that the fact that the County Board did not apparently discuss whether the word “purchase” was limited to cash outlay did not mean that the County Board intended to limit it to cash only. Mr. Schmack asserted that this one acre subject parcel was designed to be a residential lot, was conveyed as a residential lot, and does not change its character simply because it is being farmed by the adjoining land owner.

FINDING and RECOMMENDATION

Section 10.02 of the DeKalb County Zoning Ordinance vests the exclusive authority to approve or deny a

request for a Use Variation in the DeKalb County Board. Use Variations are only authorized to permit the construction of one single family detached dwelling on any parcel less than 40 acres in size, which was legally recorded and existing prior October 1976, had agricultural district zoning prior to September 18, 1991, and where no dwelling unit exists thereon on these dates. There is no dispute that, under the circumstances present in this matter, the property would meet the above criteria. The property in question involves a parcel which was legally recorded and existing as of February 4, 1969, had agricultural district zoning, and had (and has) no dwelling unit existing thereon.

In evaluating a recommendation to the County Board with respect to a Use Variation, a Hearing Officer must consider the following:

1. Whether the Petitioner purchased the property prior to December 31, 1993;
2. Whether the Petitioner has demonstrated that the property was buildable under the applicable zoning regulations at the time it was purchased.
In addition, the Hearing Officer is required to consider the following factors:
3. Did the Petitioner pay a premium price for the property because it was buildable (for example, substantially more than agricultural land was selling for at that time)?; and
4. Whether the property is viable for agriculture or any other reasonable use.

It is the undersigned's belief that, based upon the above language, the intent of the DeKalb County Board in enacting these provisions was to fix and create a limited class of eligible candidates for qualification for Use Variations at the time of enactment, based upon the demonstration of impact on legitimate financial interests at the time. In the undersigned's opinion, strict application of these requirements are necessary, and the burden of demonstrating adherence to these narrow and limited conditions lies with the Petitioner.

I will begin by stating that I found that the testimony at the Public Hearing of both Petitioners to be straightforward, honest, and credible. I accept and understand the realities associated with family relationships, and family farm relationships in particular. The imprecision of these types of arrangements do not ordinarily cause concern, and from a general perspective it is the substance, rather than the form, which dictates results. I do not doubt that Petitioners worked many hours in support of Esther Baumgartner's farm operation during the 1960s and 1970s. The facts clearly demonstrate that Esther Baumgartner conveyed the subject parcel, along with another one acre parcel, to Petitioners prior to the 1976 cutoff date associated with parcel creation under the Use Variation under the criteria. However, the inability to distinguish clearly whether the subject parcel was conveyed to Petitioners as a gift in appreciation for their efforts or as a preconditioned, objective, arms-length "purchase" is particularly troubling to the undersigned and appears ultimately to subvert their efforts to qualify for the favorable treatment under the Use Variation provisions. I believe that it is Petitioners' burden to demonstrate clearly that they meet the subject criteria. I find that they have not been able to do so.

If the property was conveyed as a gift, or merely as a broadly appreciative token of recognition for efforts provided, I do not believe that the conveyance of the parcel demonstrates "purchase" as contemplated by the DeKalb County Board in enacting the provisions of Section 10.02.C. I believe that objective measurement of the purchase is necessary establish inclusion within the criteria, and this requires evidence of a pre-existing agreement (i.e. that Petitioners would receive the parcel only in exchange for performing certain required labor), and a quantification of what is necessary (i.e. that, for example, a threshold number of hours were necessary in order to acquire the property). This, unfortunately, is missing from Petitioners' testimony and the idea that the transaction in question is a "purchase" is therefore undermined. Had the Petitioner been able to demonstrate, for example, that transfer tax of \$35.10 was paid to the state in 1969 establishing a basis to quantify a "purchase" in an amount of 23,400, Petitioners may have had an ability to mount a stronger argument. Regrettably for Petitioners, they do not appear to have facts available to demonstrate that their acquisition of the parcel was anything more than a gift or a reward. For purposes of this Section, I do not believe that such is sufficient to demonstrate that Petitioners fall within the limited class

intended to be established by Section 10.02 as being eligible for a Use Variation. I find that the requirement of 10.02.C.1 has not been met by Petitioners.

Even if one steers around the strict parsing of the word “purchase,” I cannot find that Petitioners paid a premium price of the property because it was buildable at the time in accordance with Section 10.02.C.3. Testimony was offered to the effect that the Petitioners received the subject parcel and a second parcel (upon which Petitioners have constructed their own home) in exchange for their efforts, while Petitioner Leonard Baumgartner’s sister received a pick up truck for what were presumably similar efforts. Petitioners’ testimony gave no indication as to any parity or disparity between the efforts provided by Petitioners, and the efforts provided by Petitioner’s sister, who received a pick up truck. The measurement of the “buildability premium” would seem to the undersigned to be in accordance with the standards as analyzed at the time of the conveyance. Apparently, Petitioners’ mother may have equated the value of the two parcels with the value of the pickup truck. I believe that Petitioners’ attorney’s analysis is based upon an after-the-fact evaluation of the labor that was provided and does not demonstrate that the purchase price was a contemplated by the parties as a “premium price because the land was buildable” – the strict criteria relied upon by the County Board in establishing the requirements for favorable consideration of a Use Variation. As Mr. Miller pointed out during the hearing, there was no indication that Petitioners worked the number of hours that they did *only* because they needed to do so in order to acquire the land. In my opinion, that threshold (23, 400 hours, for example) would be necessary in order to demonstrate that Petitioners were purchasing for a premium price.

Finally, it is quite apparent that the property is viable for agricultural use and such is the current use of the property. Mr. Schmack correctly notes that the fact that Petitioner Leonard Baumgartner and his sister are farming the neighboring parcel and therefore are able to farm this on a row crop basis is fortuitous. He asserts that the property, as a one acre parcel, would have no stand alone value for a row crop agriculture. He is quite right on that point. However, as the undersigned reads the criteria, this provision is simply meant to evaluate whether this property is viable for agricultural or any other reasonable use, and it clearly is so viable.

With regard to the elements of Section 10.01.C, as relating to general variation standards, I cannot find that the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in the district in which it is located. The property’s current use for agricultural purposes, notwithstanding its limitations as a “corner” property, demonstrate that a reasonable return is currently being obtained with regard to the property. (If the point were pressed, Mr. Schmack’s contentions as set forth in the previous paragraph might have applicability here, however). While there may well be unique circumstances associated with this property, I am mindful of the cautions of the DeKalb County Planning Director regarding precedent and believe that there may very well be other classes of individuals who might assert similar circumstances that would need to be contended with if the Variation request is granted.

I would find that the Variation, if granted, would not alter the essential character of the locality.

Nevertheless, for the foregoing reasons, and with appreciation for Petitioners’ sincerity in seeking only the opportunity to allow their children to build a home on land owned by them, I must recommend denial of the Use Variation request and submit the same to the Planning and Zoning Committee of the DeKalb County Board for further review with ultimate transmission to the DeKalb County Board for final decision in this matter.

Respectfully submitted,

KEVIN E. BUICK

Alternate Hearing Officer
DeKalb County

STATE OF ILLINOIS)
)SS
COUNTY OF DEKALB)

ORDINANCE 2006-12

**AN ORDINANCE APPROVING A SPECIAL USE PERMIT
FOR A STORAGE BUSINESS
ON PROPERTY LOCATED AT 16133 S. FIRST ST.
IN AFTON TOWNSHIP**

WHEREAS, Steve and Lori Diedrich, the property owners, have filed an application for a Special Use Permit in accordance with Section 9.01 of the DeKalb County Zoning Ordinance to allow the use of agricultural buildings that are no longer used for agriculture for the operation of an RV storage business on a 7.18-acre property located at 16133 South First Street in Afton Township, said property being zoned A-1, Agricultural District and legally described as shown in Exhibit "A" attached hereto; and

WHEREAS, following due and proper notice by publication in the Daily Chronicle not less than fifteen (15) nor more than thirty (30) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least ten (10) days prior thereto, the DeKalb County Hearing Officer conducted a public hearing on March 23, 2006, at which the petitioners presented evidence, testimony, and exhibits in support of the requested Special Use Permit, and no members of the public testified in favor of the request and none in opposition thereto; and

WHEREAS, the Hearing Officer, having considered the evidence, testimony and exhibits presented has made his findings of fact and recommended that the requested Special Use Permit be granted, subject to conditions, as set forth in the Findings of Fact and recommendation of the DeKalb County Hearing Officer, dated March 23, 2006, a copy of which is appended hereto as Exhibit "B"; and

WHEREAS, the Planning and Zoning Committee of the DeKalb County Board has reviewed the testimony and exhibits presented at the public hearing and has considered the Findings of Fact and recommendation of the Hearing Officer, and has forwarded a recommendation to the DeKalb County Board that the requested Special Use Permit be approved; and

WHEREAS, the DeKalb County Board has considered the findings of fact and recommendation of the Hearing Officer and the recommendation of the Planning and Zoning Committee, and has determined that granting the Special Use Permit to allow the use of agricultural buildings for RV storage on the subject property would be consistent with the requirements established by Section 9.02.B.3. of the DeKalb County Zoning Ordinance;

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

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

SECTION TWO: Based on the findings of fact set forth above, the request of Steve and Lori Diedrich for a Special Use Permit to allow the use of agricultural buildings that are no longer used for agriculture for the operation of an RV storage business on property located at 16133 South First Street in Afton Township, said property being legally described in Exhibit "A" attached hereto, is hereby approved.

SECTION THREE: This approval of a Special Use Permit is subject to the following conditions:

1. The petitioner shall apply for a Sign Permit, in accordance with the requirements of Article 7 of the County Zoning Ordinance;
2. Operation of the recreational vehicle storage business shall be in accordance with the application for Special Use Permit filed by the petitioner;

3. In accordance with the intent of the Zoning Ordinance, the buildings in which RVs are stored shall be maintained in good condition while the RV storage business is in operation; and
4. No outside storage of RVs shall be permitted.

SECTION FOUR: This Ordinance shall be in full force and effect upon its adoption by the County Board of DeKalb County, Illinois.

SECTION FIVE: Failure of the owners or other party in interest to comply with the terms of this Ordinance, after execution of such Ordinance, shall subject the owners or party in interest to the penalties set forth in Section 11.05.A. and B. of the DeKalb County Zoning Ordinance.

PASSED BY THE COUNTY BOARD THIS 17TH DAY OF MAY, 2006, A.D.

Chairman, DeKalb County Board

ATTEST:

County Clerk

Legal Description of Subject Property

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE NORTHERLY ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, 560.00 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING NORTHERLY ALONG SAID EAST LINE, 395.03 FEET; THENCE WESTERLY, AT AN ANGLE OF 89 20' 56", MEASURED CLOCKWISE FROM SAID EAST LINE, PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, 794.49 FEET; THENCE SOUTHERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 395.00 FEET; THENCE EASTERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, PARALLEL WITH SAID SOUTH LINE, 790.00 FEET TO THE POINT OF BEGINNING, ALL IN AFTON TOWNSHIP, DEKALB COUNTY, ILLINOIS.

P.I.N.: 11-08-400-013



**DeKalb County
Planning/Zoning/Building Department**

MEMORANDUM

TO: Planning and Zoning Committee

FROM: Paul R. Miller, AICP
Planning Director

DATE: April 6, 2006

SUBJECT: Diedrich Special Use Permit
Petition AF-06-04

Steve and Lori Diedrich, the property owners, have filed a petition for approval of a Special Use Permit to allow the continued operation of an RV and vehicle storage business on property located at 16133 South First Street in Afton Township. The 7.18-acre subject property is located on the west side of S. First, approximately 760 feet north of the intersection with Elva Road, and is zoned A-1, Agricultural.

The required public hearing was conducted on March 23, 2006 by DeKalb County Hearing Officer Ron Klein. The petitioner provided testimony and exhibits in support of the requested Special Use, including that the petitioners have been operating the RV storage use for the past two years out of three buildings on the property. There is an existing sign for the business, and the petitioner indicated that all required County permits would be obtained. On the recommendation of the County Engineer, the petitioner agreed that there would be no outside storage of RVs or boats on the property. No members of the public spoke in favor of or in opposition to the request.

The Hearing Officer has submitted his findings (see attached Findings of Fact), and recommends approval of the Special Use Permit. Conditions recommended at the public hearing included:

1. The petitioner shall apply for a Sign Permit, in accordance with the requirements of Article 7 of the County Zoning Ordinance;
2. Operation of the recreational vehicle storage business shall be in accordance with the application for Special Use Permit filed by the petitioner;
3. In accordance with the intent of the Zoning Ordinance, the buildings in which RVs are stored shall be maintained in good condition while the RV storage business is in operation;
4. No outside storage of RVs shall be permitted.

The Planning and Zoning Committee is requested to make a recommendation to the full County Board on the requested Special Use Permit in the form of an ordinance. The Committee may recommend approval, approval with conditions, or denial of the request.

cc: Steve and Lori Diedrich

PRM:prm

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Petition: AF-06-4

Date: March 23, 2006

FINDINGS OF FACT

This matter comes before the DeKalb County Zoning Hearing Officer on March 23, 2006, for consideration of Petition requesting approval of a Special Use Permit to allow the continued operation of an RV and vehicle storage business on property located at 16133 South First Street in Afton Township, DeKalb County, Illinois.

The application of the Petitioner was duly filed in accord with the DeKalb County Code. The Petition and its attachments are incorporated into the record of proceedings herein by reference.

Publication of Notice

The notice of public hearing has been duly published in accord with the DeKalb County Code. A certificate of publication has been received into the record and reflects publication in the Daily Chronicle on March 5, 2006. Correspondence has been sent to all adjacent property owners.

Location of Subject Property

The subject property is located on South First Street, approximately 760 north of the intersection with Alva Road, on the west side of South First Street, all in DeKalb County, Illinois.

Site Characteristics

A. Location - Access

The subject parcel totals 7.18 acres and is presently zoned A-1, Agricultural, and is the location for a residence and set of farm buildings. All surrounding land is zoned Agricultural. Access is to South First Street and the parcel lies approximately 1 ½ miles from the City of DeKalb, the nearest incorporated community, in the DeKalb school and fire districts. The parcel is designated for agricultural use in the Unified Future Land Use Plan of the DeKalb County Unified Comprehensive Plan.

B. Proposed Use

Plans call for the continued use of the existing farm buildings for the purpose of storing recreational vehicles and automobiles within such buildings.

C. Correspondence

Correspondence was received from William G. Lorence, County Highway Engineer, stating that he has no objection to the inside storage, however, recommends no outside storage be allowed due to the requirements for pollution elimination for stored vehicles. Correspondence was also received from the DeKalb County Soil & Water Conservation District wherein they stated that they had determined that the proposed changes would not affect the natural resources of the area.

The undersigned viewed the premises on March 18, 2006.

Mr. Paul Miller made a brief introductory statement indicating that there was an existing storage business

on the property which was in violation of the County Ordinance and also stated that the purpose of the Ordinance was in part to assure that farm buildings are properly maintained.

Mr. Steve Diedrich of 16133 South First Street, DeKalb, Illinois stated that he is the owner of the property consisting of 7.18 acres and he and his wife, Lori, reside on the property. He stated that approximately two years ago they had begun storing recreational vehicles in their existing farm buildings. He stated at that time he called a county office to determine if they needed to do anything in order to operate this business, and whoever they talked to told him that they needed a license but nothing was said about rezoning. He stated that he may have called the wrong office. He stated that he put a notice in the newspaper and did not realize there was a problem until this past December when he received a notice of violation from the County.

Mr. Diedrich stated that there are three existing buildings on the property which are currently used for the purpose of storing boats, campers, etc. Many are stored seasonally, although a few are stored year round. He stated that he does not contemplate adding any additional buildings. All of these buildings were previously used for agricultural purposes and they had been sitting empty when he began the storage operation. He stated that he and his wife have spent quite a lot of money fixing up the buildings including replacing doors, windows and adding new siding. They will be doing additional work including painting and other needed repairs from time to time. He withdrew his request to store vehicles outside and said that they would store everything inside. He stated that this is the location of his personal residence which has been in the family for more than 100 years.

Mr. Diedrich further stated that they believe this is a valuable service they are performing for their customers and that he had checked with all of his neighbors and none of them have any objections.

He would like to continue to have a 4 foot by 4 foot sign on the property and would obtain the necessary permit for that.

He has obtained all required state permits to operate his business.

Mr. Paul Miller then spoke indicating that there would be a permit fee required for the sign and that no outside storage would be permitted. He further stressed the need for keeping the buildings maintained.

Mr. Diedrich then testified that they did intend to keep the buildings properly maintained as they had in the past. He also stated he carries substantial liability insurance and has standard contracts that he enters into with each of the people storing on this property.

No one appeared to speak in opposition to the proposal.

RECOMMENDATION

The undersigned did view the property and knows of his own knowledge that not only is the property kept in a very neat and orderly condition but the property has been kept in that manner for at least the past 50 years. It does appear that the Petitioner is providing a valuable service and utilizing buildings that would otherwise be left empty, possibly to deteriorate. It does not appear to the undersigned that the proposed Special Use would be unreasonably detrimental to the value of other property in the neighborhood nor will it dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable Zoning District regulations. No new buildings are contemplated and it appears that there are adequate utilities available. Accordingly, the undersigned hereby recommends that the Petition for a Special Use Permit to allow the continued operation of an RV and vehicle storage business within the existing buildings on the property be granted.

Respectfully submitted,

Ronald G. Klein
Hearing Officer

STATE OF ILLINOIS)

)SS

COUNTY OF DEKALB)

ORDINANCE 2006-13

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT
FOR A TELECOMMUNICATIONS TOWER
LOCATED AT 14792 TOWER ROAD
IN MILAN TOWNSHIP**

WHEREAS, Terry Michaels, representing Tower Sites, Inc., the property owner, has filed an application for a Special Use Permit, in accordance with the requirements of Section 9.02.B.2 of the DeKalb County Zoning Ordinance, to allow a telecommunications tower on property located at 14792 Tower Road in Milan Township, said property being zoned A-1, Agricultural District and legally described in Exhibit "A" attached hereto; and

WHEREAS, following due and proper notice by publication in the Daily Chronicle not less than fifteen (15) nor more than thirty (30) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least ten (10) days prior thereto, the DeKalb County Hearing Officer conducted a public hearing on March 30, 2006, at which the petitioner presented evidence, testimony, and exhibits in support of the requested Special Use Permit, and one member of the public spoke in favor of the request and none in opposition thereto; and

WHEREAS, the Hearing Officer, having considered the evidence, testimony and exhibits presented has made his findings of fact and recommended that the requested the Special Use Permit be approved, as set forth in the Findings of Fact and Recommendation of the DeKalb County Hearing Officer, dated March 30, 2006, a copy of which is appended hereto as Exhibit "B"; and

WHEREAS, the Planning and Zoning Committee of the DeKalb County Board has reviewed the exhibits and testimony presented at the public hearing and has considered the findings of fact and recommendations of the Hearing Officer, and has forwarded a recommendation to the DeKalb County Board that the Special Use Permit for the telecommunications tower be granted; and

WHEREAS, the DeKalb County Board has considered the findings of fact and recommendations of the Hearing Officer and Planning and Zoning Committee, and has determined that approving the Special Use Permit on the subject property to allow a telecommunications tower is consistent with the requirements of Section 9.02.B.3 of the DeKalb County Zoning Ordinance;

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

SECTION ONE: The Findings of Fact and Recommendation of the DeKalb County Hearing Officer, Exhibit "B" attached hereto, is hereby accepted, and the findings of fact set forth above are hereby adopted as the findings of fact and conclusions of the DeKalb County Board.

SECTION TWO: Based on the findings of fact set forth above, the request of Terry Michaels, representing Tower Sites, Inc., is approved, and a Special Use Permit is hereby granted for a telecommunications tower on property located at 14792 Tower Road in Milan Township, said properties being legally described in Exhibit "A" attached hereto.

SECTION THREE: This approval of a Special Use Permit on the subject property is subject to the following conditions:

1. The subject property shall be maintained in substantial conformance with the Plot Plan, dated March 12, 1982, as-built dated February 8, 2006, submitted as part of the application for Special Use Permit filed by Terry Michaels on behalf of Tower Sites, Inc.;
2. Specific uses of the subject property may include: antennae for public service and safety,

telecommunication, wireless internet, public and private radio, and television providers; and

3. Construction of new towers, structures or additions to existing structures shall be subject to the regulations set forth in Section 9.02.B.12 of the Zoning Ordinance.

SECTION FOUR: This Ordinance shall be in full force and effect upon its adoption by the County Board of DeKalb County, Illinois.

SECTION FIVE: Failure of the owners or other party in interest or a subsequent owner or other party in interest to comply with the terms of this Ordinance, after execution of such Ordinance, shall subject the owners or party in interest to the penalties set forth in Section 11.05.A. and B. of the DeKalb County Zoning Ordinance.

PASSED BY THE COUNTY BOARD THIS 17TH DAY OF MAY, 2006, A.D.

Chairman, DeKalb County Board

ATTEST:

County Clerk

Legal Description of Subject Property

PART OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DEKALB COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20, SAID POINT BEING SOUTH 1235.3 FEET FROM THE NORTHWEST CORNER OF SAID SECTION; THENCE EAST PERPENDICULAR TO SAID WEST LINE 603.00 FEET; THENCE SOUTH PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 258.00 FEET; THENCE WEST PERPENDICULAR TO THE LAST DESCRIBED COURSE, 603.00 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE NORTH 258.00 FEET TO THE POINT OF BEGINNING, CONTAINING 3.571 ACRES, MORE OR LESS, EXCLUSIVE OF THE WEST 30 FEET OF THE ABOVE-DESCRIBED LAND NOW USED FOR ROADWAY PURPOSES.

P.I.N.: 10-20-100-005



**DeKalb County
Planning/Zoning/Building Department**

MEMORANDUM

TO: Planning and Zoning Committee

FROM: Paul R. Miller, AICP
Planning Director

DATE: April 6, 2006

SUBJECT: Tower Sites Special Use Permit
Petition MI-06-05

Terry Michaels, representing Tower Sites, Inc., the property owner, has filed a petition for a Special Use Permit. The request is to permit the former AT&T microwave tower at 14792 Tower Road, approximately 1,250 feet south of Perry Road, in Milan Township to be used as a communications relay tower and antenna. The subject property is zoned A-1, Agricultural District.

The required public hearing was conducted on March 30, 2006 by DeKalb County Hearing Officer Kevin Buick. The petitioner explained that AT&T vacated the subject property in the 1990's and the site had gone unoccupied until Tower Sites purchased it in 2002 and began using it as a site for antennae for various users. Users include the DeKalb County Sheriff's Office, cellular telephone providers, and ham radio operators. The petitioner seeks to allow the site to continue to be used as a communications tower, including internet, television, radio and cellular phone. The petitioner also proposes to install security fencing and a gate to discourage unauthorized traffic on the property. One member of the public spoke in favor of the use, and no members of the public spoke in opposition.

The Hearing Officer has submitted his Findings and has recommended approval of the Special Use Permit, with conditions (see attached Findings of Fact). Conditions should include the list of requested communication types and antennae, and that operation of the use shall be in substantial accordance with the site plan submitted as part of the Special Use application. The Planning and Zoning Committee is requested to make a recommendation to the full County Board on the request in the form of an ordinance. The Committee may recommend approval, approval with conditions, or denial of the request.

cc: Terry Michaels

PRM:prm

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Towers Sites, Inc. (Terry Michaels)
Special Use
MI-06-05
March 30, 2006

FINDING OF FACT

This matter came before the DeKalb County Alternate Zoning Hearing Officer on March 30, 2006 for a Public Hearing with respect to a Petition filed seeking a Special Use Permit to allow a former AT&T microwave tower to be used as a communications relay tower and antenna. The Petitioner would also like to install a security fence around the perimeter of the existing structure on the subject property. The application of the Petitioner was duly filed in accordance with the DeKalb County Code. The Petition and its attachments are incorporated in the Record of Proceedings herein by reference.

Publication of Notice

The Notice of Public Hearing has been duly published in accordance with the DeKalb County Code. A Certificate of Publication has been received into the record and reflects publication of the Notice in The Daily Chronicle on March 12, 2006. Correspondence has been sent to all adjacent property owners.

Location of Subject Property

The subject parcel is located at 14792 Tower Road, approximately 1,250 feet south of Perry Road in Milan Township.

Site Characteristics

A. Location-Access

The subject parcel is presently zoned A-1, Agricultural. The surrounding land is entirely zoned A-1, Agricultural. Access to the property is through an entrance off of Tower Road. Petitioner, citing security concerns based upon recent thefts and break ins, desires to regulate access by means of a fenced perimeter and sliding gate.

B. Soils-Drainage

No soil report was provided by the Petitioners

C. Proposed Use

Petitioner currently rents out the two towers located on the property for use by cellular telephone providers, public safety communications, wireless internet providers, and amateur radio broadcasting. Beginning in the 1950's, the site was used as a microwave relay tower. A telephone tower was subsequently added, and the site continued in operation through the 1980's. A Special Use permit for the telephone equipment and relay station was granted by the DeKalb County Board in 1982. However, during the mid-1990's, the use of the tower for its original purposes of television broadcasting and telecommunications was discontinued, and the Special Use permit expired.

Correspondence

Correspondence was received from DeKalb County Engineer William Lorence, indicating that he has no objection to the Petition. Correspondence from Dean Johnson of the DeKalb County Soil and Water Conservation District indicated he saw no negative impact with regard to natural resources if this Special Use were to be granted.

Site Visit

The undersigned viewed the property on March 29, 2006.

Persons Appearing on Behalf of the Petitioner:

Terry Michaels, 20015 W. National Ave., New Berlin, Wisconsin, appeared on behalf of the Petitioner, Tower Sites, Inc. Mr. Michaels is the President of Tower Sites, Inc. He gave historical background with regard to the use of the site as part of a television microwave relay system beginning in the 1950's, which enabled television network broadcasting systems to cross the country. AT&T built the tower originally at that time, and began using it for telephone purposes shortly thereafter. However, in the early 1990's, AT&T discontinued using the tower for microwave relay system purposes, since technology had advanced to the point of rendering microwave relay technology obsolete.

Mr. Michaels indicated that his company bought the site in 2002 in order to begin using it for communication towers. He stated that his company has provided services to numerous entities and individuals through this tower, including (currently) the DeKalb County Sheriff's police for emergency services. Local amateur radio users currently make use of the site as well. The Sheriff's Department uses the tower as a "receive" site for its wireless communication, and amateur radio users use it as a repeater station. There is an ancillary tower which is also used for cellular telephone communications.

Mr. Michaels indicated that the property has been experiencing some break-ins and thefts recently, and therefore he desired to fence the perimeter of the property in order to protect it. He would install a rolling gate that would be locked so that only authorized employees and individuals could access the site. He discovered the expiration of the Special Use permit when he sought a building permit for the fence. Mr. Michaels testified that he has made improvements to the property, has had a landscaping company maintain the grounds, and he believes that the property meets all of the requirements of the County Codes. He requested the reestablishment of the Special Use permit in order to permit radio broadcasting and other use as a communications tower aside from the cellular tower used, which is exempt from zoning regulations under the DeKalb County Code.

Jim Feyerharm, 808 S. 2nd Street, DeKalb, Illinois, spoke in favor of the proposed Special Use. Mr. Feyerharm stated that he worked for Starved Rock Communications and felt that the communications tower was a key component for the DeKalb County Sheriff's radio system. He also noted that he is an amateur radio broadcaster (WD9HFM) and using the station for storm watching and for other safety-related purposes. He urged that a favorable recommendation be passed along to the County Board.

Persons Speaking in Opposition:

There were no persons speaking in opposition to the proposed Special Use.

Staff Input

Planning Director Paul Miller stated that Staff felt that, generally, the site would comply with the requirements necessary to grant a Special Use Permit for radio communications on the subject site, but Mr. Miller felt that conditions associated with the site were important if a Special Use permit were to issue. He requested that the Special Use be subject to certain conditions, including the maintenance of the property in substantial conformance with the plot plan previously submitted in 1982 and the "as built" plans dated February 28, 2006. He further requested that any Special Use permit iterate specific uses of the subject property and be limited to those uses. Mr. Miller's list of permitted uses for the site would include: as antennae for public service and safety, telecommunication, wireless internet, radio and television providers. He further stated that, in light of the testimony received at the public hearing, perhaps an additional iterated use would include "amateur ham radio operation."

In response to Mr. Miller's question about any possible construction of new towers on the site in the future,

Terry Michaels indicated that he felt that the two currently existing towers would be sufficient for the foreseeable future. Any future expansion of amateur radio use could be in the building that currently exists.

FINDINGS AND RECOMMENDATIONS

The undersigned recommends approval of the Special Use, subject to the conditions identified by Staff. I find that the applicant has clearly established that the proposed Special Use complies with all applicable provisions of all applicable District regulations. I find that the proposed Special Use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located, or to the public welfare at large. The use of the property has been consistent for over 50 years. I find that the location and the size of the Special Use, the nature and intensity of the operation involved, and the location of the site are such that the Special Use will not dominate the immediate area so as to prevent development and use of neighboring property in accordance with the A-1 Zoning District regulations surrounding the subject property. I find that off street parking and loading areas are provided in accordance with the County standards, and that adequate utility, drainage and other necessary facilities have been provided. Finally, I find that the proposed use can be operated in a manner that is not detrimental to the permitted uses in the District, can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area, and in all other respects conforms to the applicable regulations of the A-1 Zoning District. I find that the continuation of this Special Use is desirable to preserve and promote the public health, safety, and general welfare of DeKalb County, especially in light of the use of the property for emergency storm sighting and communication purposes and for the necessary emergency communications of the DeKalb County Sheriff's Department.

I therefore recommend that the County Board approve the Special Use permit, subject to the following conditions:

- a) That the subject property shall be maintained in substantial conformance with the plot plan dated March 12, 1982 and the "as built" plan dated February 8, 2006, submitted by Petitioners;
- b) That the Special Use permit identify specific uses of the subject property as: antennae for public service and safety, telecommunications, wireless internet, radio and television providers, and for use by private amateur or "ham" radio operators; and
- c) Any future construction of towers or structures be subject to regulations set forth in Section 9.02.B.12 of the DeKalb County Zoning Ordinance.

Respectfully submitted,

KEVIN E. BUICK

Alternate Hearing Officer
DeKalb County

STATE OF ILLINOIS)

)SS

COUNTY OF DEKALB)

ORDINANCE 2006-14

**AN ORDINANCE GRANTING THREE USE VARIATIONS
FOR SINGLE FAMILY HOMES ON THREE VACANT 10-ACRES PARCELS
LOCATED ON THE WEST SIDE OF GRAHAM ROAD
IN VICTOR TOWNSHIP**

WHEREAS, Robert P. Reck has filed an application for three Use Variations to allow the construction of one single-family home on each of three vacant 10-acre parcels located on the west side of Graham Road, approximately 945 feet north of Pine Road, in Victor Township, said properties having been legally recorded and existing prior to October 20, 1976, being zoned A-1, Agricultural District, and legally described as shown in Exhibit "A" attached hereto; and

WHEREAS, following due and proper notice by publication in the Daily Chronicle not less than fifteen (15) nor more than thirty (30) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least ten (10) days prior thereto, the DeKalb County Hearing Officer conducted a public hearing on March 30, 2006, at which the petitioner presented evidence, testimony, and exhibits in support of the requested Use Variations, and one member of the public testified in favor of the petition and none in opposition thereto; and

WHEREAS, the Hearing Officer, having considered the evidence, testimony and exhibits presented, has made his findings of fact and recommended that the requested Use Variations be approved, as set forth in the Findings of Fact and Recommendation of the DeKalb County Hearing Officer, dated March 30, 2006, a copy of which is appended hereto as Exhibit "B"; and

WHEREAS, the Planning and Zoning Committee of the DeKalb County Board has reviewed the exhibits presented at the aforesated public hearing and has considered the findings of fact and recommendations of the Hearing Officer, and has forwarded a recommendation to the DeKalb County Board that the three Use Variations be granted in accordance with the recommendation of the Hearing Officer; and

WHEREAS, the DeKalb County Board has considered the findings of fact and recommendations of the Hearing Officer and Planning and Zoning Committee, and the DeKalb County Board has determined that granting the Use Variations to allow the construction of one single-family home on each of the three 10-acre parcels is consistent with the requirements established by Section 10.02.C of the DeKalb County Zoning Ordinance;

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

SECTION ONE: The Findings of Fact and Recommendation of the DeKalb County Hearing Officer, Exhibit "B" attached hereto, is hereby accepted, and the findings of fact set forth therein are hereby adopted as the findings of fact and conclusions of the DeKalb County Board.

SECTION TWO: Based on the findings of fact set forth above, Use Variations are hereby granted to Robert P. Reck to allow the construction of one single-family home on each of three, vacant 10-acre parcels located on the west side of Graham Road in Victor Township and legally described in Exhibit "A" attached hereto.

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

PASSED BY THE COUNTY BOARD THIS 17TH DAY OF MAY, 2006 A.D.

Chairman, DeKalb County Board

ATTEST:

County Clerk

Legal Description of Subject Property

THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 37 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE SOUTH 0 DEGREES 05' WEST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER 677.51 FEET FOR THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 05' WEST ALONG SAID EAST LINE 339.38 FEET; THENCE NORTH 88 DEGREES 39' 09" WEST 1283.03 FEET; THENCE NORTH 0 DEGREES 11' 22" WEST 339.42 FEET TO A LINE DRAWN NORTH 88 DEGREES 39' 09" EAST 1284.64 FEET TO THE POINT OF BEGINNING ; CONTAINING 10.00 ACRES; IN DEKALB COUNTY, ILLINOIS; ALSO,

THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 37 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE SOUTH 0 DEGREES 05' WEST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER 1016.89 FEET FOR THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 05' WEST 339.80 FEET; THENCE NORTH 88 DEGREES 39' 09" WEST 1281.41 FEET; THENCE NORTH 0 DEGREES 11' 22" WEST 339.84 FEET TO A LINE DRAWN NORTH 88 DEGREES 39' 09" WEST FROM THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 39' 09" EAST 1283.03 FEET TO THE POINT OF BEGINNING; CONTAINING 10.00 ACRES IN DEKALB COUNTY, ILLINOIS; ALSO,

THAT PART OF EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 37 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE 0 DEGREES 05' WEST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER 1356.69 FEET FOR THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 05' WEST ALONG SAID EAST LINE 340.23 FEET; THENCE NORTH 88 DEGREES 39' 09" WEST 1279.80 FEET; THENCE NORTH 0 DEGREES 11' 22" WEST 340.27 FEET TO A LINE DRAWN NORTH 88 DEGREES 39' 09" EAST 1281.41 FEET TO THE POINT OF BEGINNING; CONTAINING 10.00 ACRES, IN DEKALB COUNTY, ILLINOIS.

P.I.N.s: 17-13-300-011, -012 and -013



**DeKalb County
Planning/Zoning/Building Department**

MEMORANDUM

TO: Planning and Zoning Committee

FROM: Paul R. Miller, AICP
Planning Director

DATE: April 6, 2006

SUBJECT: Reck Use Variations
Petition VI-06-06

Robert P. Reck, the owner of three separate, vacant, ten-acre parcels, has filed petitions for a Use Variance for each parcel. The subject properties are located on the west side of Graham Road, approximately 945 feet north of Pine Road, in Victor Township. The petitions are to allow the construction of one single-family detached dwelling on each property. The subject properties are zoned A-1, Agricultural District.

A public hearing on the requested Use Variance was held by DeKalb County Hearing Officer Kevin Buick on March 30, 2006. The petitioner's representatives indicated that the three, vacant, 10-acre parcels had originally been part of a Plat Act subdivision and were buildable lots when acquired by the petitioner. Several of the smaller lots that were created have been developed with residences. The properties were represented as being marginal for farming. Testimony focused on whether the petitioner paid a premium price for the properties because they were buildable. Staff noted that the first of the lots was purchased for only \$1,000 per acre, and the second for \$2,300 per acre. The petitioner's representative argued that, because of the marginal quality of the properties for agriculture, as evidenced by the fact that an attempt to sell to surrounding farmers was unsuccessful, the purchase price was a residential premium. One member of the public spoke in favor of the request, and none in opposition.

The Hearing Officer has submitted his Findings and recommends approval of a Use Variation for each of the three parcels, with the condition that no structures be constructed within 100 feet of the existing drainage ditch on the northernmost lot. The Planning and Zoning Committee is requested to forward an ordinance for approval to the full County Board, and may recommend approval, conditional approval or denial of the proposal.

cc: Robert P. Reck
Richard Schmack, attorney for petitioner

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Robert P. Reck
Use Variation
VI-06-06
March 30, 2006

FINDING OF FACT

This matter came before the DeKalb County Alternate Zoning Hearing Officer on March 30, 2006 for a Public Hearing with respect to a Petition filed in accordance with the requirements of Section 10.01.C and 10.02 of the DeKalb County Zoning Ordinance seeking three separate Use Variation to permit construction of single family residences on three separate 10 acre parcels owned by the Petitioner, adjacent to one another, located in Victor Township.

The application of Petitioner, along with all attachments, was received into the record and incorporated therein was the Staff Report dated March 21, 2006 prepared by Derek M. Hiland, Assistant Planner.

Publication of Notice

The Notice of Public Hearing has been duly published in accordance with the DeKalb County Code. A Certificate of Publication has been received into the record and reflects publication of the Notice in The Daily Chronicle on March 12, 2006. Correspondence has been sent to all adjacent property owners.

Location of Subject Property

The subject parcel is located in Victor Township on the west side of Graham Road, approximately 945 feet north of Pine Road.

Site Characteristics

A. Location-Access

The subject parcel is presently zoned A-1, Agricultural. The surrounding land is zoned A-1, Agricultural. Access to the three separate ten-acre parcels would be off of Graham Road.

B. Soils-Drainage

Correspondence dated March 20, 2006, was received from A. Robert Drake, Director of DeKalb County's Environmental Health Division, indicating that the soils comprising these three separate parcels are satisfactory for installation of a conventional private sewage disposal system in their natural state.

C. Proposed Use

Petitioner is seeking the ability, pursuant to the County's Use Variation exception to the 40-acre single family residence requirements in the A-1 Agricultural District, to construct a single family residence on each of these three adjacent ten-acre parcels.

D. Water Supply/Sewage Disposal

Water Supply would need to be served by private well. Sewage disposal would require installation of a conventional private sewage disposal system. A. Robert Drake, Director of the Environmental Health Division of the DeKalb County Health Department, indicates that the soils are satisfactory for installation of such private sewage disposal systems in their natural state.

Correspondence

Correspondence was received from DeKalb County Engineer William Lorence, indicating his support of the Road Commission with regard to this matter. It should be noted that the Road Commissioner, Alan Ehrhart, appeared at the Public Hearing to request certain specifics with regard to culverts if the properties are to be improved with single family residences.

Site Visit

The undersigned viewed the property on March 29, 2006.

Persons Appearing on Behalf of the Petitioner:

Petitioner appeared through Richard Schmack, his attorney, and Janet Hartwig, his daughter. The petitioner is 93 years old and was unable to be present at the public hearing.

Janet Hartwig, 11295 Pine Road, Somonauk, Illinois, testified on Petitioner's behalf at the Public Hearing. She stated her familiarity with her father's ownership of the property and indicated that her own residence was in the general vicinity, plus she owned some property immediately adjacent to the subject property. She stated that originally the land consisted of an 80-acre farm owned by Will and Elsie Buehler, which was informally subdivided by Attorney Peter Krentz during the 1970's. One of Petitioner's exhibits attached to the application included a survey dated May 8, 1972. The survey was never recorded because all of the lots in the subdivision were over five acres in size, and therefore dividing these parcels would not violate the Plat Act. Mrs. Hartwig testified that she purchased the Buehler property's farmstead, in 1972 or 1973. Her father, Mr. Reck (the Petitioner) purchased the three ten-acre parcels which are the subject of the Petition in 1973, 1978, and 1979. Mrs. Hartwig emphatically stated that her father purchased the three parcels for investment purposes as home sites, and not for farming. According to Mrs. Hartwig, the land in this area is very rocky and difficult to farm, and the Buehlers had been told to sell this portion of the land off as home sites. The survey had been prepared to create large-sized "estate" lots. There are 10 lots in the subdivision, five consisting of narrow 10 acre lots fronting Graham Road, one five-acre lot fronting Graham Road, three five-acre lots fronting Pine Road, and Mrs. Hartwig's lot consisting of 7.90 acres, on Pine Road. Several of these lots have subsequently been improved with homes.

Mrs. Hartwig testified that her father, Mr. Reck, had purchased Lot 3 of the subdivision (the northern most of the three subject parcels) pursuant to a Memorandum which was recorded in 1973. The property was purchased for \$10,000.00 on a land sale contract. It was purchased on a contract basis because the Buehlers wished to receive their payments on a slow basis for tax purposes. She testified as to her explicit understanding that her father bought these as buildable lots and identified a specific legal description that was listed on a mortgage, thus creating a lot of record, prior to October 20, 1976. She testified similarly regarding her father's purchase of Lot 4 in 1978 for \$23,000.00, and Lot 5 in 1979 for \$53,000.00. Similarly, legal descriptions and lots of record had been established pursuant to the original mortgage recorded prior to October 20, 1976.

Mrs. Hartwig stated that she felt that her father had paid a premium for the property based upon the nature of the land. There was no purpose, she said, to purchase this and use it for farmland since it is "not real good" as farmland. She stated that the soil is rocky and relatively unproductive. She indicated that a neighboring property owner, Jerry Hinterlong, did not wish to purchase the property for farming purposes. Mrs. Hartwig indicated, however, that a family friend, Mark Tuttle, began farming the property as a High School project on a portion of the land. She stated that some of the property is used for pasture. She further indicated that Lots 1 and 2, the two northern-most lots in the subdivision -- owned by Commonwealth Edison -- are also farmed pursuant to Mark Tuttle's farming project. Mrs. Hartwig testified that Commonwealth Edison has paid a total sum of \$250.00 per year to rent approximately 15 acres used for Mark Tuttle's farming project. The income that Robert Reck receives amounts to one-half of an average sum of \$3,721.00 per year for the entire acreage, which includes government subsidies.

Mrs. Hartwig testified that the three lots are separately fenced off, because her father was relying on the idea that they would be sold as separate units. She stated that there was no economic value to the property as 10 acre farm units, and her father could not recoup his investment in the property if the property could only be used for farm purposes.

Mrs. Hartwig testified that she felt that granting the Use Variations would not in any way change the character of the neighborhood, identifying existing houses on five lots within the subdivision already. She characterized the area as an "estate" subdivision and felt that the addition of three more houses would do nothing other than maintain the character of the locality as an estate neighborhood.

Attorney Richard Schmack, representing Petitioner, argued that the situation was unique and circumstances were not characteristic of general farmland because Mr. Reck purchased the property as an investment for an expressed purpose of selling the three 10 acre parcels as home sites. He stated that he felt that Mr. Reck had paid a special price for buildable lots and stressed that granting the Use Variations with regard to these three ten-acre lots would bring these lots into harmonious use with neighboring residences. He further stated his opinion that intense farming of the subject parcels would not be compatible with the residential neighborhood that already exists.

Mr. Schmack argued that the Buehlers' sale of the property in 10 acres parcels for home site purposes to Mr. Reck during the 1970's evinced the reality that these parcels should be granted Use Variations. He stated that "if it were possible to have sold the property as farmland, the Buehlers would have done so." He stressed that the purchase of the properties in 1973, 1978, and 1979 were for investment purposes and were completely dependent upon use of the property as investment property. With regard to analyzing whether a premium price was paid because the property was "buildable," Attorney Schmack conceded that the sum on \$1,000.00 per acre in 1973 and \$2,300.00 in 1978 may match up with an "average acre of land on a large tract of farmland," but stressed that these circumstances necessitated a view of each particular marginal tract of land in analyzing whether or not the purchase price for that tract was "premium." He felt that \$5,300.00 per acre for the sale Lot 5 was demonstrably and significantly over what anybody could have expected to obtain for farmland in 1979. Nevertheless, Attorney Schmack reiterated that he felt that the farm parcels in question were marginal and would not have sold for the same amount of money as an average acre of farmland on a larger tract of property might have.

In response to a question from **Alan Ehrhart, Road Commissioner for Victor Township, 1432 Leland Road, Leland**, Mr. Schmack stressed that Petitioner would comply with all requirements of the Road Commissioner with regard to resizing culverts for driveways, should the property be developed with single family homes. Mr. Ehrhart indicated that he would require 15" x 30' culverts to be installed under such circumstances, and Planning Director Paul Miller noted that County Regulations already required a culvert permit from the local Road Commissioner if the Use Variations were granted and single family residences were to be constructed.

Gerald Hinterlong, 11210 Pine Road, Somonauk, testified in favor of the proposed Use Variations. He is the adjoining property owner to the west of the subject properties. Mr. Hinterlong confirmed that he was uninterested in purchasing these parcels in the 1970's for use as farmland.

He stated that he believed, and felt that the general consensus of the adjoining owners was to "Let 'em build." He stated that some of the neighboring property owners were initially against the granting of the Use Variations, but changed their thinking when they discovered that the property was purchased for investment purposes by Mr. Reck.

Mr. Hinterlong further testified that he paid \$747.00 per acre for his farmland in 1969. He was offered the entire 80-acre parcel by the Buehlers for \$64,000.00 a couple of years later, which included the farmstead, but the Buehlers decided that they could sell it for more by subdividing and the deal was never consummated.

Persons Speaking in Opposition:

There were no persons speaking against the proposed Use Variations at the Public Hearing.

Staff Input

Planning Director Paul Miller offered comments on behalf of Staff. Mr. Miller identified the prime issue as whether a premium price was paid by Petitioner due to the buildability of the lot. He reiterated that the Use Variation procedure is not intended to allow every parcel that was once buildable under past regulations to be buildable under the new regulations. He stressed that the financial hardship element was the reason that the County Board made the changes to the DeKalb County Zoning Ordinance in 1993 and 2000.

Mr. Miller did not question the basic finding that the property was buildable. However, he stated that the purchase prices for the Lots 3 and 4, of \$1,000.00 per acre and \$2,300.00, respectively, called into question whether a “premium price” was paid.

Mr. Miller noted that Lot 3 contained a sizeable drainage area and requested that if the Hearing Officer and the County Board saw fit to ultimately approve the Use Variations, he felt that a reasonable condition would be that houses not be located within 100 feet from a drainage ditch.

Mr. Miller did acknowledge that the existence of the drainage way might be a “germane factor” in whether or not a property’s value might be diminished to the extent that \$1,000.00 per acre in 1973 could in fact represent a “premium price” for farmland. However, he characterized some of the arguments of Petitioner’s attorney as “misleading” with regard to public policy as to the argument that maintaining zoning regulations which operate to prohibit single family use could impair investment returns or create a “losing proposition” for a land-owning property holder.

FINDING AND RECOMMENDATIONS

Given the testimony received at the Public Hearing, the documentation contained in Petitioner’s application and attachments, and upon analyzing the requirements of Section 10.02 of the DeKalb County Zoning Ordinance, I believe that Petitioner has met the narrow criteria required for approval of a Use Variation and recommend that the County Board approve the same for each of the three lots, subject to conditions with regard to Lot 3.

The decision on whether to grant or deny a Use Variation lies exclusively with the DeKalb County Board. In reviewing the criteria, I find that Petitioner has demonstrated that each of the three subject parcels were legally recorded and existing prior to October 1976, had agricultural district zoning prior to September 18, 1991, and none of them currently have dwelling units existing thereon, although based upon my site visit, it is apparent that the undersigned that the three parcels are specifically marked and delineated by fencing. It is evident that Petitioner purchased the property prior to December 31, 1993, and it is uncontested that the property was buildable under the applicable zoning regulations at the time that it was purchased.

The issue of whether Petitioner paid a premium price for the property because it was buildable is, as Planning Director Miller notes, one worthy of question and evaluation. It is the undersigned’s opinion that the purchase of Lot 5, for a price of \$5,300.00 per acre, intuitively and unquestionably meets the criteria of Section 10.02.C.3 with regard to demonstration that property was purchased for a “premium price” relative to farmland value of any measure in 1979, the year purchased. As Mr. Miller notes, the purchase prices of the other two parcels can reasonably call into question whether this particular analytical factor has been met. Nevertheless, I find that the testimony of Mrs. Hartwig regarding the rocky nature of the soil, the location of the drainage way area on Lot 3, and the unwillingness of others to purchase this property for farmland tend to lend aid to the argument of Petitioner’s counsel that the property (such as it was and is) was indeed purchased for a “premium price.”

With regard to the suitability of the property for agriculture, Petitioner did concede that the property (or at least a portion thereof) is in row crop agricultural production. However, the testimony regarding the low productivity of the property, that it was begun as a “summer project” by a high school youth who has simply maintained the farming consistently since that time to the present day, and Mr. Hinterlong’s unwillingness to acquire the property for agricultural purposes, constitute facts sufficient to demonstrate impairment of the property’s

viability for agricultural use. Other reasonable use may be possible, but it seems important to the undersigned that the character of the property – highly evident during my site visit – appears well-suited to the residential purpose for which it was originally acquired by Petitioner back during the 1970's. The neighborhood supports this use and Petitioner's arguments to that effect appear sound to the undersigned. I will reiterate my understanding of the narrowness of the County's Use Variation provisions, and believe that the testimony, facts, and exhibits offered by Petitioner meet the demanding standards of Section 10.02.

With regard to the general standards of Variations set forth in Section 10.01.C, I find that the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in the District in which it is located. The testimony regarding the current amount of income produced by the property demonstrates to the undersigned that the reasonable return sought by Mr. Reck should indeed come in the form of single family use for each of the 10 acre sites as opposed to financially unsustainable efforts to farm the land . I find that the plight of the owner is due to unique circumstances, given the specific circumstances relating to the division of these 10 acres sites in the 1970's for this expressed purpose, and Petitioner's acquisition based upon that expressed purpose. I find that the Variation, if granted, will not alter the essential character of the locality given the other five homes currently within the original estate subdivision. I further find that the particular physical surroundings, shape and typographical conditions of the three lots in question would result in particular hardship upon this owner, as distinguished from mere inconvenience, if the strict letter of the regulations were carried out. I find that the conditions upon which the Petition for Variation is based would not be applicable, generally, to other A-1 Agricultural District property. I find that the purpose of the Variation is not based exclusively upon a desire to make more out of the property. The character of the estate subdivision and the neighborhood upon this property are of significant weight to the undersigned. I find the alleged difficulty or hardship has not been created by the owner of the property, given that the circumstances arise from the change in zoning regulations in the DeKalb County Code since Petitioner bought the property some 30 years ago. I further find that the granting of the Variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. Again, it appears to dovetail with common sense to allow construction of home on these sites, which were expressly purchased for that purpose. Finally, I find that the proposed Variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, endanger public safety, substantially diminish or impair property values within the neighborhood or adversely affect the health, morals, or general welfare of the public.

I would therefore recommend approval of the Use Variations for each of the three lots with regard to this Petition, subject to a condition that no residence shall be constructed on Lot 3 within 100 feet of a drainage ditch.

Respectfully submitted,

KEVIN E. BUICK

Alternate Hearing Officer
DeKalb County