

Zoning Board of Adjustment (BOA) – August 23, 2016

Approved by the Board of Adjustment on September 9, 2016 with a minor correction in the spelling of “Plump” on page 11 of 15.

Zoning Board of Adjustment Public Hearing – August 23, 2016
Daniel & Mary Bragger, Joe Bragger Agent; Variance #2016-1

The meeting was called to order by chairman, Dale Klopp.

Role Call Ron Kazmierczak, Barry Drazkowski, Dale Klopp were all present.

Mr. Kazmierczak asked for a moment of silence in the memory of Joe Wantoch, who passed away since the last Board of Adjustment (BOA) hearing. Mr. Kazmierczak continued by saying that Mr. Wantoch was a longtime member of this Board. He served faithfully in a good service for many years; served as a mentor to himself and Mr. Kazmierczak continued by saying that he appreciated it. The loss of Mr. Wantoch was a shock to all of us and he will be greatly missed. *Moment of silence.*

Mr. Kazmierczak welcomed Barry Drazkowski to the group, stating that he was initially appointed as an alternate; Mr. Kazmierczak continued by saying that he feels Mr. Drazkowski will be a good addition.

Mr. Klopp also welcomed Mr. Drazkowski.

- Mr. Klopp – I knew Mr. Wantoch for many years as a Farm Bureau member and later on the Farm Bureau Board. Mr. Wantoch was an inspiration as far as being on the BOA; he knew the ins and outs and the three of us, Mr. Kazmierczak, Mr. Wantoch and myself all agreed that we worked together as a Board; not always agreeing.

Mr. Klopp reviewed the agenda items for the hearing to Review, Discuss and possible action of Variance #2016-1, Bragger Family Farms, Joe Bragger Agent.
Notice of public hearing was read.

Hearing Minutes are summarized as follows:

Coop is used in these minutes where there may have been reference to structure, barn or coop.

Application presentation and testimony. Applicants were introduced as follows: Joe Bragger, Ron Marquardt, Golden Plump, Dan Bragger, landowner.

Joe Bragger explained that there has been a lot of difficulty in trying to locate this coop because of the convenience of having two chicken coops together and when you look at the Town of Montana, Town Land Use Plan it talks about cluster development, which is what they are proposing, with the two coops together. Mr. Bragger continued by saying that the issue is the proximity to the property line that sweeps down to the road.

Mr. Klopp asked Joe Bragger to come forward to point out on a map what he is talking about, so the BOA members could better understand. Mr. Bragger stated that the issue is the separation distance of 170'; the challenge is the steep hillside and so when they can move it that less distance, they gain advantage for fill and are off the steep hillside. Mr. Bragger continued by saying that if you look at where the residence is, almost 1,200 feet away, compared to where the 170' is to the property line,

the only thing you see from the residence is a little bit of the roof line of the current coop. Mr. Bragger stated that the farm is willing to put in a tree barrier between the coops and the Ed Romanowski property as the residential landowner requested after it is landscaped to minimize the visibility of his coop and the visibility to the neighbor. Mr. Bragger continued by saying that if the house was at the 170' setback they would not even consider asking for the variance; we are really talking about the end of the driveway.

- Joe Bragger explained that the proposed coop would only have one driveway on the east side, compared to the first coop where there is a driveway all the way around it; that is where the truck travel, for feed, etc. Mr. Bragger explained that they would utilize the east driveway of the first coop and the east driveway of the second coop for truck travel access to the second coop to minimize the slope impact on the west side of the proposed coop. Jutting into the hillside requires so much more fill and does not become cost effective.
 - Mr. Klopp questioned a field and Joe Bragger stated that it is a slope.
 - Mr. Klopp questioned a green line on the map and Joe Bragger stated that the green lines on the map represent parcel lines.
 - Joe Bragger explained that the small residential parcel was initially owned by one person; since that time the individual has purchased the entire adjoining parcel south of Pape Valley Road. Mr. Bragger pointed out on the map a wedge that has been planted to pine trees, so from the residential lot, once the trees grow up, you will not see much of the coop, plus the trees along the property line which Bragger's have agreed to plant as a screen.
 - Joe Bragger pointed out on the map areas they avoided due to topography when they were trying to locate the coop. Mr. Bragger continued by saying that this is one parcel that Dan Bragger owns; had they thought about a second coop when the first was built, they would have better located the first coop to better accommodate a second coop. Mr. Bragger stated that he understands that permission of the landowners does not necessarily grant a variance, but there is an email from residential adjacent property owner that he was in favor of this and hoped it would get approved, but would not be able to attend the hearing.
 - Joe Bragger pointed out on the map and stated they had statements from other adjacent property owners that were not opposed to putting up the structure. Mr. Bragger continued by saying that he took time to talk to all the adjacent landowners.
 - Mr. Klopp questioned what was in the area of the existing driveway.
 - Joe Bragger stated that it was just a hay field.
 - Mr. Bragger also pointed out a waterway and explained how they would handle water coming to the site; it was difficult to know what he was pointing to on the map to explain in detail in these minutes.
 - Mr. Bragger stated that he is proposing a second driveway 100' from the first coop driveway on the east side of the structure and swing around the end of the first coop.
 - Mr. Drazkowski questioned the drainage.
 - Joe Bragger pointed out on the map the direction of the drainage and the location of the existing culverts, but did not explain in detail and from the audio could not include in detail in these minutes.
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- Mr. Klopp – Who lives at W107 Pape Road.
 - Joe Bragger - Robert Dingfelder
 - Mr. Klopp – When were the pine trees in the photo planted.
 - Joe Bragger - This past spring.

Joe Bragger pointed to an area on the map that they use to rent, but the landowner wanted to plant pine trees.

- Mr. Klopp – Were the pine trees that were planted earlier this spring seedlings.
- Mr. Bragger – Yes, they were seedlings. We do not care what kind of trees the neighbors want for a screen, because of the cooperation we have had with the proposed construction; we will do what the neighbors want to make this work within reason.

Mr. Klopp suggested that his experience with the fast growing poplars, will be ready to fall down from rot at about 25 years.

- Mr. Klopp questioned a waterway that Mr. Bragger had talked about earlier in this hearing.
- Joe Bragger pointed to a location on the map, stating that it is on this side there is a big drainage area.
- Mr. Bragger also pointed out on the map where the stream is located and explained how the water flows out of the valley by pointing and identifying it on the map. He stated they would have to culvert that similar to how they did the one above. Not enough description was on the audio to identify the exact location on the map to include in these minutes.
- Mr. Klopp questioned whether a lot of water was going through there or just a big storm event.
- Joe Bragger explained by pointing at the map, the area and direction where the water flow goes, but did not provide enough explanation to include in these minutes.
- Mr. Bragger explained that the existing coop had water just lapping up to the door of the coop from the previous rainfall, but nothing entering the coop itself.
- Mr. Klopp questioned disturbance to the waterway (the one NW of the existing coop)
- Joe Bragger stated that they will have to build over it, reshape, reseed and fix it up. Mr. Bragger continued by saying that in a significant rainfall, there was more problems in the wooded areas versus areas where they seeded and had tall grass growing and the waterways in the field held up really well.
- Joe Bragger stated that he believes that they can do a good job of managing the open area and keeping it stable.

Joe Bragger was questioned and stated that the existing coop has been there for 6 years.

- Mr. Marquardt from Golden Plump - From a county standpoint it makes sense to put two coops together; just from a land use standpoint; we are here for the variance because of the construction. The site has been surveyed and the proposed location is the most economical from a feasibility standpoint for building the coop; we would certainly move it away if it was economically feasible to do it.
- Mr. Owecke – Has the distance between the 2 coops been reduced from what is normally required.
- Mr. Marquardt – They did a little bit, 25'; This is a costly coop from an excavation standpoint, that is why we are her today because there is no other place to put the coop, if we are going to put it next to the other coop.
- Mr. Draskowski – I think the slope coming in requires it to be in that spot because otherwise there would be either too much slope coming to or away from the coop.
- Mr. Marquardt – The reason for the 2nd driveway is because the road tapers and the design of that will be difficult to get truck traffic up and to the coop, otherwise they could utilize the existing driveway.

- Joe Bragger – Originally they talked about coming off the first driveway and coming up, but there needs to be a 6% maximum slope in the driveway in the back of the coop to get from the first coop to the second coop.
- Mr. Kazmierczak – I am looking at this and see the estimate regarding cubic yards of material that would have to be moved; I am looking at 30 x 60 at 1800 square feet and even assuming you had to excavate out 6’ deeper to move it 30’ to the SE, without arguing whether it is a good idea or bad, there is no way I came up with 23,000 cu yards and asked for an explanation.
- Joe Bragger – What dimension do you have.
- Mr. Kazmierczak – You figure the barn is 60 feet wide and if you go 30’ farther SE, it is 1800 square feet and lets say that you had to go 6’ deep, that is nowhere near 23,000 yards.
- Mr. Marquardt – The 23,000 yards is total.
- Mr. Kazmierczak – For the entire building.
- Joe Bragger - Yes; that is the hill on the end; as you go into the hill in the back, it picks up.
- Mr. Marquardt – It is not an additional 23,000 cu yards.
- Mr. Kazmierczak – That is part of my question. I agree with the concept of trying to keep them in a cluster and everything else, but I am looking at this and the way the variance statute is written, I see some real problems with this, not personally, but trying to approve it. Are there any topo maps of the area available so I can see what the actual hills and slopes are.
- Mr. Owecke - No, but I have some images that were taken on my site visit earlier.
- Mr. Klopp – Can the coop be moved 30’ up the hill and what would the slope percentage be to the SE.

Mr. Owecke showed the photos from different locations, showing corner stakes and explaining that the applicant felt they would need a conditional use permit for construction in the steep slopes, but it was not required; slopes in the proposed project area are less than 12%.

Discussion was held as Mr. Owecke continued showing the photos, however there was not enough information/detail in the conversation from the audio to explain what they were looking at to put into these minutes; discussion included amount of cuts and fills as you move the coop in any direction.

- Joe Bragger – Every 6 inches they move a coop, it is 1200 yards of fill. As you climb into the hill (he pointed on the map) makes them cut and fill too much more to make up the difference.
- Mr. Klopp – What is the distance requirement between the two coops.
- Joe Bragger – They require 150’, however Golden Plump gave them 125’ for construction of the second coop to get them to a lower elevation. If they move closer to the first coop, they have a more difficult time blending the slope to fit the pad on the existing coop.
- Joe Bragger – The second coop will be sitting higher in elevation than the other coop; they can’t get them both at the same level.

Mr. Klopp questioned a waterway going through, pointing to a location on the map and Joe Bragger stated it was not a waterway, it is a dirt berm that was created when they excavated for the first coop; berm was left so water could divert around the coop. Joe Bragger stated that there would be a small waterway around the back side of the proposed coop to divert from the hill.

Mr. Owecke continued showing photos he took at the site. Joe Bragger pointed to 2 locations on the map where test pit holes were dug to determine soil types, trying to avoid sandy soils and water; test pit holes were dug 13' deep; didn't hit water or sand; just shale and then clay. Joe Bragger stated that they would not be here if they found a big sand mess or water that they would have had to deal with during construction.

- Mr. Drazkowski commented on one photo that actually shows the slope better.
- Mr. Owecke – By moving the coop back, you create more excavation at both ends of the coop.
- Joe Bragger – By reaching the 200' setback from the residential property, you would not need a variance, but the residential property landowner prefers the coop be tucked down, but as the coop moves back, we are climbing the SE hill and the neighbor will have more view of the coop.
- Mr. Klopp - How often are the Romanowski's (residential neighbor) at their second home.
- Joe Bragger – They come up pretty often; for sure once a month. In all fairness, Mr. Romanowski said that it has to do with land value; what is done with the Bragger farm affects the neighbors land value.

Mr. Owecke pointed out the hunting structure on the 3J LLC property and its proximity and view of the proposed barn. The Dingfelder neighbor property was pointed out on the map and its proximity and view to the proposed structure.

- Mr. Owecke - The existing coop was built less than 200' from the neighboring property line.
- Joe Bragger suggested that at that time the ordinance was probably interpreted different.
- Mr. Owecke stated that farm structures were not permitted at that time.
- Dan Bragger - The reason the first barn is located where it is was to keep it farther away from the stream.
- Mr. Owecke – I mentioned in the staff report that the location for this structure is out of the floodplain; it is not in shoreland area; there are no wetland issues and no steep slopes.
- Mr. Klopp – Who covers the cost of construction.
- Mr. Marquardt - That is a division of costs between Golden Plump and the landowner; Golden Plump locks in on a price for the barn and the grower is responsible for personal costs which include power to the barn, wells and excavation. This is a borderline coop from a cost stand point; if you are looking at payback; right now we are at 23,000 cubic yds and that is a lot of fill; that lowers a growers cash flow at the end.
- Joe Bragger – As you increase the fill you get to a point where your actual cost will not be paid back before the 10 years (life of the contract) is up.
- Mr. Marquardt - My thought is that if this variance does not get passed, he did not see this barn going in at this site; we would not be here if we did not think it was a last resort.

Joe Bragger talked about how after the coop would be constructed the field SW of the barn will no longer be crop-able because of the steepness and balance of only 3 acres would not make it feasible for cropping; will probably be planted to trees, which will include the tree berm requested by the neighbor.

- Mr. Klopp – Did you consider and not knowing what the topography is to the south more towards where Joe Bragger lives.
- Joe Bragger – Once you get around the hill, pointing to a location on a map, that drops off into a big gully.

- Mr. Marquardt – The problem in the area closer to Joe Bragger’s property, there are high lines; that is where they were going to put it originally; on the line boundary, there is a power line.

Joe Bragger pointed out on the map, where Dan Bragger’s property line is.

Mr. Kazmierczak questioned and pointed on the map to a steep soil.

- Joe Bragger – Then we run into another situation that the barn should be located on property owned by Dan Bragger. You would come into Joe Bragger property, but then you run into issues with the creek. I did some checking into putting one more on my property (pointed to a location on the map; there was not enough detail in the audio to know exactly where Mr. Bragger was pointing to include the location in these minutes) and opted not to put it in that location, but put it on another spot on the farm.

Joe Bragger also talked about some additional reasons why that location was not selected at the time.

- Joe Bragger – The way the farm is split out, this is Dan & Mary Bragger’s parcel and pointed out the location on the map. (Joe Bragger pointed out some other features on the map that were not explained in enough detail in the audio to include in the minutes). We did try and find different angles to locate the barn.

Mr. Kazmierczak questioned whether property pointed out on the map belonged to Joe Bragger. Joe Bragger stated it did belong to him and pointed out the location of the quarry.

Mr. Kazmierczak questioned whether the Board wanted to look at the site.

Motion by Mr. Kazmierczak to recess to visit the site. Mr. Klopp stated that the Board will recess to the property located at W89 Pape Valley Road. The hearing recessed at 9:48 a.m.

The hearing was reconvened at the site of Dan and Mary Bragger, Pape Valley Road, 31 acres.

- The group walked out in the field a short distance.
- Joe Bragger pointed out the hunting shed that they talked about and the other residence (not sure where he was pointing), the 4 corner stakes of the coop, the location where the road/driveway would be, the lower side of the coop and stated that the end pad of the proposed coop would be similar to the one on the existing coop.
- Mr. Draskowski questioned whether there would need to be a culvert and Joe Bragger stated yes, like the one down there to the creek at 140’ to 160’ and continued by saying that you think 5% slope is not a big deal, until you go 800’; 5 for every 100’, that is a 40’ difference.

Background noise made it hard to hear and understand the audio here.

- The property boundary of the residential neighbor was pointed out being located by steel posts, however Mr. Owecke pointed out that is the boundary of Dan and Mary Bragger’s property; the boundary to the residential property is outside this boundary.
- Mr. Klopp questioned and Dan Bragger stated that he and his wife do not plan on building a residence here at this time.
- Mr. Draskowski questioned the fill by moving the coop.

- Mr. Marquardt – Just by moving the coop 30’, we still will not meet the 200’ setback from the residential property line; the coop may need to be moved 80’ to get the 200’ setback. I do not know what distance you would need to move the coop to meet the 200’ setback.
- Mr. Kazmierczak – What will happen to the waterway that comes around the front of the proposed coop
- Dan Bragger- It will stay there.

Joe Bragger explained how they would add a culvert and reshape the waterway. There was not enough detail in the audio to fully understand Mr. Bragger’s explanation of how the reshaping would be done to include in these minutes.

- Mr. Marquardt – We would like to put the culvert under the driveway because the culvert would be able to be much shorter.
- Mr. Draskowski – What is the distance between the buildings.
- Joe Bragger – It will be 125’, but Golden Plump would like 150’.

Background noise made it difficult to hear and understand the audio here. Joe Bragger was explaining ventilation and exhaust from the coop and wind direction.

- Mr. Marquardt – When you are at maximum ventilation you are moving so much air, it is so diluted and that is mainly in the summer in hot periods.
- Joe Bragger – Dennis Bork, Town of Montana, Supervisor was out to look at the driveway location and visibility and he was satisfied with the proposed plan and the Town Board in their response, stated that there were no driveway issues.
- Mr. Klopp – The only bad spot I see is where the road jags out; is there a Driveway Ordinance in the Township.
- Joe Bragger – I do not know whether a driveway ordinance exists in the Town of Montana.

The group walked to the location of the existing coop.

- Mr. Draskowski questioned water flow with the recent rainfall.
- Joe Bragger explained and pointed to the areas where the water was most significant and stated that no water got inside the coop. Joe Bragger went on to explain that the coops are built level and some of water went around the west side of the existing coop and went on to say that some water can be deliberately routed around the back end of the coop where there is a lot of relief. Joe Bragger stated that with the recent rainfall, this is an opportunity to make some changes to get the water to move away from the site more quickly.
- Joe Bragger – The proposed coop will not have the back driveway because the semi’s will come around the back of the existing coop and come in on the east side of the proposed coop.
- Mr. Kazmierczak questioned and Joe Bragger explained that the semi would come in on the left side, facing the front of the existing coop and swing around the back and drive forward on the right side of the proposed coop.
- Mr. Draskowski questioned a culvert for drainage and Joe Bragger stated there would be a culvert for drainage (from the audio I could not tell what area at the site they were talking about putting a culvert) on the back side.

- Mr. Klopp questioned a waterway on the map and the possibility of using the existing driveway for the other coop. Joe Bragger stated that it is just too steep to use the existing driveway.
- Mr. Draskowski questioned the back side where the back flags are, and the slope starts to go down to the other drainage, you will have a road that will come around, so you are already starting to encroach; will you have to push that drainage over a little bit.

The group walked to the back flags of the proposed coop.

- Mr. Draskowski questioned and Joe Bragger stated the stake is the coop and 80' to 100' past the coop would be a gravel pad. Mr. Marquardt stated the gravel pad should end with the existing coop.
- Coop color was questioned and Joe Bragger stated the coop would be gray because gray blends in better with the clouds and the background and the residential neighbor did request that the new coop be the same color as the existing coop.

Background noise made it hard to hear and understand the audio here.

- Joe Bragger – Putting two coops together eliminate scattering single coops all over the landscape. The language from Town of Montana Land Use Plan talked about cluster development and the Plan had one spot in the Township marked out and it was at the top of Pape Valley Road intersection and a couple of new homes have been built at that location since then; they like the bluff view; funny how that lines up.
- Mr. Owecke – Will there need to be a new well for the second coop.
- Joe Bragger – We will have a new well, to eliminate the risk of not having water; you can always tap into the existing well and vice versa.
- Joe Bragger explained how the driveway for the new coop would be laid out and stated that it would come around the back of the existing coop to maintain a 6% slope for the Golden Plump trucks to get in and around to the second coop.
- Slope and drainage was discussed in regard to a different location for the coop, but it was not explained in enough detail to include exact locations in the minutes.
- Mr. Kazmierczak questioned a location and Joe Bragger stated the drop would be outrageous; you would have 40' of fill on the lower end, at least. Joe Bragger continued by saying that the more you move it, the more you have to take and build up on the other end.

Driveway and driveway construction was discussed, but background noise made it hard to hear and understand the audio here.

- Mr. Draskowski questioned where Joe Bragger's farm was and a creek crossing near his farm.
- Joe Bragger stated that the crossing was just a creek crossing and probably not something for semi's.

Unable to identify from the audio who made this comment; Golden Plump would not even make it down Joe Bragger's driveway because it is so steep.

Mr. Owecke explained that closer to Joe Bragger's farm there is Shoreland Zoning. Joe Bragger stated they went through floodplain last time and continued by saying that where you see the brush

hanging on the fence that is the creek and to stay away from the creek in that location, you are starting to climb the slope again.

Background noise made it hard to hear and understand the audio here.

- Mr. Marquardt – The reason we chose Dan and Mary Bragger is because they are good growers for Golden Plump.
- Mr. Klopp questioned the driveway where it will loop around the back and why go up when you can go down
- Mr. Marquardt explained that some trucks (bedding versus feeding) have to go different directions to fully service the coops.

The group went around the end of the coop and back to the front on the west side.

- Mr. Drazkowski stated that he was trying to understand the cross section of cuts and fills because the coop will not be laying on top of the ground and when you move the coop it impacts everything else; it is really a site with an incredible amount of balance; ideally would be better to have it somewhere else, probably.
- Mr. Klopp questioned the dirt berm on the west side of the existing coop and Joe Bragger explained that they do not mow it, but use it for fill in other areas of the farm.
- Mr. Kazmierczak commented that when you contract with Golden Plump, they build the coop and in 10 years the barn is yours.
- Joe Bragger stated that is correct, as a grower we have a 10-year plan that it pays off and Golden Plump subsidizes, so the value at the end of the 10 years is only worth a small portion of the cost to build it originally; it is all paid off if you want to sell it to someone else.
- Mr. Kazmierczak questioned and Joe Bragger stated that a coop is built special and there is really no other use for it after the contract ends. Joe Bragger continued by explaining that the coop and ventilation is set for the number of birds in the coop.
- Mr. Kazmierczak asked for a copy of the map and questioned property lines and residential property lines.
- Mr. Owecke stated it is the residential parcel; the residential parcel is inside the adjoining property line.
- Mr. Kazmierczak questioned whether the required setback is 200' from a property line or 200' from a residential property line.
- Mr. Owecke stated that the variance is for 170' instead of the required 200'.
- Mr. Kazmierczak questioned the adjoining property line versus the inside property line.
- Mr. Owecke explained that the adjoining property line does not have a residence.
- Mr. Kazmierczak stated that it is a separate lot.
- Mr. Owecke stated one is a residential lot.

Joe Bragger asked to explain the lot lines and continued by saying the residential lot line seems totally fair if a guy had a house closer to the area of the coop corner not meeting required setback, but the residents is a substantial difference from the coop versus the residence lot line at the area in question of the variance.

- Mr. Kazmierczak stated that your argument is if you move the coop back, you are still not going to be far enough away from to meet the setback of 200'.

- Mr. Owecke stated that if it was just a farm, the setback requirement would be just 100', but a house and someone lives there, then the setback requirement is 200'.
- Mr. Kazmierczak questioned separate driveways; just so we understand, Mr. Kazmierczak pointed out on a map the direction that he believes the trucks go to serve the coop will follow and continued by saying if you were to move the coop back a little bit, you would not pick up that much as far as excavation because you need it on the other end anyhow. Correct. (was hard to explain in detail exactly what Mr. Kazmierczak was pointing to on the map).
- Mr. Kazmierczak stated that moving the coop 30' is not going to be enough; I agree with you just being out here seeing the difference.

Discussion about moving the coop to avoid a variance continued, but background noise made it hard to hear and understand the audio here.

- Joe Bragger – Every time you raise the coop up then you get farther away from the road; higher than the road (not sure what road they are talking about, was not specifically named in the audio); higher on the residential neighbors landscape.
- Mr. Marquardt – Then it makes the coming in and going out difficult; slide that back, then you have to raise the coop up and the more you raise the coop, the more the resident neighbor is going to see it.
- Joe Bragger - You start crawling up the landscape.
- Mr. Kazmierczak pointed out the waterway on the map and questioned Mr. Owecke whether there was a shoreline setback
 - Mr. Owecke – They are out of shoreland.
 - Mr. Kazmierczak – What would happen if you just cramp this end a little bit; can you do that and still meet your needs here (pointing to a location on the map).
 - Mr. Marquardt – It gets closer to the existing coop.
 - Mr. Draskowski – Mr. Kazmierczak is taking the coop and pivoting the front end.

Discussion continued with clarification on the exact location and options to move it and an explanation on why the proposed location was finally submitted with a variance request.

- Mr. Kazmierczak – I am just trying to understand why something else can't be done.
- Mr. Marquardt – If the feed bins are on the west side of the coop then you would need a road on that side, which is currently not part of the proposed plan.
- Joe Bragger - If you start doing stuff on the west side of the coop you make the bank on that side almost impossible;

Joe Bragger talked about moving the coop this way (not sure what direction he was moving it), then the lower bank is impossibly steep.

- Mr. Marquardt – I do not have the design guy here.
- Joe Bragger – Earlier I worked with the technician during the design process for a couple hours moving the coop many different locations and the location that is being proposed seemed to be the best one taking everything into consideration.

- Mr. Klopp – The Board will recess to the courthouse at this time and reconvene in about 45 minutes.

This ended the site visit.

- Mr. Klopp – We are reconvened back at the Buffalo County Courthouse in the County Board Room.

Mr. Klopp asked if Mr. Kazmierczak or Mr. Drazkowski had any additional comments or questions.

- Mr. Klopp - As far as they went the 30' to the SE corner, it would be more ground disturbed; better chance of erosion, but not if it is done right it would not be.
- Mr. Kazmierczak – If you are going straight SE, Mr. Klopp that would not move it proportionately that much farther from the property line, because of the way the property line is sitting, which is something that I had not realized until I looked at it; it is not 30', you would probably have to go 60' or 70' to meet the 200' setback. One thing, Mr. Chair, that I did, as we were leaving, I asked the gentlemen from Golden Plump about just pivoting it 30'; the issue there is that the driveway area is going to be wide enough; it looked like it would be, as a matter of fact the gentleman from Golden Plum said he wished the design guy was here, because they still have that distance between the two coops that would be adequate; they have enough room for the pad in the front, but Mr. Marquardt could not answer the question about pivoting the coop; it would move the distance between the coops to probably 95' and that does not meet their requirement between coops.
- Mr. Drazkowski – So in that context you are talking about moving like this.
- Mr. Kazmierczak – Just pivoting it 30' over.
- Mr. Drazkowski – So you would be moving the coop into
- Mr. Kazmierczak – Towards the other coop and instead of 150' they are at 125' right now and that might move it to 95' apart; he mentioned the virus issue.
- Mr. Owecke – That would be the end of it (meaning the project if they only had 95' between the coops).
- Mr. Drazkowski – They also have propane, water and all that needs to be on that side of the building.
- Mr. Kazmierczak - Those tanks would be on the other side; the outside.
- Mr. Drazkowski – I thought that was going to be on the inside.
- Mr. Kazmierczak - There would not be enough room there, however I think it was a virus/disease issue which would be the big factor; I mean as far as movement on the site, the applicant themselves admitted had they known better, they would have located the first coop over and that would have solved the issue would it not have been a problem, but they didn't, so we get into as least from my perspective; I am just going to bring this up for discussion; you look at the criteria for a variance first one is un-necessary hardship and they can't claim hardship when the conditions are self imposed. The parcel as a whole must be considered when applying un-necessary hardship test and then the final factor is financial hardship does not warrant a variance as maximizing the economic value of the property. If you look at that, and what that is telling us, is I don't think, legally we can issue a variance for this property even though I don't think any of us would disagree at least from my perspective that it makes sense to build the coop there; I think to have it as a cluster makes sense; the neighbors are not opposed to it, so the question is do you ignore that issue. The other one is unique property limitation; I think that one you could probably legitimately say, yes there

are some unique limitations with the drainage way, the steep slopes; the other constraints of the property and I think that is an undue hardship there with unique property limitations. I do not see this as being harm to the public interest; the only one I am having difficulty with is the un-necessary hardship category part of the variance. Maybe you can ease my mind on that somehow Mr. Owecke, but I am looking at it; it makes it tough.

- Mr. Drazkowski - Un-necessary hardship from the stand point of that they made a bad decision when they located the first coop.
- Mr. Kazmierczak – Correct.
- Mr. Drazkowski - So the consequence now.
- Mr. Kazmierczak - It says it can't be self-imposed, which putting the first coop there was self-imposed, but the second one and the other factors you have to consider is the parcel as a whole and there are other areas there where it could be sited on; maybe not real well and then you can't look at the financial aspect of it and I think that is ludicrous not to be able to look at the financial aspect, but it says we can't look at that. You look at that and then it says, why can't you excavate, because it is going to cost you several thousand dollars and I don't know how significant several thousand dollars is, but it is going to cost more to site it where it would be legitimate.
- Mr. Kazmierczak – The issue that I have is with the un-necessary hardship part of the variance, again I will just add that I think it makes sense to locate the coop where they are proposing. I honestly believe it would be a reasonable thing to do.
- Mr. Klopp – I also agree as far as the un-necessary hardship, it was self-imposed, but who knows what they were thinking when they put up the first coop, whether it was going to be the only coop or not.
- Mr. Drazkowski – The big factor here, they even admit, is that it just cost too much more money to slide and in my thinking, I get that, it makes sense, but as you point out, that is not something we are supposed to consider.
- Mr. Owecke – I guess from a Zoning perspective, as far as land use, I have no issues with the project at all, and I agree with Mr. Kazmierczak that the applicant satisfies #2 & #3 variance criteria; #1; I think if you are going to take a strict interpretation of that guidance; that you could come to that conclusion. Personally, I think that and understanding the vagueness of ordinance and the ability to interpret ordinance, I don't think if the decision was made that yes indeed a hardship exists because of strict compliance with the ordinance would result in a hardship for their development. It would be my belief that if that will be the Board's decision, that could not be contested; In my mind, I could make that connection that if you are going to force compliance to our ordinance, that yes, the hardship is going to exist for that encroachment, that they are not going to be able to build the coop; they really have no other options where they can locate it; the other options have constraints that would prevent construction, such as shoreland. From a Zoning stand point, I like the location that they have chosen; I like that they are not going to disturb a whole new area, visually and esthetically I like it; for that reason it makes a lot of sense. I do have concerns about, even at 11 and 11 ½ % slope you are getting into challenging territory. I included conditions to be placed on the variance to address that; a permit from the WI DNR for storm water management on the place and looking at numerous Golden Plump sites this summer, we did have to bust them on a few, now they are doing it by the letter of the law.
- Mr. Drazkowski – As we talk about this, it becomes clearer as an issue, but what complicates it a little bit for me as a standard as I look down the road does a decision to approve create any precedent around this financial variance that could be problematic in cases where there might be others.

- Mr. Owecke - That is a valid concern, a good point to be taken. The state statute requires that every ordinance is considered on its own merit and not according to what has been done in the past with anything similar; you can't bring in decisions made in other cases.
- Mr. Klopp – Each variance application is different, but I thought the same thing as Mr. Drazkowski; but every application we see there is always something different about them.
- Mr. Drazkowski – I guess when I think about this one, we commented for this site, it is kind of the best spot putting several things together, everything considered collectively, fairly positive, except for this one piece. I think in my mind, given all of these qualifications, this looks good, the other consideration that as I look down the road, in terms of a precedence, not only that you consider them individually, this does have a lot of other pieces.
- Mr. Klopp – I would say there are a lot more positives than negatives when it comes to this variance.
- Mr. Kazmierczak – I agree. The only thing Mr. Klopp, I am looking at this, I don't disagree with anything you folks have said, is that you can't really consider the lack of objection from a neighbor, if it is within the boundaries of the ordinance, you have to approve or disapprove based on that. Financial hardship is the big issue here.
- Mr. Owecke - Financial hardship is not exclusive to this; it results in hardship. Financial hardship is one aspect of that.
- Mr. Kazmierczak - Yes, but it says it doesn't warrant a variance to maximize the value of the property.
- Mr. Owecke – If that is all you are considering it's going to cost them money, then no, what I mentioned earlier, is that you could say that there would be hardship imposed if you abide by the strict letter of the ordinance; not necessarily a financial hardship.
- Mr. Kazmierczak – The other question I have for you Mr. Owecke. We know there is other land that they own in the immediate area that they could site one of these on, however as we (the Board) are making this decision, so we have to look at the 31 acre parcel. Is that the parcel that it is being sited on.
- Mr. Owecke – I think you (the Board) are bound to that.
- Mr. Kazmierczak – I just want to clarify that; that is really what we are talking about here; not the home farm down the road or any other place.
- Mr. Owecke – yes.
- Mr. Kazmierczak – I am willing to make a motion if no one else is and I won't feel bad if you vote against me; please understand that. In light of the fact that we are looking at the 31 acre parcel, I think that is something that we have to look at. I think that it is actually a net positive for the county and for the Township that it is located in and I think it's the best site that they could come up with; there has been some compromises made already to this, while I would like to see it comply with the letter of the law, I also understand the rationale for not doing that and that is why they applied for the variance. I would move to approve, subject to the conditions that were put together.

Seconded by Mr. Drazkowski.

- Mr. Klopp – There has been a motion and a second to approve Variance #2016-1, Bragger Family Farms. Is there any other discussion, as far as conditions, I am looking at #6, so that one would probably be scratched off of the conditions.

Conditions were not read aloud during the hearing, only included in the Staff Report provided to the Board members to review prior to the hearing as follows:

Should the Board of Adjustment choose to approve the variance application of Dan and Mary Bragger the Buffalo County Zoning Department recommends that the following conditions be placed on the variance:

1. *Applicant must apply for and obtain a Wisconsin Pollution Discharge Elimination System (WPDES) Permit from the WI DNR and submit a copy to the Zoning Department.*
2. *Silt fence must be property installed downslope of all areas to be disturbed prior to any land altering activity.*
3. *All disturbed slopes must be stabilized and all disturbed area is to be seeded and mulched as soon as final grade is established. Utilize erosion control matting on disturbed slopes if necessary.*
4. *The color of the poultry barn shall match the existing barn.*
5. *A vegetative screen consisting of trees shall be planted on the applicant's property to obscure the view of the barns from the Romanowski dwelling location. The tree species to be approved by the Romanowskis.*
6. *To reduce land disturbance on steeper slopes, a road/access drive shall not be constructed to the west of the proposed barn.*

- Mr. Owecke - They are supposedly not to have a road on that side western portion of the coop; they will eliminate that much more land disturbance; they will do away with that road.
- Mr. Klopp – Right off Pape Valley Road
- Mr. Owecke – The road around the back side of the new coop.
- Mr. Kazmierczak – They will only have a road on one side.
- Mr. Klopp – I guess what I was thinking is that it was the access road off the Town Road.
- Mr. Klopp – The one culvert where we went around on the back side (of the existing coop), where he walked down into the ditch; to me it looked like it should probably be at least a 6' culvert; 4' minimum. I don't know who decides as far as the culvert size, but you want something that will probably handle something disaster, like we had a couple weeks ago.
- Mr. Kazmierczak - The only question I would add, Mr. Chair is it our place and I don't think it is to design the facility for them; that is what they have their engineers for. Frankly if they design it improperly, it is their facility that will be destroyed. I would say that we don't want to specify how they design it other than they meet all applicable state and federal guidelines. That is my personal feeling.
- Mr. Klopp – That is a good thought.
- Mr. Klopp - Are there any other conditions that need to be put on.
- Mr. Kazmierczak – I think that Mr. Owecke did a good job; the only other comments I will make is that I struggle with this because the letter of the law variance issue and I want to make that clear that this was not done lightly and I think there is some unique circumstances in this one.
- Mr. Owecke – I think that is good that you struggled with this one; that means that you gave it a lot of consideration.
- Mr. Klopp – I had the same thought after going through the criteria for the variance application; they are tough and even with ...; if all the neighbors agreed to it, it doesn't mean that we are not supposed to take that into consideration.
- Mr. Klopp – Motion has been made and seconded. All in favor say I. 3 voting yes, no opposition. Carried.

Business was discussed as follows:

Mr. Owecke provided the BOA members with a document regarding protocol of document retention. Mr. Owecke stated that personal notes that are not part of public record, should be

retained by each member. Discussion was held on phone calls the BOA members receive at home regarding BOA business and it was the recommendation from Mr. Kazmierczak that BOA members not engage in phone calls at home regarding BOA business. Mr. Owecke stated that he would encourage the individual to attend the hearing and voice their opinion during public comments.

Mr. Owecke reported that the last court challenge (Badger Bluff Sands) the BOA was involved in was decided in favor of the BOA by the Court of Appeals. Discussion was held regarding the submittal of documents when an appeal is file and Mr. Owecke commented that the courts probably look to see that the BOA followed protocol and use the minutes and what the BOA based their decision on when the courts make their decision and probably do not look at all the documents provided.

Mr. Owecke informed the BOA that he had a discussion with County Board Chair, Doug Kane in regard to increasing the per diem for BOA members. Mr. Owecke stated that he would be putting forward a resolution to increase per diem for BOA members to \$50 a hearing.

Mr. Owecke informed the BOA that he had a second discussion with Doug Kane, regarding the ability of the alternate to participate in proceedings, but not vote. In reviewing this idea with County Corporation Counsel, he indicated that it would be fine, but any decision by the siting BOA members could not be based on the alternates position or opinion. Mr. Owecke suggested that BOA members think about this and bring this back for more discussion at a future BOA hearing/meeting.

Mr. Owecke asked whether all BOA members were available for a public hearing on September 20; there will be an application for a Conditional Use Permit for development in the steep soils overlay district.

Motion by Mr. Kazmierczak, seconded by Mr. Drazkowski to adjourn. All in favor. Carried. The hearing was adjourned at 12:55 p.m.

Respectfully submitted,
Recording Secretary
Julie Lindstrom