

Dubuque County Zoning Board of Adjustment Minutes of March 1, 2022

Chairperson Ben Schroeder called the meeting to order at 7 p.m.

A. ROLL CALL: Members present at the Dubuque County West Campus, 1225 Seippel Road: Loras Link, Dave Klein, Ben Schroeder, Lillian Kremer & Michelle Switzer. Staff Present at the Dubuque County West Campus, 1225 Seippel Road: Tammy Henry, Amy Schmerbach & Lindsey Schreiber. Dubuque County Attorney CJ May was present at the Dubuque County West Campus, 1225 Seippel Road.

B. APPROVAL OF MINUTES: A motion was made by Ms. Switzer, seconded by Mr. Link and passed unanimously to approve the Minutes of the February 1, 2022 meeting. Vote: 5-0.

C. PUBLIC HEARINGS:

1. BA#03-06-22

ROBERT ROUSSEL

VARIANCES

The applicant is requesting to build an 80' x 144' single family home and garage on a slab within the R-1, Rural Residential and C-1, Conservancy zoning districts. He is requesting to build 35' from the front street line, they will need a 45' variance to the 80' required. He is also requesting to build 35' from the right side yard, they will need a 15' variance to the 50' required. The property, located along Paradise Valley Road approximately 1.89 miles southeast of the City of Rickardsville, is legally described as Lot 1 Behnke Acres Plat 4 Section 34, (T90N-R1E) Jefferson Township, Dubuque County, Iowa.

The property is a 7.36-acre bare lot. The applicant would like to build a single family home and garage on a concrete slab. Because of the topography and shape of the lot, this would be the best place to build the home. There are no homes close to this lot that would be affected by building in this location. Four (4) letters were sent, four (4) were delivered and the City of Rickardsville was notified. There were no comments in regards to this case.

Speaking to the board was Robert Roussel, 1801 Lincoln Ave, Dubuque. Mr. Schroeder administered the following Oath asking the participant to raise his right hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Schroeder asked if he wanted to add anything to his case. He said no.

Ms. Kremer asked Ms. Henry if the Department of Natural Resources had to be contacted because the property is partially in the C-1, Conservancy zoning district. Ms. Henry said no, because he is building on the top part of the lot above the timber & away from the waterline. When he pulls his Erosion permit the watershed department would look at it and if there is an issue they would address it.

Mr. Klein commented that he frequently passes by and could understand why he was building there because he was making good use of the land. He said it was marginal real estate.

Mr. Schroeder asked if anyone had any further questions. No one spoke.

A motion was made by Ms. Switzer, **seconded by Mr. Link to approve the variances. The motion passed unanimously. Vote:5-0**

2. BA#03-07-22 RICHARD & ELAINA BIECHLER VARIANCE

The applicants are requesting to build a 40' x 64' detached garage in an R-1, Rural Residential zoning district. They are requesting to build 10' from the left side yard, they will need a 40' variance to the 50' required. The property, located along Humke Road approximately .66 miles south of the City of Dubuque, is legally described as Lot 5 Kress Subdivision Section 27, (T89N-R1E) Center Township, Dubuque County, Iowa.

The property is 1.51 acres with a home. The applicants would like to build a detached garage behind their home. Because of the placement of the septic tank and drainage field they need to be closer to the left side lot line and will need a variance. Also, there is a pipeline that runs through the back yard that they can't build close to. Nine (9) letters were sent, 7 delivered and the City of Dubuque was notified. Heath & Bonnie Drone and Michael Elgin and Theresa Oliger did not pick up their letters. There were two comments in regards to this case. Brian Recker, 13446 Katra Ct., Dubuque said they were contacted by Richard Biechler regarding an outbuilding that he intends to build on his property at 17333 Humke Rd. and will need a variance to locate it at 10 feet from his west property line. Per his request, we are contacting you, as his neighbors on the north side of his property, to state that we have no objection to this variance request. Please feel free to contact myself, or my wife, if you need anything more formal submitted. Another comment was from Susie and Paul Smith, 17377 Humke Rd. Dubuque. They said we have no issue with Richard Biechler putting up a building on his lot with the adjusted setbacks on his Humke Road residence. We are his neighbors to the west.

Mr. Schroeder said that was good that the two people that would be most affected by it are ok with it.

Speaking to the Board was Richard Biechler, 1733 Humke Rd, Dubuque. Mr. Schroeder administered the following Oath asking the participant to raise his right hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Schroeder asked if he had anything to add to his case. He said no.

Mr. Schroeder asked if he planned to put a driveway back to the building. Mr. Biechler said yes on the west side of the house. Mr. Schroeder asked if there would be any water shed from the driveway and asked if the water would run onto his property or the neighbors. Mr. Biechler responded that it would all run off onto his property.

Mr. Schroeder said his only concern is with the rainwater from the driveway and from the building that gutters and down spouts needs to be directed to have it run back onto his property and not onto the neighbor's property. Mr. Biechler said all of the rainwater would run onto his property.

Ms. Switzer said that when the driveway is poured to make sure that it was pitched so the water runoff would run onto Mr. Biechlers property and not the neighbors.

Mr. Schroeder asked if anyone had any questions. No one spoke.

A motion was made by Ms. Switzer, **seconded by Mr. Schroeder to approve the variance with the following conditions. The applicants must have gutters and drain spouts to direct the water runoff onto their own property and the applicants must pitch the driveway to direct the water runoff onto their own property. The motion passed unanimously. Vote: 5-0.**

3. BA#03-08-22 DOUGLAS & CINDI HIRSCH VARIANCE

The applicants are requesting to build a 18' x 37' attached garage in an R-2, Single Family Residential zoning district. They are requesting to build 11' from the left side yard, they will need a 9' variance to the 20' required. The property, located along Prairie View Lane approximately 1.41 miles east of the City of Dubuque, is legally described as Lot 9 Autumn Ridge 2nd Addition Section 30, (T88N-R3E) Mosalem Township, Dubuque County, Iowa.

The property is 2.25 acres with a home. The applicants would like to build a garage addition for more storage. Their Homeowners Association does not allow any detached buildings so they have to attach it to the existing garage and will not meet the left side setback. The front of the addition will match the brick of the existing home and the roofline will be continuous. Nine (9) letters were sent, nine (9) were delivered and the City of Dubuque was notified. There were no comments in regards to this case.

Speaking to the Board was Douglas Hirsch, 7633 Prairie View Lane, Dubuque. Mr. Schroeder administered the following Oath asking the participant to raise his right hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Schroeder asked if he had anything additional to add to his case. He said no.

Mr. Schroeder asked if there would be enough room on the left side of the garage to get a vehicle to the back of the house to access the septic. Mr. Hirsch said yes and that he planned to put a 10' driveway next to the garage. Mr. Hirsch said the current water runoff is between the two properties on the property line so he would not be adding any more rainwater to either property.

Ms. Kremer asked him if he had talked to his neighbors the Kaisers. He said yes.

Ms. Kremer asked about the driveway distance from the property line. Mr. Hirsch said the driveway would be right on the edge of property line but would not cross the property line. Mr. Hirsch said the driveway would also give the Kaisers access to the back of their house.

Mr. Klein asked if he planned to put gutters all the way around the garage. Mr. Hirsch said yes and he will run them out the back onto his own property.

Mr. Schroeder asked if anyone had any questions. No one spoke.

A motion was made by Mr. Klein ,**seconded by Mr. Link to approve the variance with the following condition. The applicants must have gutters and drain spouts to direct the water runoff onto their own property. The motion passed unanimously. Vote: 5-0.**

4. BA#03-09-22 DUSTIN & KATHERINE LUCAS VARIANCES

The applicants are requesting to build 14' x 24' attached garage addition and a 22' x 20' attached garage addition in an R-3, Single Family Residential zoning district. They are requesting to build 3' from the front street line, they will need a 27' variance to the 30' required. They are also requesting to build 1' from the left side yard, they will need a 14' variance to the 15' required. The property, located along River Vista Court approximately .059 miles north of the City of Dubuque, is legally described as Lot 1-1 Richard Fincel Place Section 02, (T89N-R2E) Dubuque Township, Dubuque County, Iowa.

The property is .61 acres with a home. The applicants would like to build an attached garage on the left side and rear of the existing garage. Because the home is built at an angle on the lot, they will be closer to the left side and front lot lines than the requirement and will need variances for both. The rear of the yard slopes down and the septic is located in the back yard. The garage addition will match the existing home. Twelve (12) letters were sent, ten (10) were delivered and the City of Dubuque was notified. Robert & Lisa Klauer and Megan & Gabriel Skiles did not pick up their letter. There were no comments in regards to this case.

Speaking to the Board was Dustin Lucas 17714 River Vista Ct, Dubuque. Mr. Schroeder administered the following Oath asking the participant to raise his right hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Ms. Kremer asked if he had talked to his neighbors. He said yes and they had agreed to pull out the trees and replant them for privacy once the garage was complete.

Mr. Klein asked if he would have access to the other side of the house to get to his septic. He said yes.

Mr. Schroeder asked if anyone had questions. No one spoke.

A motion was made by Ms. Switzer, **seconded by Mr. Schroeder to approve the variances with the following condition. The applicants must have gutters and drain spouts to direct the water runoff onto their own property. The motion passed unanimously. Vote: 5-0.**

**5. BA#08-32-21 PFABCO LLC/CORY PFAB
MODIFICATION OR POSSIBLE REVOCATION OF THE SPECIAL USE
PERMIT**

The Board of Adjustment is holding a Public Hearing to discuss the modification or possible revocation of the Special Use Permit granted on August 3, 2021 to place a 30,000-gallon anhydrous tank for the Pfab Family Farms only and not for resale in an M-1, Industrial zoning district. The property, located along Bernard Road approximately 1.88 miles northeast of the City of Bernard is legally described as Lot 2 Lynch Industrial Subdivision, Section 14, (T87N-R1E), Prairie Creek Township, Dubuque County, Iowa.

The applicants are in violation of their Special Use Permit Decision that was signed on September 3, 2022. The Special Use Permit required the following conditions;

1. The applicant must install an 8ft. high chain linked fence around the baffle and pump areas. The fence must be locked when not in use and follow the regulations of the Iowa Department of Agriculture.
2. The applicant must install cement pilasters that are 5' above, 5' below and 5' from the tank spaced in 5' intervals around the tank for crash protection and follow the regulations of the Iowa Department of Agriculture.
3. The applicant needs to have operational lights around the tank that come on at dusk and turn off at dawn.
4. The applicant needs to have an operational security camera facing in towards the tank.
5. Emergency contacts which includes names, phone numbers and addresses must be clearly visible and posted by the road side at the site entrance.
6. The applicant needs to have a lock box to cover up the valves, plumbing and hoses so they cannot be accessed at night.
7. No nurse tanks are to be stored at the site during the off-season.

The Zoning Administrator received a complaint on January 18, 2022 that on January 17, 2022 Mr. Pfab was filling the Anhydrous Tank without having the safety measures in place. The Zoning Administrator contacted Mr. Pfab immediately and was told by Mr. Pfab that in fact some of the things were not in place and that he would take care of them that very same day.

A site visit with pictures was completed on January 19, 2022 with Mr. Pfab present at the site. Mr. Pfab had placed a Temporary Fence and Precast Cement Barriers around the tank. He also had installed a Trail Cam and Security Lighting. Mr. Pfab explained that he was not able to get the fence in because of the fencing company could not get them before the weather got cold. Mr. Pfab stated that he has secured the property the best that he can until the weather allows him to finish the project in the spring.

The property is 5 acres of Industrial zoned ground. Four (4) letters were sent, four (4) were delivered and the City of Bernard was notified. There was one comment regarding this case from Jim Connolly, 16534 Twelve Mile Rd, Bernard. He said these safety factors should have been addressed before anhydrous was put in the tank:

- Lighting
- Fencing-wasn't ordered until after the tank was installed
- Water near tank

Rules were not followed. We are concerned that if these things weren't done, then the future may hold more broken guidelines and more safety issues.

A Concerned Citizen,

Jim Connolly

Speaking to the Board was Cory Pfab, 6333 Old Davenport Rd. Mr. Schroeder administered the following Oath asking the participant to raise his right hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Pfab stated that when the Department of Agriculture gave him the facility inspection list that they put the tank in service and they said that I could start placing product in the tank and said to check the valves over.

Mr. Pfab said that Mark Benedict from Ammonia Propane did the install and they were both present when they introduced product into the tank.

Mr. Pfab stated that the Department of Agriculture questioned why they were being called out for another inspection since they were just there a few weeks back and everything was just as good if not better then when they put it in service in November. He said that they want to know why the County was pursuing this. They then sent him the local legislation prohibit chapter 200.

Mr. May spoke that his presents at the meeting was to assist the board and be our council.

Mr. May suggested that everyone should review the Special Use Permit that the board did grant in the past and look at the seven specific conditions of approval. He said to make a determination if a violation or violations have or have not occurred and vote accordingly to either amend, modify or revoke the permit.

Mr. May said that Mr. Pfab did stop in his office the week before this meeting and brought to his attention Iowa Code Section 200.22 and asked him to read it and give his opinion.

Mr. May said the code section stated a local body such as the board cannot adopt any particular motion, resolution, rule or regulation that would affect multiple things. Such as use, sale, distribution, storage, transportation disposal, labeling, registration or manufacture of fertilizer conditioner. If you do then the rules of the Iowa Department of

Agriculture would pre-empt anything you do but the saving clause is that this Section 200.22 does not apply to local legislation or general applicability to commercial activity.

Mr. May spoke to the board and said that what they were doing was trying to control land use in the county which was common even with very specific conditions. He said that's what the board was doing listing the seven very specific conditions. He said that Mr. Pfab signed the document and it was exactly what needed to be done and it is a binding document.

Mr. May said the thought the board was more driven by the Iowa Administrative Code of Chapter 43 which is fertilizers and agriculture line along with Chapter 44 onsite containment of pesticides, fertilizers and soil conditioners. He said as an example these chapters define what is a mobile container, a non-mobile container and a permanent storage site.

Mr. May said in his opinion the Board of Adjustment has not over stepped their authority by listing the all of the specific conditions on the special use permit.

Mr. Pfab replied, "Don't get me wrong guys. I'm not trying to get out of the conditions at all."

Ms. Kremer asked Mr. Pfab "Who gave you permission to put the Anhydrous Ammonia in the tank?" He replied Lisa Kurt at Department of Agriculture. Ms. Kremer asked if she was the person that signed off on the special inspection sheet. Mr. Pfab said yes. Ms. Kremer asked if she was a previously a Lynch and if she was tied in with the Lynch Livestock where Mr. Pfab purchased the land from. Mr. Pfab said no that they were out of Waucoma, Iowa. He questioned why some of the documents even listed the Lynch name on them. Ms. Henry replied, "Because that is what you told us to put on the Board of Adjustment Application. Mr. Pfab stated that the Lynch's had nothing to do with the case.

Ms. Kremer stated that the guidelines that we requested were the same as the websites of Department of Agriculture, EPA & OSHA. She asked why Ms. Kurt gave him permission when there were no concrete barriers and no fence. Mr. Pfab said he does not think there is another tank in Iowa that does have the fence and most don't have the crash protection. Mr. Pfab thoughts were that Ms. Kurt has seen cases like this set up both ways.

Ms. Kremer said she noticed that Ms. Kurt had checked off on the 150 gallon barrel of water on site and wanted to know where the barrel was located at. Mr. Pfab said he brought it to the site when they had a nurse tank that held 13,000 gallons and dumped out the water due to the cold water freezing overnight and just filled it back up in the morning when they were pressure testing the other tank. Ms. Kremer questioned how Ms. Kurt could checked off on inspection when the 150 gallon barrel of water was not filled. Ms. Kramer asked Mr. Pfab if Ms. Kurt just took his word for it that it was present and filled. Mr. Pfab said the 150 gallon was not present when Ms. Kurt did the inspection. Ms. Kramer suggested that we should check on this with Ms. Kurt's supervisor.

Mr. Schroeder said at this point the board would go through the seven conditions one by one and see if each condition was when it was completed or not and if it was incompliance or not.

Mr Schroeder started with condition #1 reading it out loud. Mr. Pfab commented that he was unaware that this had to be completed before anything goes in. Ms. Kremer & Ms. Switzer both commented that is was a stipulation from last meeting.

Mr. Schroeder asked if there was Anhydrous in the tank prior to the fence going up. Mr. Pfab said yes.

Mr Pfab comment that this is where everything becomes cloudy or it becomes a gray area because the state says its ok and Ms. Henry says there should not be any product in the tank. I read the agreement and did not see that part of it. Mr. Pfab stated that our agreement was that everything should be completed before it was operational. Mr. Pfab said he told Ms. Henry the day that he signed the agreement that he would not wire up that motor until the county signed off on it and to this day the motor is not wired up.

Mr. Pfab said he looked at all the conditions and maybe the order of things taking place was not done right.

Ms. Kremer stated that these conditions were put in place for public safety and it was very clear in the last meeting. Mr. Pfab agreed and said that he did not say was he not going to do them. Ms. Kremer asked him what he was thinking when he ordered semi loads of anhydrous ammonia when he knew the criteria's that we set by the Board of Adjustment. Ms. Kremer said Mr. Pfab shrugged off the rules that were set.

Mr. Schroeder commented there was no fence around the project when it was constructed and no fence around when the tank was filled.

Ms. Kremer commented that the current fence that is installed is 6' fence and he was using stakes that were commonly used as produce cages that are not buried in the ground. Mr. Pfab said that he had talked to Heiar fencing and they said if you use a T-post, use brace wire, wrap them twice, and tie them that technically by Iowa Code they can call it a fence however, he agrees it is not the correct fence. Mr. Pfab stated that the correct fence is on order.

Speaking to the Board via Zoom was Mark Benedict, 15102 West County Road A, Evansville, Wisconsin 53536. Mr. Schroeder administered the following Oath. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said I do.

Mark Benedict said he would talk about the normal process of construction and why & what they do. He said part of the process is making sure the integrity & safety of the vessel and piping that runs to the tank is functional. He said he does request product in the tanks just to make sure that there is mechanical seals and that's the way they can have a true test is to have product in the tank.

Mr. Schroeder said to Mr. Benedict that he did review the August meeting minutes and did notice that he attended via zoom. He said you were aware of the conditions however, I know that it didn't pertain to his part of this project but not once did he hear an objection saying that we can't do it that way because it would affect your process of the project.

Ms. Kremer asked Mr. Benedict if he was stating that the tank has to be filled to the top seal to get proper testing. Mr. Benedict said no.

Mr. Schroeder moved to condition #2 and said the condition was not met yet.

Ms. Kremer commented that the cement blocks were placed when there was a layer of ice and the ground was frozen. She said if a vehicle would have left the road and hit one of the cement blocks it would have certainly pushed the blocks into the tank.

Mr. Schroeder moved to condition #3.

Ms. Switzer asked if there was a light and wanted to know when was it installed. Mr. Pfab said the light was installed the day that Ms. Henry called. Mr Pfab did not think it had to be installed until the tank was operational.

Ms. Switzer switched back to condition #2 and asked Mr. Pfab if he poured concrete to place the tank on and he said yes. She asked when and he responded October 1st. Ms. Switzer asked Mr. Pfab why the pilasters were not done at the same time. Mr. Pfab said he did not have all the plumbing done yet.

Mr. Pfab apologized that he did not outline the steps of the construction process claiming that everything was new to him and new to the Board of Adjustment.

Mr. Schroeder asked Mr. May if the Iowa Code 200.22 or Chapter 44 outlines or describes what is operational. Mr. May said no. Mr. May thinks it is what the Board of Adjustment deems it to be as far as operational.

Mr. Schroeder asked if there was a security camera on location and Mr. Pfab said yes.

Ms. Kremer stated that the camera was just put in place but was not in place when the tank was filled.

Mr. Schroeder moved to condition #5. Mr. Schroeder asked if the emergency contact signs were in place and if the signs were visible from the road. Mr. Pfab said they were in place and had to be present before the tank was in service. Mr. Pfab said he would place a chain link fence and post the sign closer to the road to make it more visible from the road.

Mr. Schroeder moved to condition #6. Mr Pfab said the lock boxes that secure the valves, plumbing and hoses are present.

Mr. Schroeder moved to condition #7. Mr. Pfab said they did a 5-year hydro test on the nurse tanks. He said that Mr. Benedicts Company filled the nurse tanks with water and applied pressure in December in a heated shop. Mr. Pfab said they checked the valves and made sure the tanks did not leak. At that time, they drained the water and needed to add product into the tanks to remove the excess moisture.

Mr. Schroeder referred to previous meeting minutes that Mr. Link had said he did not want nurse tanks stored on sight in the off season and it would be ok the leave the nurse tanks on site for a brief period of time when they were using the anhydrous. Mr. Schroeder stated that testing the tanks is the same as using or operating.

Mr. Klein said he really did not expect most of the conditions to be met by March 1st due to the weather and backorders on supplies. Mr. Klein stated his biggest concern was the nurse tanks were left overnight. Mr. Pfab stated he didn't want to be pulling the nurse tanks down the road after dark so that's why they were left there.

Ms. Kremer commented that the the Special Use Permit was agreed upon on August 3rd and Mr. Pfab didn't go into sign the document until one month later and then it was not recorded until one month after that. Mr. Pfab said the Dubuque County Zoning office wanted to hold the document until September. Mr. Schroeder explained that this was allowable and Mr. Pfab agreed. Ms. Kremer asked Ms. Henry if the zoning office pushed it back until September and Ms. Henry said no. Ms. Henry said it took a couple of weeks to get the paperwork correct and it was not complete the same week of the meeting. She said that Mr. Pfab came in later by choice. She told Mr. Pfab that he could stop to sign the document at any time but if it was going to be appealed in the courts it would usually be done in thirty days. Mr. Pfab said he misunderstood. Mr. Pfab however agreed with Ms. Henry that it was in his best interest to wait the 30 days if the case was appealed.

Mr. Schroeder opened up the meeting to public comments.

Speaking to the Board via Zoom was Zeke McCartney, 110 East 9th Street, Dubuque. Mr. Schroeder administered the following Oath. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said I do.

Zeke McCartney stated he was an attorney speaking on behalf the Connolly's. Mr. McCartney expressed that the issue was that Mr. Pfab is clearly in violation of the Special Use Permit agreement.

Mr. Schroeder asked Mr. Pfab what the current status of the tank was. Mr. Pfab said it was in use and operational. Mr. Pfab said the Iowa Department of Agriculture recognized that the tank was in service and operational.

Speaking to the Board was James Ruden, 3585 Bernard Rd, Bernard. Mr. Ruden administered the following Oath. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said I do.

Mr. Ruden asked the board why a petition that had ninety signatures that was presented to the Dubuque County Board of Adjustment was ignored. Mr. Schroeder stated that the petition don't make it a law however it did make the Board of Adjustment know that there were concerns regarding the case.

Mr. Ruden said he would like to see the Board of Adjustment revoke the permit. He said that he thinks the Board of Adjustment has opened up a can of worms by granting the permit. Mr. Ruden stated, there was a farmer just down the road that has multiple anhydrous tanks that is watching this case. He thinks if this case is passed, more farmers will be requesting permission to do the same. Mr. Ruden stated that Mr. Pfab's gray area is just a lack of respect. He thought Mr. Pfab should have been calling the Board of Adjustment with questions.

Mr. Ruden asked Mr. Pfab how many semi loads he had delivered. Mr. Pfab stated three (3) semi loads. Mr. Ruden stated that he witnessed four (4) semi loads unloading at night. Mr. Pfab said there could not have been because he only paid for three (3). Mr. Ruden stated he witnessed two wagons that had two nurse tanks per wagon travel down the road late at night to be filled by the semis. Mr. Ruden said you could tell by the ice on the tank that it is 80% full. He said there was anhydrous left on scene at night with full tanks. He said I don't know where you went with them Cory. He didn't know if Mr. Pfab took them to another secure lot. Mr. Schroeder said the board was more concerned with the conditions that were or weren't met and not with what nurse tanks went up the road. Mr. Ruden said that he just thought this was a gray area for him.

Speaking to the board was Peggy Ruden, 3537 Bernard Rd, Bernard. Ms. Ruden administered the following Oath. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" She said I do.

Ms. Ruden stated that she was not a farmer and wanted to know when Anhydrous Ammonia is typically applied when farming.

Mr. Klein replied April, May, October, November & December.

Ms. Ruden said that Mr. Pfab stated that they would like to store as little as possible when they were not using the product. She asked Mr. Pfab how much product is needed to run the safety protocols. She said in her opinion the tanks should not have been filled because most of the conditions were not met when she took footage of the site.

Mr. Schroeder asked Mr. Benedict how much product had to be in the tank to run the safety checks. Mr. Benedict said it would have to be a full load.

Ms. Ruden asked Mr. Pfab if the people running the operation were certified with the Departments of Agriculture. Mr. Pfab said yes. Ms. Ruden asked Mr. Pfab what the rush was to fill the tank. He said that he did not want the inside of the tank to rust and he stated that it's hard on the tank to be sitting empty. Ms. Ruden calculated that the tank had been sitting empty for five months before being filled and wondered why the tank could not have sat a few more months until the conditions were met. Mr. Pfab said that he did not want to wait until the last minute because of the supply shortage.

Ms. Switzer stated that Mr. Pfab's concern was that if the tank sat empty that it would rust on the inside. Ms. Switzer asked Mr. Pfab if the tank would sit most times empty. Mr. Pfab said the tank will never be completely empty.

Ms. Kremer asked what the manufacturing date of the tank was. Mr. Benedict replied that he thought it was in the late 1960's.

Mr. Pfab said the tanks from the 1960's to the early 1980's were better built tanks than they are built today. He said it was 15th or 16th of an inch thick of treated steel. Mr. Klein said he thought the tank was newer.

Ms. Ruden asked Mr. Pfab if there was a significant price change from purchasing the product in February as opposed to purchasing it in April. Mr. Pfab said no that it was more about the safety.

Speaking to the Board was Erin Meloy, 3460 Bernard Rd, Bernard. Ms. Meloy administered the following Oath. “Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?” She said I do.

Ms. Meloy said they are about eleven hundred feet away from the anhydrous tank and they have small children. Ms. Meloy asked Mr. Pfab to ask himself if he would like to have this tank this close to his residence.

Speaking to the Board was Jesse Meloy, 3460 Bernard Rd, Bernard. Mr. Meloy administered the following Oath. “Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?” He said I do.

Mr. Meloy said his main concern was is safety of his child.

Speaking to the Board was Jason Kramer, 17180 Prairie Creek Rd, Bernard. Mr. Kramer administered the following Oath. “Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?” He said I do.

Ms. Kremer asked him if he was the fire chief for the City of Bernard. Ms. Kremer acknowledged that Mr. Kramer was present at the last meeting and that he made a promise that he would get the proper equipment and proper training. She asked Mr. Kramer what steps he had taken to fulfill this. Mr. Kramer said that they have hazmat training. He said they have bunker gear, self-contained breathing apparatus and gloves.

Mr. Schroeder said that in looking at minutes from the last meeting Mr. Kramer said the Fire Department has had training on the anhydrous training through Northeast Iowa Community College about two to three years ago. Ms. Kremer asked if they had the proper gear to handle an emergency with the tank. Mr. Kramer said no not at this time and he was researching what they need to be compliant in a disaster. He said he thought they would need the tech gear on site and they do not. He stated with the 28E Agreement that is with the City of Dubuque Hazmat team the only obligation to isolate downwind at the ERG recommended distance and shut it off. Mr. Kramer said they Bernard Fire Department did do a refresher course with the City of Dubuque’s Hazmat team in December 2021.

Ms. Kremer asked if they had a reciprocal agreement with the City of Dubuque in the event of a spill or rupture out in the county that the City of Dubuque Hazmat would respond. Mr. Kramer said yes, it is called a 28E Agreement.

Ms. Kremer asked if everyone on the fire department has been trained and how many. Mr. Kramer said about 25. Ms. Kremer mentioned that on the petition against the tank that out of 90 signatures there were about 20 that were on the Bernard Fire Department. Mr. Kramer said the Bernard Fire Department Association is neither for nor against the anhydrous tank.

Mr. Schroeder asked if anyone in the audience would like to speak either for against this case. No one spoke.

Mr. Pfab asked Mr. May if there was any truth to it when the Department of Agriculture said that they held all the jurisdiction and liability over the case. Mr. May expressed he did not know what their conversation was. Mr. Pfab asked Mr. May if he thought the county should take all liability back. Mr. May said no. Mr. May said what he thought the Department of Agriculture was referring to the Chapters 43 & 44. Mr. Pfab said that the Department of Agriculture was assuming all liability as of November 23 because they were doing the testing annually whereas the county do not do any testing. Mr. May said correct that the Dubuque County Board Adjustment does not do any of the testing. Mr. Pfab said that the Department of Agriculture told him the county could not pull away the Special Use Permit because they have all of the authority over it. Mr. May stated to Mr. Pfab that he wouldn't have been going to the Department of Agriculture asking for them to certify to this operation if he had not had the Special Use Permit first. Mr. May stated that Mr. Pfab needed a place to operate so that is what the Board of Adjustment had granted. Mr. May said this is a multi-step process. Mr. May said going back to the beginning of all of this if you Mr. Pfab have not complied with what the Board of Adjustment required from you and they have options to address that. Mr. Pfab said correct. Mr. May said what the Board of Adjustment is looking at or what they are concerned about is that Mr. Pfab has not met their terms first which you needed the Special Use Permit to even build the operation. He said Mr. Pfab would not have purchased the plant if he could not get the Special Use Permit. Mr. May said it was already zoned M-1 and Mr. Pfab took the next step to get the Special Use Permit and all this left him with the ability to operate.

Mr. Pfab said he was confused because when he got the permit he thought he had a year to complete the conditions and this was the gray area. He said that everyone had different opinions of what operational is.

Mr. Schroeder said the conditions needed to be completed before it was operational and his idea of operational was using & filling the tank.

Mr. Pfab stated that he & his concrete team plan on having all the conditions done in the next couple of weeks if weather permits. He said he was 95% done with the project and wants to complete it.

Mr. Klein asked Mr. May if the Special Use Permit is revoked, is there a law against Mr. Pfab purchasing more anhydrous ammonia to fill the nurse tanks on his other farm. Mr. May said no. Mr. Klein said asked if keeping the Special Use Permit would be safer. Mr. May said that was up to the Board of Adjustment. Mr. May said in the administrative code that with provisions, you can load directly from the transport trucks into the nurse tank and it is allowed.

Mr. Klein stated he would rather keep the Special Use Permit for safety and fix what conditions are not completed. Mr. Schroeder stated that he agreed.

Mr. Pfab said he spoke with the Department of Agriculture when they did the second inspection and they said would not even write up a warning so he stated to the Board of

Adjustment to just give him a warning or that he would even be willing to pay a small fine.

Mr. Klein asked Mr. Benedict if the Board of Adjustment was to assume when he did his test of the tank that it was better not to have the fence and pillars around the tank. Mr. Benedict said it would have been difficult to conduct the test with them present.

Ms. Kremer said that there were seven conditions Mr. Pfab was to follow and he was defiant on all seven.

Mr. Link said he didn't not think that Mr. Pfab was being defiant he just has not gotten all of the conditions completed yet and got a head of himself by filling the tank.

Ms. Kremer said she wonders what would have happen if the neighbors would not have notified the board. She thinks Mr. Pfab would have still been operating.

Mr. Link said he thinks Mr. Pfab would have eventually completed all the conditions and the board would not be having this meeting if he had not put product in the tank. Mr. Link said he understood why he put some product in the tank but he should not have left product in the tank overnight in the off-season. Mr. Link thought that this was the one condition where Mr. Pfab was defiant.

Mr. Klein said he felt the same as Mr. Link and he said if he was in Mr. Pfab seat he could just pull portable tanks and do what he wants and that which would be more dangerous.

A motion was made by Ms. Switzer, **second by Ms. Kremer to revoke the Special Use Permit. The motion was denied. Ms. Kremer and Ms. Switzer voted in favor of the motion. Mr. Schroeder, Mr. Klein and Mr. Link voted against the motion. Vote 2-3.**

A motion was made by Mr. Link, **second by Mr. Schroeder to approve a 90 day Special Use Permit with following conditions:**

- 1. The applicants must install an 8ft. high chain linked fence around the baffle and pump areas. The fence must be locked when not in use and follow the regulations of the Iowa Department of Agriculture. The fence must be professionally installed and needs to be at least 3 feet or more in the ground. This must be completed by April 1, 2022.**
- 2. The applicants must install cement pilasters that are 10 inch H Beams with ½ inch flanged or 10 inch Steel Case Concrete Pilasters that are 5 feet above ground, 5 feet below ground and 5 feet from the tank spaced in 5 feet intervals around the tank for crash protection and follow the regulations of the Iowa Department of Agriculture. This must be completed by April 1, 2022.**
- 3. The applicants needs to have a minimum of (2) two operational lights around the tank, (1) one at the front of the tank, and (1) one at the rear of the tank**

that are facing the tank and they must be on from Sunset to Sunrise. This must be completed by April 1, 2022.

- 4. The applicants need to have an operational security camera over the pumping area. This must be completed by April 1, 2022.**
- 5. Emergency contacts which includes names, phone numbers and addresses must be clearly visible and posted by the road side at the site entrance located on Bernard Road. A second sign with the same information must be clearly visible and posted at the pump area. This must be completed by April 1, 2022.**
- 6. The applicants needs to have a lock box to cover up the valves, plumbing and hoses so they cannot be accessed at night. All manual valves must be locked and or chained when not in use. This must be completed by April 1, 2022.**
- 7. No nurse tanks are to be stored at the site during the off-season which is defined as July 1st thru September 30th and December 1st thru March 31st of each calendar year.**
- 8. No filling of the 30,000-gallon tank will be permitted from July 1st thru September 30th and from December 1st thru February 28th of each year. The 30,000 gallon tank shall not contain more than 15% of Anhydrous from July 1st thru September 30th and December 1st thru February 28th of each year.**
- 9. The applicants must follow and comply with the Iowa Department of Agricultural & Land Stewardship Anhydrous Ammonia Facility Inspection Checklist and it must be completed by their required Deadline date of August 1, 2022.**
- 10. The applicants must contact the list of property owners who have requested to be notified when the tank is scheduled to be filled. The contact must be 24 hours prior to filling the 30,000-gallon Anhydrous tank.**
- 11. All of the above conditions must be met by the deadline dates or subject to immediate revocation of the Special Use Permit.**

The motion was approved. Mr. Link, Mr. Klein, Mr. Schroeder and Ms. Switzer voted in favor of the motion. Ms. Kremer voted against the motion. Vote: 4-1.

D. PUBLIC COMMENTS: None

E. OLD BUSINESS: None

F. NEW BUSINESS: None

G. ADJOURNMENT: A motion was made by Ms. Switzer, seconded by Mr. Schroeder and passed unanimously to adjourn. Vote: 5-0. The meeting adjourned at 10:18 p.m.