

Violet Township Board of Zoning Appeals Special Meeting

June 6, 2019

Mr. Collins called the meeting to order at 7: 00 p.m. and roll was called.

Members present: Mr. Rector, Mr. Dellinger, Ms. Schirtzinger, Mrs. Gillette, Mr. Kluczynski and Mr. Collins. Also present was Kelly Sarko, Zoning Inspector and Jennifer Huber, Township Legal Counsel.

Mr. Collins stated there were five members present. He noted that Stephanie Gillette would be permitted to ask questions but would not be voting.

Mr. Collins swore in those wishing to speak. It was noted for the record that Ms. Sarko had also been sworn in.

Case Number 03-CU-2019 (continued from May 29, 2019)

An application for Conditional Use Permit for Home Occupation filed by Rob Hewitt, 8006 Allen Road, Canal Winchester, for property located at 8006 Allen Road, owned by Robert Kull, 8193 Carroll Northern Road, Carroll, Ohio. Pursuant to Violet Township Zoning Resolution Sections 3B1-02(9) and Section 3AA5, this application requests a Conditional Use Permit in order to conduct a home occupation from the residence located at 8006 Allen Road.

Ms. Sarko presented the Board a letter from Mary Lou Dawson, 8310 Allen Road, dated June 6, 2019. Mr. Collins entered the letter from Mrs. Dawson into the record as Exhibit "E".

Connie Klema, P.O. Box 991 Pataskala, Ohio, represents Mr. and Mrs. Hewitt. She noted she was not present until just the last meeting on May 29, which is when she came to be counsel for the Hewitts. She said she noted driving to this meeting that there is a lot of farming going on in our area. She also said a typical Home Occupation, the code is written to protect what is typically a house sitting along a road in a subdivision or along a street where you can see the house, unlike this situation where you have a 1,300 foot driveway that goes back to an area that is buffered with trees and actually a road at the rear. It is not typical that you would have a Home Occupation request in this type of an area, because most people would run their business without many people knowing.

This is an area where you have a home that has been there for many years as well as a barn. We have a person that owns a landscaping business, they come and they go, they store things in the barn and they are not operating in the house. There is not a long driveway that they are parking along to accommodate a shop at the barn. She said they could remove one of the variances because the variance for outdoor storage is only needed if it is not buffered. She said the buffering is there so they do not need that variance.

She heard a lot of anger last week when she was at this hearing and wondered why. There has been some noise because he is working and improving the house and been working at improving the barn. His business has not been initiated there. There is an adjacent property where there is also a farm, but also allows storage of materials and things that are not buffered. She thinks many things happen on fields and farm areas that do not need a home occupation. Farming is a home occupation. It is very similar to what he is asking for. The people that will be coming and going in the morning or evening will not be staying there during the day and working.

In addition to removing that one variance, he will not be using the driveway that is currently used to access the property. He will be extending a road or driveway from Carroll Northern Road to the home and this has been agreed to with the current owner of the property.

Richard Ricketts, 50 Hill Road South, Pickerington, said he is counsel for the Osbornes. He stated he has a very extensive analysis of the Violet Township Zoning Code in this application that he will go over at the conclusion of evidence. He said he would like to cross examine the applicant and enter into the record an analysis.

Mr. Ricketts, while he respects what Ms. Klema has said, she is saying "he is a nice guy ignore your code".

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Mr. Ricketts presented exhibits – one set for the record, one for counsel and three sets the Board can share.

Mr. Ricketts began his cross-examination of Mr. Hewitt by referring to Exhibit 1, page 2. Mr. Ricketts asked Mr. Hewitt if that was his signature on the application. Mr. Hewitt said it was. Mr. Ricketts asked him if this appeared to be the text of what he submitted in support of his application. Mr. Hewitt said it does.

Mr. Ricketts, referring to Exhibit 2, asked if this was a copy of a map provided as a part of his application. Mr. Hewitt said it was. Mr. Kluczynski asked if he could slow down. Mr. Ricketts said he thought this was consolidated. Mr. Collins said they were doing the Conditional Use portion first. Mr. Ricketts asked Mr. Hewitt if this was the application for Conditional Use Permit. Mr. Hewitt said it was not, it was for the variance.

Mr. Ricketts said what appended to the application were the references on pages 4, 5 and 6 for the variance. Mr. Hewitt said yes. Mr. Ricketts, referring to Exhibit 2, asked him to look at the map he provided and asked what address was provided for Columbus Hardscapes. Mr. Hewitt said his current home residence, which is 9434 Joy Avenue, Canal Winchester, Ohio 43110.

Referring to Exhibit 3, which is a GIS aerial image, Mr. Ricketts asked Mr. Hewitt if what he sees is part of the Kull property. Mr. Hewitt said correct and that Mr. Kull owns the property. When asked who resides on the property, Mr. Hewitt said that his in-laws live on the property. Mr. Hewitt said that he is the owner of Columbus Hardscapes and there are no other owners.

Mr. Ricketts asked when he entered into discussions with Mr. Kull about the purchase. Mr. Hewitt said they went into contract this time last year. Mr. Ricketts asked if the contract is still in place. Mr. Hewitt said it was. Mr. Ricketts asked if Mr. Hewitt had provided a copy of the contract. Mr. Hewitt said no, and did not have it with him and could provide a copy.

Mr. Ricketts asked if the contract included the ability to be able to access Carroll Northern Road. Mr. Hewitt said that contract does not. Mr. Ricketts asked if he had addendum to provide him with that ability. Mr. Hewitt said he has not. Mr. Ricketts asked what would the width of that need to be, based upon Violet Township standards. Mr. Hewitt he believed Mr. Kull and he spoke about this and he would actually provide an easement and Mr. Hewitt would put the driveway in. Mr. Ricketts asked if he was talking about having ownership out to Carroll Northern Road. Mr. Hewitt said not at this time. Mr. Ricketts asked if he understood that the residential code in Violet Township provides for 120 feet of frontage for an R-1 property. Mr. Hewitt said he thought it was 125 feet. Ms. Sarko confirmed it was 125 feet. Mr. Ricketts asked if he investigated the zoning of the property when he entered into discussions with Mr. Kull.

Mr. Hewitt said he briefly spoke with Ms. Sarko about the property. When they agreed to purchase the property, they looked around at the neighbors and did not think it would be an issue. Mr. Ricketts asked if he inquired as to what the actual zoning of the property was. Mr. Hewitt said he did not. Mr. Ricketts asked if he was aware it was not commercial. Mr. Hewitt said he was. Mr. Ricketts asked if he was aware it would take commercial zoning to be able to run a business. Mr. Hewitt said no. Mr. Ricketts asked what investigation he did to determine what approvals he would need for Violet Township. Mr. Hewitt said he spoke to Ms. Sarko and then proceeded on his own from there. Mr. Ricketts asked when he entered into a contract. Mr. Hewitt said March or April of last year. Mr. Ricketts asked when he spoke with Ms. Sarko. Mr. Hewitt said it would have been around that time. Mr. Ricketts asked if he submitted a conditional use and variance based upon those conversations with Ms. Sarko and was he aware those were necessary. Mr. Hewitt said he was aware they were necessary. Mr. Ricketts said he did not submit any of these applications until they were subjected. Mr. Hewitt said that was incorrect. Mr. Ricketts asked if Ms. Sarko contacted him about issues and submitting an application. Mr. Hewitt said Ms. Sarko contacted him about questioning if they were operating a business from their property. Mr. Ricketts asked if, at that point and time, he then moved forward with these applications. Mr. Hewitt said they did. Mr. Ricketts asked why he did not submit these

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applications earlier. Mr. Hewitt said because they were not considering moving their business into the property yet. They were waiting for Mr. Kull's personal situation to change.

Mr. Ricketts asked when he planned on closing on the property. Mr. Hewitt said that was unknown. Mr. Ricketts asked how Mr. Hewitt knew if he would ever close on the property. Mr. Hewitt said he has never known anyone that had a divorce that never ends. Mr. Ricketts asked if his contract provides that he can close through the date of the finalization of Mr. Kull's divorce. Mr. Hewitt said they have both made agreements and have extensions on the original contract. Mr. Ricketts asked if it was Mr. Hewitt's understanding that he will have to close anyway. Mr. Hewitt said not necessarily. Mr. Ricketts asked if he could potentially walk. Mr. Hewitt said that is not what he wants to do, but he could.

Mr. Ricketts said that what Mr. Hewitt is saying, is he does not know when or if he going to close on this property. Counsel Connie Klema objected to the question.

Mr. Ricketts said Mr. Hewitt did not know when he was going to close. Mr. Hewitt said that was correct. Mr. Ricketts asked if he knew if he was going to close for sure. Mr. Hewitt said no.

Mr. Ricketts asked if Mr. Hewitt has been renovating the house and barns on the property. Mr. Hewitt said yes. Mr. Ricketts asked what work he has been doing. Mr. Hewitt said renovations. Mr. Ricketts wanted to talk specifically about the buildings he intends to use for his business and asked what work he has been doing in that. Mr. Hewitt said reinforcing the trusses on the interior of the barn, closing off one of the entrances to the barn, adding a second man-door to the barn, prepping the interior for new concrete. Mr. Ricketts asked since this is going to be used for commercial purposes, has he obtained permits for any of this work. Mr. Hewitt said he has spoken to Don Day.

Mr. Ricketts asked if he has submitted for permits for the State of Ohio and he said no. Mr. Ricketts asked if he submitted for permits for the appropriate commercial renovation. Mr. Hewitt said no. Mr. Ricketts asked when he planned to do that. Mr. Hewitt said it was not a commercial property. Mr. Ricketts asked if it was a commercial use. Mr. Hewitt said no. Mr. Ricketts asked if he intended for it to be a commercial use and Mr. Hewitt said it was not a commercial property. Mr. Ricketts asked if he intended for it to be eventually and Mr. Hewitt said yes.

Mr. Ricketts asked if he was aware that a Conditional Use requires that he live on the property. Mr. Hewitt said he was aware. Mr. Ricketts asked when he was moving onto the property. Mr. Hewitt said he said he would be prepared to move onto the property if that is a condition by the Board. Mr. Ricketts asked if he sought a variance to not live there. Mr. Hewitt said yes. Mr. Ricketts asked if the Board requires him to live on the property, is he going to move onto the property, would he live in the existing house or would he build an additional house. Mr. Hewitt said they would have to live in the existing house. Mr. Ricketts asked if he was prepared to commit to this Board to move into this house. Mr. Hewitt said he was. Mr. Ricketts asked how quickly that would occur. Mr. Hewitt said as soon as his current house sells. Mr. Ricketts asked when that would be. Mr. Hewitt said he could not answer that.

Mr. Ricketts asked if he or Mr. Kull is paying for the improvements Mr. Hewitt is doing on the property. Mr. Hewitt said he was paying for them. Mr. Ricketts asked if he had an agreement about those expenses, if he does not close. Mr. Hewitt said he does. Mr. Ricketts said that would indicate, if he does not get these permits, he could be reimbursed and go somewhere else. Mr. Hewitt said he could.

Mr. Ricketts, referring to Exhibit 3, said they have identified the Kull property as being the large property in the center. He asked Mr. Hewitt if the left side of the property was Allen Road and if the right side of the property was Carroll Northern Road. Mr. Hewitt agreed. Mr. Ricketts asked Mr. Hewitt when the easement and driveway to Carroll Northern would be started. Mr. Hewitt said they would start as soon as they were able, preferably during the late fall or early winter and not in peak season, as he would be doing a lot of the work himself. They would be using his employees to help. Mr. Ricketts asked if he was planning to use the existing driveway until that is complete. Mr. Hewitt said that was correct.

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Mr. Ricketts asked Mr. Hewitt about the width of land which runs to Allen Road. Mr. Hewitt agreed it was small and said he believes it to be 15 feet wide. Mr. Ricketts said he previously indicated R-1 zoning requires 125 feet. Mr. Hewitt said correct. Mr. Ricketts asked if he has sought a variance to operate a business on a 15-foot driveway or for an easement to go to Carroll Northern Road. Mr. Hewitt said no.

Mr. Ricketts asked if he had done any title work to determine if Mr. Kull owns the 15-foot strip. Ms. Klema noted it was part of the parcel. Mr. Ricketts asked if they had title work to that. Ms. Klema said she did not have title work. She has the parcel and deed. Mr. Ricketts asked if Mr. Hewitt had completed a survey of the property to determine where the driveway is and whether or not there are encroachments on it. Mr. Hewitt said no.

Mr. Ricketts noted at the last meeting, the Skaggs' related they have used that driveway for an extended number of years and it appears they have owned their property for 30 years. He asked Mr. Hewitt if he has obtained an opinion that Mr. Kull's rights to the driveway exists. Ms. Klema objected, noting it is a legal question and she should answer. She said that would take a title action on behalf of the Skaggs'. She said the property is currently titled to the owner.

Mr. Ricketts asked Ms. Klema if she was aware the fact exists that they are in adverse possession. Ms. Klema said she did not know the facts and would have to research. Mr. Kluczynski asked who owns the road. Ms. Klema said the access of this property is all part of the same parcel and Mr. Kull owns the driveway. Ms. Schirtzinger asked if the driveway has been used by Mr. Kull or his mother during the last 21 years. Ms. Klema said yes.

Mr. Ricketts said Mr. Hewitt's application indicates that because he believes that the 15-foot driveway is grandfathered, he has the right to use the driveway. Mr. Hewitt said that was correct.

Mr. Ricketts said he understands that if there is a change of use, that grandfathering does not apply. Mr. Hewitt said he was not aware of that. Mr. Ricketts asked how he intended to get 125 feet of frontage on Allen Road to satisfy the R-1 zoning requirements, for any use other than what Mr. or Mrs. Kull historically have used it as right-of-way to their house.

Ms. Klema said she did not believe he could get 125 feet, because it has been split to only allow a 15-foot strip, but there is plenty of frontage on the Carroll Northern side, which is why he could access there if he needs a split that actually goes back that far, or if he has to get some type of a variance that would be what would have to happen. Mr. Ricketts noted her client testified he did not intend to buy at Carroll Northern Road, and an easement does not satisfy what the code requires. Ms. Klema said she did understand. If he got a split, he would have to come in and say there is 15 feet frontage on Allen Road and we would like to use that frontage for the 10-acre parcel and an easement would be a separate part of that. Mr. Ricketts asked if Mr. Hewitt was aware, they have not submitted a variance to use that 15-foot driveway for commercial purposes. Mr. Hewitt said that was correct.

Mr. Ricketts asked him to look at the map towards the top and asked if he would acknowledge that the property that had the red roof building was the Osborne property. Mr. Hewitt said that was correct. Mr. Ricketts asked if he recognized the hay bales in the picture. Mr. Hewitt said he knows they are there and he recognizes that Mr. Osborne does engage in farming. Mr. Hewitt said sure.

Mr. Ricketts asked if Mr. Hewitt was aware the property that is south of the 10 acres he is proposing to buy, is owned by Fairfield County Utilities. Mr. Hewitt said yes. Mr. Ricketts asked if he had spoken with Fairfield County Utilities about locating buildings down there, and asked if anyone would be living there. Mr. Hewitt said he has not, because that land is not conducive to build on, as it is a very wet and low-lying area. Mr. Ricketts said the picture shows a stream on the property. Mr. Hewitt said that was correct. Mr. Ricketts asked if he would acknowledge that the property where he is proposing to run his business, would drain into that creek. Mr. Hewitt said yes. Mr. Ricketts asked if he had contacted the EPA about what permits he is going to need to make sure that his business does not improperly discharge effluents into the stream. Mr.

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Hewitt said he has not. Mr. Ricketts asked what plans he had to make sure that the neighbor's water sources – their wells, are not contaminated by virtue of his activities on the property. Mr. Hewitt said the parking area and the gravel lot they are proposing to put in, should catch the majority of any water that hits it. Anything that does drain would have another 150 feet of turf to get through before it hits the creek. There should not be any contaminants. Mr. Ricketts asked if his plan shows fuel tanks. Mr. Hewitt said it shows above ground fuel tanks that would be diked. Mr. Ricketts asked if he intended to have bulk salt. Mr. Hewitt said potentially. Mr. Ricketts asked if that salt would be covered. Mr. Hewitt said it would. Mr. Ricketts asked when he loads the salt, is it possible the salt is going to continue to exist on the gravel area. Mr. Hewitt said it is possible but they plan to extend the concrete in front of the salt so it can be scraped up.

Mr. Ricketts asked if the hours of operation were 7:30 to 4:30 p.m. Mr. Hewitt said it could vary a little, but that was average. Mr. Ricketts asked how much can it vary. Mr. Hewitt said staff arrives at 7:00 a.m., they load and leave and then return between 4:00 and 4:30, on an average day. If they are trying to get a project completed, they may work until 6:00 p.m. When they arrive, they would be loading gravel, tools, potentially some pavers or mulch.

Mr. Ricketts asked what hours he would run, in terms of salt. Mr. Hewitt said winter hours can vary. There would be times when they would work overnight. Mr. Ricketts asked him to acknowledge there might be earlier hours. Mr. Hewitt said yes.

Mr. Ricketts asked if his company has grown in the last five years and how much. Mr. Hewitt said yes, maybe 30 to 40%. Mr. Ricketts asked if he anticipated the company would continue to grow. Mr. Hewitt said he would hope that it would grow, but does not want to increase the size of the company. He said he hopes revenues grow. Mr. Ricketts asked if he gets new business would he turn it away. Mr. Hewitt said he has turned a lot of business away. Mr. Ricketts asked how soon it would be until he has 20 employees. Mr. Hewitt said it could be a few years. Mr. Ricketts asked how soon till he gets to 30 employees. Mr. Hewitt said he does not know that he will get to 30.

Mr. Ricketts asked if he understood that his Conditional Use is premised upon 9 to 14 employees, and asked if he intended to come back in and get a new Conditional Use if he had more employees. Mr. Hewitt said he would work with the Township to satisfy things they needed him to do.

Mr. Ricketts said that previously Mr. Hewitt had indicated it would take approximately 60 trips per day for employees coming to and from and going to jobsites. Mr. Ricketts asked if that was still accurate. Mr. Hewitt said that was reasonable.

Mr. Ricketts asked what equipment he would be using on the property for his business. Mr. Hewitt said skid steers, dump trucks, small equipment and he might occasionally rent a mini excavator. Mr. Ricketts asked if they had back-up alarms. Mr. Hewitt said they do. Mr. Ricketts asked if he used trailers and dump trucks. Mr. Hewitt said he does. Mr. Ricketts said he previously indicated he planned to park the trailers outside. Mr. Hewitt said that was correct. Mr. Ricketts asked if he had inventory stored outside. Mr. Hewitt said that was correct. Mr. Ricketts asked if they store their inventory orderly and neatly. Mr. Hewitt said they try to do so, but the facility they are renting is difficult to use, so now everything is everywhere. Mr. Ricketts said they currently have inventory on the Kull property. Mr. Hewitt said what is stored is what is left over from working on the property.

Referring to Exhibit 2, Mr. Ricketts noted Mr. Hewitt has indicated he planned to have a fuel tank pump and asked if there would be gravel or asphalt beneath the tank. Mr. Hewitt said it would be a combination of crushed #2 gravel with crushed asphalt. Mr. Ricketts asked if he had a study done that reflects there would be no runoff. Mr. Hewitt said no.

Mr. Ricketts asked if there would be a roof on the outdoor storage in the upper left corner, and would it be a cover or a roof. Mr. Hewitt said if there were a roof, it would be just over the salt bin.

Mr. Ricketts noted Mr. Hewitt referenced a future office in the storage building and asked when he planned to build that structure. Mr. Hewitt said within the next 3 to 5 years. He asked if Mr.

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Hewitt had contemplated how he is going to get a commercial building on a residential tract. Mr. Hewitt said he has not. Mr. Ricketts asked if he had contemplated toilet facilities for his employees. Mr. Hewitt said there is none at the facility they currently rent and they do not have any restrooms either, so that is another reason their staff does not stick around. Mr. Ricketts asked what provisions he would make for utilities for bathrooms. Mr. Hewitt said if they needed to install a septic system then they would do so. Mr. Ricketts asked if he had investigated whether he can get a septic system for a commercial building. Mr. Hewitt said he had not. Mr. Ricketts asked if he had investigated or determined the condition of the existing septic system. Mr. Hewitt said they had it tested and it was in good condition. Mr. Ricketts asked if he has determined that system can be a part of a new commercial building. Mr. Hewitt said that has not been determined and does not believe that would be a plan, because it is too far away. Mr. Ricketts asked if he understands that there is no central sewer system in this area. Mr. Hewitt said he does recognize that. Mr. Ricketts said if he does not have bathroom facilities, he assumes that his employees will go behind the barn. Mr. Hewitt said they could get a port-a-john, but that is a lot of money to spend.

Referencing Exhibit 2, Mr. Ricketts asked where he plans to have his employees park. Mr. Hewitt said on the north side of the existing building. Mr. Ricketts asked if the area around the landscaped area is where he considered putting his storage and equipment. Mr. Hewitt said that is where the well is. Mr. Ricketts asked if he considered putting it behind the house. Mr. Hewitt was not sure where behind the house, because that is all a wet area and sloped. Mr. Ricketts said the area behind the house does not show those problems, according to the GIS map. Mr. Hewitt said they had not considered putting it to the right of the house, as there is a small building, it would be pretty close to where the driveway would be, and it would be moving everything around.

Mr. Ricketts said it appears, according to his drawing, Mr. Hewitt has done everything to deflect the use away from his house, as opposed to having it centered around something that would be better for the neighbors. Mr. Hewitt said he does not think that is accurate. He said the house is located where the house is located. The flat wide open ground just so happens to be along the property line bordering Mr. Ricketts' client's property. Mr. Ricketts asked if he did an analysis of putting his business in the area adjoining his house. Mr. Hewitt said there was not enough room in front of the house. Mr. Ricketts said it would certainly appear from a scaling perspective there is. Mr. Hewitt said he has looked. Mr. Ricketts asked if he had an engineer work on that. Mr. Hewitt said no.

Mr. Ricketts asked if he constructed or started on the mounds or mound landscaping that he shows on the property line. Mr. Hewitt said he has not. Mr. Ricketts asked when he planned to do that. Mr. Hewitt said as soon as they get approval.

Mr. Ricketts asked Mr. Hewitt to review the photos in Exhibit 4 and to confirm they are photos of Mr. Kull's property and buildings. Mr. Hewitt said they are. Mr. Ricketts asked if this was the condition they appeared when he was looking at buying the property. Mr. Hewitt said yes.

Mr. Ricketts asked Mr. Hewitt if the building in Exhibit 5 is the same building that appears in Exhibit 4. Mr. Hewitt said it was. Mr. Ricketts said that is looking at the building from Joe (Osborne's) property. Mr. Hewitt said that was correct. Mr. Ricketts asked him to go to the third page of Exhibit 5. Mr. Ricketts asked if that was inventory, he has stored on the property. Mr. Hewitt said that was all leftover product that he used on the property. Mr. Ricketts asked if this was inventory that was sitting on the property approximately 30 days ago. Mr. Hewitt said that was correct. Mr. Ricketts asked if that had been used. Mr. Hewitt said it has not. Mr. Ricketts asked if the trailer in the picture was his. Mr. Hewitt said it was. Mr. Ricketts asked what the yellow item was. Mr. Hewitt said it was Mr. Kull's wood chipper. Mr. Ricketts asked him to refer to the next page (page 4) and identify the items shown. Mr. Hewitt said they were Joe's (Osborne's) and they were stored in the building. Mr. Ricketts said to go to the next page (page 5) and asked if that was a picture of the property roughly 30 days ago. Mr. Hewitt said it was. Mr. Ricketts referred to the next page and asked if those were Mr. Hewitt's pallets. Mr. Hewitt said they were.

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Mr. Ricketts asked him to go two more pages (page 8) to the one that has the boat with the blue tarp, looking across the Osborne fence. Mr. Ricketts asked him to identify, proximate to the Osborne fence. Mr. Hewitt said that at the back you could see that same structure that was in the barn. The boat covered by a tarp is Mr. Kull's, which was also in the barn, which they moved out. The mound with the trees and the growth and everything around it is a concrete slab where silos used be. Mr. Ricketts asked what his plan was for this. Mr. Hewitt said the plan would be to make that a part of their pallet of material storage area. It is existing concrete, so they would try to incorporate it.

Referring to the last page of the Exhibit, the page with three black and white pictures, Mr. Ricketts asked Mr. Hewitt to acknowledge those are pictures looking over the Kull property. Mr. Hewitt said yes. Mr. Ricketts said if he were submitting for a conditional use application and variance, he would certainly try to make a clean presentation. Mr. Hewitt said he do not believe so and he does not know if Mr. Ricketts has ever done a renovation and cleaning out of property that has sat for 50 years, packed full of stuff. Unfortunately, it requires trucks to haul stuff out, haul debris out, haul scrap out, haul junk out. The material that you see there will be used on the property to enhance the value of the property. Unfortunately, these pictures do not show Mr. Ricketts' client's property and was careful where the bottom of the picture was cut off.

Mr. Ricketts asked when was the last time Mr. Hewitt did any weed whacking or weed control. Ms. Klema objected. There is irrelevancy with this question. Mr. Ricketts said it goes to the relevance of what the neighbors are going to have to look at. Ms. Klema said it goes to the relevance of whether or not a Conditional Use should be granted. The property, as her client has testified, has been undergoing improvements from what it has been for many years, and if you are going to restore a barn you cannot leave everything inside, you have to take everything out. The intention is to clean it up and to make it look better. Ms. Klema said for the record, it appears that several of the pictures were taken on the site and she does not know if Mr. Ricketts had permission to go on site to take these pictures. She said she has been very careful not to go onto Mr. Osborne's property as she shared and she has only done this by Google. She would like to ask that there be some understanding with the fact that in asking questions of the status of the property, Mr. Hewitt has said he does not own it and the owner is allowing him to clean it up and make improvements to it.

Mr. Ricketts, referring to Exhibit 6, asked Mr. Hewitt to indicate whether this is an aerial of where he currently operates. Mr. Hewitt said it was. Mr. Ricketts said it does not look much better. Mr. Hewitt said they rented that property for several years and the owner of the property has not given them a dime to put into it. Mr. Hewitt said he has put about \$20,000 into gravel. Mr. Ricketts asked if that was his inventory stored in the back. Mr. Hewitt said it was. Mr. Ricketts asked if he has weed wacked or done any vegetation control. Mr. Hewitt said that was mud so it is impossible to trim the weeds, without moving every pallet. Mr. Ricketts asked if he had heard of Roundup. Mr. Hewitt said he had heard of Roundup and they have used it. Mr. Ricketts asked if he could indicate when the last time was he sprayed it. Mr. Hewitt said he could not.

Mr. Ricketts asked if he currently owned property in Violet Township. Mr. Hewitt said he does. Mr. Ricketts asked why not operate his business from that location. Mr. Hewitt said he did not have enough space. Mr. Ricketts asked if he had ever tried to do a Conditional Use for that property. Mr. Hewitt said he never applied because he had too much going on.

Mr. Ricketts said it also shows he does have another location that is shown in paragraph 6. Mr. Ricketts asked why he is leaving that property. Mr. Hewitt said because the gentleman he is renting from is very difficult to work with and does not provide any upkeep to his property, the rest of the property, or the property around him, and he continues to raise the rent. Mr. Ricketts asked if he was being required to leave the site. Mr. Hewitt said no. Mr. Ricketts asked if he has given notice that he is leaving. Mr. Hewitt said they have had many conversations on leaving and he did give notice, but put it on hold until he gets this resolved.

Mr. Ricketts asked if his applications are not approved, could he continue to operate from that spot. Mr. Hewitt said he could, short term.

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Mr. Ricketts asked what efforts he has undertaken to provide a commercially zoned manufacturing, M-1 or M-2 zoned property in Violet Township. Mr. Hewitt said he has entered into two different contracts and has been trying to purchase property for a couple years. It has gotten very costly and devastating returns.

Mr. Ricketts asked if he has met with the Violet Township Economic Development Director to investigate sites that she knows are available. Mr. Hewitt said he had. He met with Holly last year before he went into contract with this property. Mr. Ricketts asked if he was aware, there are properties on Basil Western that are available for sale that are zoned manufacturing. Mr. Hewitt said he is and the cost to develop those is incredible. Mr. Ricketts said the purchase price is actually less than what he quoted to put the driveway in. Mr. Hewitt said he was aware and the purchase price for the piece of land is the cheapest part of the property. Constructing a building after an architect and civil engineer and all of that and then running utilities under the roadway is the expensive part. Mr. Ricketts said but it can be done. Mr. Hewitt said it could be done. In fact, that was where one of the properties was that he entered into contract.

Mr. Ricketts referred to the Violet Township CEDA District. Mr. Hewitt said he was not familiar with it. Mr. Ricketts asked if he was aware of multiple properties located off Diley Road in the commercial park. Mr. Hewitt said he has investigated that.

Mr. Ricketts asked if Mr. Hewitt would agree there will be noise that will come from his property with the use of skidders and trucks and trailers. Mr. Hewitt said he was.

Mr. Ricketts said he had no additional questions at this time, but he would move that his exhibits be entered into the record as evidence. These would be Exhibits 1 through 7.

Ms. Schirtzinger asked Ms. Sarko if a variance would be required for the 15-foot driveway (frontage). Ms. Sarko said they would also have to get a variance with Regional Planning Commission, because their requirement is 60 feet. She would defer to legal counsel because the required frontage is 125 feet. It is an issue that needs to be discussed and investigated.

Ms. Klema requested that she be able to ask Mr. Osborne some questions.

Joe Osborne, 8186 Allen Road, Canal Winchester, acknowledged he had been sworn in.

Ms. Klema asked if it was true his property was adjacent from the subject property. Mr. Osborne said yes. Ms. Klema asked about his lane and how his property was accessed. Mr. Osborne said his property goes out to the road. Ms. Klema asked how wide and how deep the driveway is. Mr. Osborne said it is 105 feet and 1,600 feet deep. He said the Township did not have 125 of frontage - it was 100' at that time.

Ms. Klema said Mr. Ricketts stated Mr. Osborne was a farmer. Ms. Klema asked what type of farmer he was. Mr. Osborne said he raises cattle and cuts hay.

Ms. Klema asked what type of tools he has on his property that are not inside the barn. Mr. Osborne said a Bobcat to load round bales, tractors, trailers, pickup truck. Ms. Klema asked if the Bobcat has a beeping system. He said he does not need to have it, because he is not a commercial business.

Ms. Klema said the stream that crosses her client's property also crosses his, and asked if he had ever contacted the EPA because of the livestock or his operations. Mr. Osborne said he has never had any issue with that.

Mr. Ricketts said he gave Ms. Klema some latitude but this is not about Mr. Osborne's property. Ms. Klema said this is not about Mr. Osborne's property, but Mr. Ricketts was asking about physical appearances of the property and the neighbor's property and he also showed pictures. Ms. Klema said she would be happy to stop, as she has all the answers she needs to her questions.

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Mr. Ricketts had questions for his client. He asked his client to give his full name for the record. He said his name was James Neil Osborne and his wife's name is Leslie Denise Osborne. Mr. Ricketts asked if she had prepared a written statement that he wanted to put into evidence. Mr. Osborne said that she did.

Mr. Ricketts asked when, approximately, the applicant began to work on the Kull property. Mr. Osborne said over a year ago. He heard they were trying to rent from Mr. Kull, and then more and more trucks started coming in. Then he called Kelly (Sarko) to see what was going on.

Mr. Ricketts presented audio recordings taken by Mr. Osborne and his wife, to show how the sound carries across the property. Mr. Kluczynski asked what they were listening to. Mr. Osborne confirmed it was the sound of work being done on the property. Mr. Osborne said Mr. Hewitt stated he closed off the barn doors, but he did not close off the one that faces Mr. Osborne's house, and the sound recording came from the living room of his house. He said it sounded like a concert.

Ms. Schirtzinger asked if that was going into his living room. Mr. Osborne said it was, with the windows closed, sitting in the house. Mr. Ricketts said he understands this may be renovation, but you can hear everything coming across the property. He had new recording 24, new recording 9, and new recording 3.

Exhibit "G", new recording 24; Exhibit "H", new recording 9; and Exhibit "I", new recording 3 were entered into the record.

Mr. Collins asked what the distance from his living room to the barn is, when those recordings were done. Mr. Osborne said estimating, maybe 300 feet.

Ms. Schirtzinger asked where his living room was located. Mr. Osborne showed the location of his living room.

The letter from Leslie Osborne was entered into the record as Exhibit "J".

Connie Klema said that Mr. Hewitt and his wife have both agreed that the variances regarding outside storage can be removed. The variance regarding not being the person residing in the home can be removed, because they are committed to residing in the home. The variance requiring that someone that resides in the home on the business can be removed.

Mr. Kluczynski asked how you can remove those as variances when the applicant does not live there at the moment, because the variance was submitted a month ago - how can you take something out that does not exist. Ms. Klema said they can take something out, because what they are saying is, if you grant the Conditional Use, that Conditional Use cannot occur unless you place conditions on it, and you would have to reside in the home or put any type of condition, but we can work with those conditions and we can remove things when they are on the floor and we cannot add them.

Ms. Huber said if he does not ask for, or obtain a variance from the provision that the owner or operator of the business must reside on the property, then, he would need to seek a variance, because he could not operate a conditional use without it, or won't operate a conditional use until, and unless he lives there, then he would not need the variance.

Mr. Collins asked if he would still need a variance at this time, because he wouldn't own the property. Ms. Huber said Section 3AA5-03(1) reads: only a principal resident of the dwelling and the owner/proprietor of the home occupation. Ms. Sarko said the owner has to live in the home. Ms. Huber said the second that Home Occupation is granted, he would need to live there.

Ms. Klema said the intention here is that ultimately he is residing there, whether it's by lease or whether it is by ownership, he would be residing there and he would be operating his business

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there. Ms. Sarko said the question is will he be physically be residing within that property. Ms. Klema said yes, that is what they have committed to.

Mr. Kluczynski made a motion to take a break at 8:31 p.m. Ms. Schirtzinger seconded the motion
Roll call vote: all ayes.

Mr. Collins reconvened the meeting at 8:43 p.m.

Ms. Huber asked Mr. Ricketts and Mr. Osborne about the letter from Mrs. Osborne, which said to look at the email, and asked if the board had those. Ms. Sarko said they did.

Ms. Huber said at this time they were going to listen to additional testimony, but place some limitations upon the testimony. She said the Board has listened to the testimony and it has been incorporated into the record. At this time, the Board will only hear testimony from owners who are adjacent or contiguous to the subject property, and they should limit their comment to new testimony. They encourage that new testimony be as brief as possible and not be repetitive of other speakers testimony.

Thomas Festing, 8458 Allen Road, Canal Winchester, said the concern they have is that it impacts all of them on Allen Road. They asked the question two or three meetings ago, if there was any follow up about an EPA study, traffic study, water assessment management study, or if they have been in touch with the Sheriff's Department to talk about the needs for more personnel. Mr. Rector said this was repetitive information they have already heard.

Mr. Festing said they are concerned about limited visibility, looking for exits and entrances, and they are a residential community, not a commercial community. They live at the northern part of Allen Road. He said you cannot see their road when traffic comes across that hill. The shoulders are inadequate and are too steep.

Mr. Rector asked if he had any experience on these findings. Mr. Festing said he owns a tape measure, he called ODOT to get the road requirements, and he measured 8 feet. Mr. Rector asked for some explanation of what he meant when he says 8 feet. Mr. Festing presented pictures, and said one of the pictures was him with a tape measure halfway across Allen Road to the shoulder, and explained it measured 8 feet, and the picture shows where the 8-foot mark was. He had pictures he took to show how the bigger trucks and cars going down Allen Road tend to exceed over the yellow line. They are concerned about larger vehicles on that road. He said 8 to 10 feet is a local road, according to the manual.

Mr. Festing referred to page 13 of pictures showing the trash truck coming into their residential neighborhood. He said they cannot get trash trucks on the right side of the road. Ms. Huber said the page numbers were not correct.

Mr. Festing's PowerPoint presentation (paper version) was entered into the record as Exhibit "K".

Robert Kull, 8193 Carroll Northern Road, said people keep saying this is a residential property. He said it has been a farm and used to be 600 acres when his grandfather owned the property. The residences are due to generations of the property being sold, to allow houses to be put on Allen Road. He said everyone knew that the property was for sale, but no one stepped forward to buy it except for Rob. Now they are going to try to stop them from putting gravel, dirt and turf. He said everybody has a driveway, everybody has dirt in their yard, and everybody has mulch in their yard. He does not understand what EPA has to do with mulch, dirt and gravel.

Kathleen Buoni, currently living at 491 Yale Circle, Pickerington, said she was sworn in. She said they are building a home at 7888 Allen Road. She said she and her husband were glad to be able to live in the home of their dreams. She said research and time landed them in Violet Township. She said she heard his (Mr. Hewitt's side) and believes him to be sincere. She said they have concerns about noise and air pollution that come from the trucks. Her biggest questions are about the size of the business. She said Violet Township is a respite from urban growth. She read a prepared statement to the Board.

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Richard Clark, 6535 Busey Place, said he was a Health Commissioner from Morgan County. He said any time heavy trucks are driven over gravel, it is pushed around and creates particulates, which can be inhaled into the lungs of young children, infants, elderly and can cause acute illnesses such as pneumonia. He said the size of the road does matter and mentioned his previous office manager's mother-in-law is dead because she was driving down a road and there was no room to get off.

Mr. Ricketts wanted to make a closing analysis. Mr. Kluczynski asked if this was going to be about Home Occupation or variance. Mr. Ricketts said there is no way you cannot tie them all together, because without the variances, the applicant even admits that he can't use the conditional use. Mr. Kluczynski said we understand how variances affect the overall parameters of the home occupation; however, for this discussion, they are focusing on the home occupation and we have another case dealing specifically with the variances.

Mr. Ricketts said things have gotten more complicated than they need to be, specifically as it relates to the Conditional Use Permit application. He said if they focus on the Zoning Code and apply the facts that are before the Board, he thinks there is a good roadmap and an easy conclusion as it relates to the Conditional Use application.

Referring to Exhibit 7 where he dissected the provisions of the code, he said the property is located in an R-1 District. He said conditional use permits can be requested when you are in an R-1 District, and Number 9 refers to customary Home Occupations subject to the terms, conditions or procedures in Section 3AA5 of the Zoning Code. He said even if you do this as a Home Occupation, you also have to determine whether or not it is a customary Home Occupation. Mr. Ricketts referred to the section on Home Occupations. He referred to the purpose – it is further the intent of these sections to allow limited non-residential uses in residential structures that are compatible with the residential character of their surroundings. He said when you look at that definition you have to say “we are done” because we are not within the building, we are not limited, we are not customary and we are not consistent with the residential character of the surroundings.

The next section provides a definition of a Home Occupation. He said you don't see a Landscaping Company or any type of business of that nature that fits within the definition of the Home Occupation, which the Board should be looking at. There are also some very specific reasons why the Board should say this is an easy decision, that this is not an appropriate Conditional Use, because the traffic created by the Home Occupation shall not be compatible with the residential character of the neighborhood (60 trips compared to a couple trips per day), and will create congestion or unusually heavy traffic on residential streets, which already has a lot of problems.

He said they are not looking at something that is a conditional use, and we look at standards as a matter of law; the Board's duty is to protect the citizens of the Township in looking at Conditional Uses and make sure that they are being protected. He would suggest to the Board that this application is premature:

- 1) We do not even know if he is going to buy it
- 2) We do not even know if he is going to move in
- 3) We do not know exactly when he is going to build anything that he says he is going to do and he needs all these variances to get his Conditional Use approved

He said the Code language says the use must be incidental and subordinate to the principal use of the premises of the dwelling. Mr. Ricketts said it is not.

Referring to Section 3AA5-03, Mr. Ricketts said the maintenance, servicing, storing or selling of commercial industrial or heavy motor vehicles shall not be included in the definition of a Home Occupation under any circumstances.

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Mr. Ricketts said the next section has specific requirements that have to be met in order to be considered. He said it cannot be done without a series of variances based upon a lot of information that we do not have even have.

Mr. Ricketts referred to various paragraphs of the Code for Home Occupations – Section C, there shall be no outside storage of materials or products used or produced in a Home Occupation. Section D, the primary use of the principal property shall always remain residential and should be the dominant or principal use of the property. Section E, no equipment process, materials or chemicals shall be used which create offensive noise, vibration, smoke, dust, etc. Section I, only a principal resident of the dwelling may be the owner, proprietor of the Home Occupation, and Section L, no more than one motor vehicle which is used by the resident in his or her Home Occupation may be parked, stored or otherwise kept at the residence at any one time.

Mr. Ricketts said Violet Township has a Zoning Code that has residential, commercial manufacturing, and various PD provisions. He said we are about a Zoning Code that says if you want a commercial business, go to a commercial property and there is a reason why we say that. Health, safety, welfare. There is no sanitary sewer on this property. He asked why the applicant did not ask for a commercial zoning.

He noted there are specific conditions on page 149 that talks about when a Conditional Use is inappropriate. He said the Master Plan shows no commercial in this area and that should be our guideline and we are not following it here.

Mr. Ricketts asked if there has been any discussion of the fact that there are going to be 15 employees who are coming on and off the property and there was no discussion about how many kids this impacts as well as the ability for people to safely have their kids in a residential environment, especially one that is a rural residential environment. He said the reality is, a lot of employees have a lot of issues, they turnover and how do we know we are providing safety and protection to the adjoining people around us.

He asked if the Fire Department could get over every bridge and stream. He noted when there is a commercial zoning application, the Fire Department provides a report says these are the things that need to be done.

Ms. Klema said they have removed three of the variances. They will not be using Allen Road because she said it could be a condition that they would not use Allen Road for any business.

Ms. Klema said she grew up on a farm and she knows the businesses that go on in a farm and they had a barn just like Mr. Osborne. Vehicles were stored there. She said this is a large property and it is shielded by buffers and the barn has been there for years.

Ms. Klema said that before you do something like this you want to make sure it is going to work. Mr. Hewitt innocently came and fell in love with the property, rehabbing the property and working with the owner and showing him the improvements. He likes it there.

Ms. Klema said in regards to rezoning, the Land Use Map show the property from 33 to this property as being future business and industrial property.

Mr. Kluczynski made a motion to enter into private deliberations at 9:37 p.m. Ms. Schirtzinger seconded the motion. Roll call: Mr. Kluczynski, yes; Ms. Schirtzinger, yes; Mr. Rector, yes; Mr. Dellinger, yes; Mr. Collins, yes. Motion carried.

There was a prior motion to enter into private deliberations at 7:26 p.m. Roll call vote: Mr. Kluczynski, yes; Mr. Dellinger, yes; Mr. Rector, yes; Ms. Schirtzinger, yes; Mr. Collins, yes.

The meeting reconvened at 10:05 p.m.

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Mr. Collins said Case No. 03-CU-2019 will be closed at this time and the Board will render their decision within a reasonable time. He noted that if anyone wants information about when the decision will be made, to note contact information on the sign-in sheet.

Case Number 17-VA-2019

An application for variance filed by Rob Hewitt, 8006 Allen Road, Canal Winchester, for property located at 8006 Allen Road, Canal Winchester, owned by Robert Kull, 8193 Carroll Northern Road, Carroll. This application requests variances from Section 3AA5-03(C), to allow outside storage of materials used or produced in a home occupation; Section 3AA5-03(H), to allow non-residents of the dwelling and non-family members to participate in the home occupation as an employee, employer, or volunteer; Section 3AA5-03(I), to allow a person who is not currently a resident of the dwelling to be the owner/proprietor of the home occupation; Section 3AA5-03(L), to allow more than one motor vehicle which is used by the resident in the home occupation to be parked or stored or kept at the residence at any one time; Section 3AA5-03(M), to allow a vehicle having more than two axles or weighing more than two tons (gross) to be parked, stored or kept at the residence.

Mr. Collins said all information from the previous Conditional Use case. Anything in the previous case will be applied to this case as well.

Connie Klema of P.O. Box 991, Pataskala, Ohio, was present. Ms. Klema said for the record they are removing these requests for these variances 3AA5-03(C), 3AA5-03(H), 3AA5-03(I).

Mr. Kluczynski wanted clarification that there would be no outside storage, no gravel, and no salt. Ms. Klema said the code says: there shall be no outside storage of the materials or products used or produced in the Home Occupation unless such storage is screened from view of the adjoining property from the street. He has provided on his site plan that it will be screened from view of the adjoining property and the street.

Ms. Huber announced the variances are related to the Conditional Use that was previously heard. The Board would like to incorporate the testimony heard in the Conditional Use case into the Variance case. They will hear testimony from adjacent and contiguous property owners. They would also encourage people to be as brief as possible and be non-repetitive of each other's testimony. As she said before, if they have a particular harm or interest in the application, they may speak as well, but please be particular and let the board know what their connection is.

Richard Ricketts, 50 Hill Road South, he is counsel for the Osborne's and wanted to give his closing argument. Mr. Ricketts said he wanted to clarify for the record and make sure that counsel for the applicant is aware of the vision he is taking as to the withdrawn sections in the application. He also wanted to note several items to the Board because he believes it would be appropriate for Ms. Klema to have an opportunity to address those issues.

Mr. Ricketts said if they withdraw the variances he believes the Conditional Use Permit needs to be denied for the following reasons:

- 1) Yes, there is outdoor storage and there is a provision that allows that, but the testimony was they were going to have a mound and some trees but it is not the appropriate mounding and fencing as provided for by the Violet Township Zoning Code. It is not going to block adjoining property owners from being able to see it. It is his position that it being withdrawn automatically means you cannot approve the Conditional Use, because the proposal is not in compliance with the Zoning Code.
- 2) Ms. Klema indicated they are withdrawing their request for a variance to have 9 to 14 on the property, because they are not going to work there. They will have 9 to 14 people coming to this site as they are going to load the vehicles with a variety of things and they are going to come and go. He said that is completely inconsistent with the evidence.

Mr. Ricketts said if 3AA5-03(I) is being withdrawn, then they do not have an applicant who is living on the property. He said this is the cart before the horse and if this was being properly done, there be an application where the individual was living on the site. He said assuming that you

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look at all those things, there is at least one variance that is not even before the Board that kills everything. There is no variance for the change of use and the road frontage and the lack of road frontage on Allen Road. Mr. Ricketts said Mr. Hewitt cannot, according to the Violet Township Zoning Code, use an easement to be able to do it. There is a situation where there is a missing variance that you can't proceed on. Mr. Ricketts said this is "fatal" in a matter of law in being able to move forward, because we have a 15-foot driveway and it will not be in compliance.

Mr. Ricketts asked if the property will yield a reasonable return without the variance. He said the standard is – Is the request substantial? He said the evidence is clear that putting 9 to 14 people, going 60 times a day up and down a 15-foot road, is going to have a substantial impact on this neighborhood.

He said these are not the types of variances that meet the standards under the Violet Township Zoning Code or under the Ohio Law. He would ask that the Board overrule all the variance requests along with the Conditional Use with one caveat - he is not suggesting that a variance or grandfathering is inappropriate, if the property is continued to be used as it is. He thinks that is why we have such things as being grandfathered and he is not saying that he objects to that, but these variances are just not the right thing in these particular situations.

Mr. Collins asked how many employees or non-residents Mr. Osborne has and Mr. Ricketts said zero. Mr. Collins asked about the letter from Mrs. Osborne, which talked about cabinet building. Mr. Ricketts said he believed that was for projects off-site.

Ms. Klema said in reference to Mr. Ricketts' response about his client's business, she said her client's business is off-site, as he does landscaping at other people's houses. The only thing happening at his site would be the storage of materials and the trucks, which also occurs on Mr. Osborne's property.

In regards to the variances, it is very difficult for someone to put a property in contract and have contingencies such as rezoning.

The owner of this property has said that he can live there and reside on the property as his in-law's do.

The variances – basically, the practical difficulties they have tried to address and explain the fact they need to have trucks that weigh a little more. Those trucks, such as campers and all kinds of things, come in and out of the people's driveways all the time.

As far as allowing non-residents for that type of a variance, they understand that there are employees that will actually come and go from the property, but it will be from that access from the rear.

Mr. Collins said Case Number 17-VA-2019 will be closed and a decision made at a later time – at the same time as 03-CU-2019. He noted that if anyone was interested in knowing when a decision would be made for both cases, to put their name and email on a signup sheet.

Ms. Schirtzinger made the motion to close the Public Hearing. Mr. Kluczynski seconded the motion. Roll call vote: Ms. Schirtzinger, yes; Mr. Kluczynski, yes; Mr. Rector, yes; Mr. Dellinger, yes; Mr. Collins, yes. Motion carried.

Mr. Rector made the motion to adjourn the meeting. Mr. Kluczynski seconded the motion. Roll call vote: Mr. Rector, yes; Mr. Kluczynski, yes; Mr. Dellinger, yes; Ms. Schirtzinger, yes; Mr. Collins, yes. Meeting adjourned at 10:37 p.m.

**Violet Township Board of Zoning Appeals
Special Meeting**

June 6, 2019

Approved:

Thomas Collins, Chair

Donald Rector, Secretary

Denise Cole, Board Member

Stephanie Gillette, Board Member

Date: _____

Albert Kluczynski, Board Member

Cathy Schirtzinger, Board Member

Rick Dellinger, Alternate Member