



**KENDALL COUNTY  
ZONING BOARD OF APPEALS  
PUBLIC HEARING/MEETING**

111 West Fox Street • Rooms 209 and 210 • Yorkville, IL • 60560  
(630) 553-4141 Fax (630) 553-4179

**AGENDA**

January 31, 2022 – 7:00 p.m.

**CALL TO ORDER – ZONING BOARD OF APPEALS**

ROLL CALL for the Zoning Board of Appeals: Randy Mohr (Chair); Scott Cherry, Cliff Fox, Tom LeCuyer, Dick Thompson, Anne Vickery, and Dick Whitfield

MINUTES: Approval of Minutes from the December 13, 2021 Zoning Board of Appeals Hearing/Meeting (Pages 3-23)

PETITIONS:

1. **Petition 21 – 49 – Irma Loya Quezada (Page 24)**  
Request: Map Amendment Rezoning the Subject Property from A-1 Agricultural District to R-1 One Family Residential District  
PINs: 09-18-300-018 (Part) and 09-18-300-019 (Part)  
Location: On the East Side of Brisbin Road Across from 14859 and 14975 Brisbin Road, Seward Township  
Purpose: Petitioner Wants to Rezone the Property in Order to Divide the Property and Construct Two Homes
  
2. **Petition 22 – 01 – Jose and Silvia Martinez (Page 24)**  
Request: Special Use Permit for a Landscaping Business, Variance to Section 7:01.D.30.b to Allow a Landscaping Business a Non-State, County, or Collector Highway as Defined by the Kendall County Land Resource Management Plan, and Variance to Section 11:02.F.7.b of the Kendall County Zoning Ordinance to Allow a Driveway Zero Feet from the Southern Property Line  
PINs: 03-12-100-004 and 03-12-100-013  
Location: 1038 Harvey Road, Oswego Township  
Purpose: Petitioner Wants to Operate a Landscaping Business at the Subject Property; Property is Zoned A-1
  
3. **Petition 22 – 03 – Executive Pastor Sean Mabee on Behalf of Grace Bible Church of Shorewood and Fire Chief Andrew Doyle on Behalf of the Troy Fire Protection District (Page 24)**  
Request: Special Use Permit for a Governmental Building or Facility (Fire Station) and the Revocation of a Special Use Permit for a Church Granted by Ordinance 2004-24  
PIN: 09-12-300-017  
Location: 748 Jones Road, Seward Township  
Purpose: Petitioners Want to Operate a Fire Station and Remove the Special Use Permit for a Church at the Subject Property; Property is Zoned A-1
  
4. **Petition 22 – 04 – John and Laura Gay (Page 24)**  
Request: Major Amendment to an Existing Special Use Permit for a Kennel Granted by Ordinance 2019-33 by Changing the Site Plan  
PIN: 03-28-100-004  
Location: 3601 Plainfield Road, Oswego Township  
Purpose: Petitioner Wants to Change the Orientation of the Building, Change the Access Point on Plainfield Road, Move the Parking Area, and Change the Layout of the Turnaround Area; Property is Zoned A-1

NEW BUSINESS/ OLD BUSINESS

1. Kendall County Regional Planning Commission Annual Meeting-February 5, 2022, at 9:00 A.M.

REVIEW OF PETITIONS THAT WENT TO COUNTY BOARD

1. Petition 21-37 Text Amendment Regarding Vegetable Gardens
2. Petition 21-38 Text Amendment Regarding Agricultural Experiences
3. Petition 21-40 LRMP Amendment for Land West of 16924 O'Brien Road
4. Petition 21-41 Rezoning of Land West of 16924 O'Brien Road
5. Petition 21-46 Special Use Permit Amendment at 3485 Route 126

PUBLIC COMMENT:

**ADJOURN ZONING BOARD OF APPEALS**- Next hearing/meeting on February 28, 2022

If special accommodations or arrangements are needed to attend this County meeting, please contact the Administration Office at 630-553-4171, a minimum of 24-hours prior to the meeting time.

**MINUTES – UNOFFICIAL UNTIL APPROVED**  
**KENDALL COUNTY**  
**ZONING BOARD OF APPEALS MEETING**  
111 WEST FOX STREET, COUNTY BOARD ROOM (ROOMS 209 and 210)  
YORKVILLE, IL 60560  
**December 13, 2021 – 7:00 p.m.**

**CALL TO ORDER**

Chairman Randy Mohr called the Zoning Board of Appeals meeting to order at 7:00 p.m.

**ROLL CALL:**

**Members Present:** Scott Cherry, Cliff Fox, Tom LeCuyer, Randy Mohr, Dick Thompson, Anne Vickery, and Dick Whitfield

**Members Absent:** None

**Staff Present:** Matthew Asselmeier, AICP, CFM, Senior Planner

**Others Present:** Gregg Ingemunson, Dan Koukol, Brian Henrichs, and Rick Porter

Chairman Mohr welcomed Anne Vickery to the Zoning Board of Appeals.

Chairman Mohr requested that the agenda be amended by moving Petition 21-37 to after Petition 21-48. He also announced that Petition 21-49 would be continued to the January 31, 2022, hearing. Member Vickery made a motion, seconded by Member LeCuyer, to amend the agenda as requested. With a voice vote (7) ayes, the motion carried.

**MINUTES:**

Member Whitfield made a motion, seconded by Member Cherry, to approve the minutes of the November 1 hearing/meeting.

With a voice vote of seven (7) ayes, the motion carried.

Chairman Mohr swore in Gregg Ingemunson, Dan Koukol, Brian Henrichs, and Rick Porter prior to the start of the public hearings.

**PETITIONS**

The Zoning Board of Appeals started their review of Petition 21-46 at 7:02 p.m.

**Petition 21 – 46 – Greg Dady on Behalf of DTG Investments, LLC and Robert A. Baish on Behalf of Baish Excavating, Inc.**

**Request:** Major Amendments to a Special Use Permit for a Landscaping Business Granted by Ordinance 2007-10 by Changing the Number of Employees Reporting to the Property, Amending the Site Plan, and Removing the Restrictions Forbidding the Parking and Storing of Vehicles, Equipment, and Landscaping Materials Outdoors

**PIN:** 06-09-400-005

**Location:** 3485 Route 126, Na-Au-Say Township

**Purpose:** Petitioner Wants to Operate Landscaping Business at the Property; Property is Zoned A-1 Agricultural District

Mr. Asselmeier summarized the request.

Greg Dady, on behalf of DTG Investments, LLC would like to sell the subject property to Baish Excavating. After exploring a text amendment to allow an excavating business on the subject property, the Petitioners decided to pursue a major amendment to the existing special use permit for a landscaping business at the subject property.

The application materials, aerial of the property, aerial with the flood zone, plat of survey, site plan, the court order regarding a previous excavating business at the property, and the special use permit for a landscaping business previously granted by Ordinance 2007-10 were provided.

The subject property is approximately five point five (5.5) acres in size.

Route 126 is a State maintained arterial; there is a trail planned along Route 126.

There is a floodplain on the north end of the property (Zone A-no base flood elevation determined).

The adjacent uses are agricultural or agricultural related.

The adjacent zonings are A-1. The zonings in the area are A-1, R-1, and A-1 with special use permits.

The Future Land Use Map calls for the area to be Rural Residential and Public Institutional.

The A-1 SU to the east is for a farm market, garden shop, winery, corn maze, and fall festival. The A-1 SU to the west is for a farm equipment sales and service business.

Oswego School District 308 owns the property southwest of the subject property.

Ten (10) existing houses are within one half (1/2) mile of the subject property.

Pictures of the property and area were provided.

EcoCAT Report submitted and consultation was terminated.

The LESA Score was 189 indicating a low level of protection.

Petition information was sent to Na-Au-Say Township on October 26, 2021. No comments have been received.

Petition information was sent to the Village of Oswego on October 26, 2021. The property is inside Oswego's planning boundary. No comments have been received.

Petition information was sent to the Village of Plainfield on October 26, 2021. The property is within one point five (1.5) miles of Plainfield. No comments have been received.

The Oswego Fire Protection District was sent information on October 26, 2021. The Oswego Fire Protection District submitted an email on October 27, 2021, requesting that fuel tanks be installed, permitted, and inspected per applicable law, storage heights inside the storage bins be capped at

twenty-five feet (25') in height, and no miscellaneous storage of vehicles, machinery, or equipment occur in the storage bins. The Petitioners were agreeable to these requests.

ZPAC reviewed this proposal at their meeting on November 2, 2021. The Petitioners stated that only trailers would be parked in the floodplain. No turning lanes off of Route 126 would be required. However, the Illinois Department of Transportation could review the need for turning lanes in the future. The Petitioners were agreeable to setting the maximum number of employees at fifteen (15). ZPAC recommended approval of the request with the conditions proposed by Staff by a vote of eight (8) in favor and zero (0) in opposition with two (2) members absent. The minutes of the meeting were provided.

The Kendall County Regional Planning Commission reviewed this proposal at their meeting on December 8, 2021. The Petitioner was asked if the building in the floodplain would be used for the proposed business and if they would be agreeable to a restriction to not use this building as part of the special use. The Petitioner was agreeable to this condition. The Kendall County Regional Planning Commission recommended approval of this special use permit with the condition that the building on the northeast corner of the property in the floodplain not be used as part of the business allowed by the special use permit by a vote of nine (9) in favor and zero (0) in opposition with one (1) member absent. The minutes of the meeting were provided.

The subject property has been used as a landscaping business and repair and restoration business. The Petitioner would like to retain the special use permit for a cleanup and restoration business at the property.

1. All vehicles, equipment and materials associated with a landscaping business shall be stored entirely within an enclosed structure, unless otherwise permitted under the terms of this Special Use Permit.
2. The business shall be located on, and have direct access to, a State, County or Collector Highway as identified in the County's LRMP, having an all-weather surface, designed to accommodate loads of at least 73,280 lbs, unless otherwise approved in writing by the agency having jurisdiction over said Highway. Such approvals shall establish limitations as to the number of employees and types of vehicles coming to and from the site that are engaged in the operation of the use (including delivery vehicles). These restrictions shall be included as controlling conditions of the Special Use.
3. No landscape waste generated off the property can be burned on this site.

If the County Board approves the outdoor storage of materials, the above conditions have been met.

According to the business plan, Baish Excavating, Inc. does excavation, concrete, landscaping, site maintenance, railroad and major pipeline work. Their work takes place offsite within a radius of approximately thirty-five (35) miles of Plainfield. They are relocating from their current location because their existing location has been sold.

The hours of operation are Monday through Friday from 6:00 a.m. until 5:00 p.m. The company operates outside these hours of operation during snowfalls and other emergencies. The company has eleven (11) employees, but this number could rise to fifteen (15) employees. Four (4) or five (5) of these employees work onsite while the remainder of employees work at job sites.

Equipment and trucks would be stored indoors as much as possible, but some equipment would be stored outside. Equipment consists of excavators, loaders, skid steers, track skids, two (2) semi dumps, and dump trailers. The site plan shows a sixty foot by one hundred foot (60' X 100') trailer parking area.

According to the site plan, the Baish Excavating, Inc. would like to install three (3) fuel tanks on a concrete pad. The area would be twenty feet by thirty feet (20' X 30').

The site plan also calls for a twenty foot by sixty foot (20' X 60') outdoor storage bin area. This area would be used to store aggregates and salt in "tents". The "tents" would be a maximum of thirty feet (30') in height. The tents would be enclosed except for one (1) side. A picture of the "tent" was provided.

The existing special use permit for a landscaping business was granted on March 20, 2007, and included the following conditions and restrictions:

1. The maximum number of employees reporting to the site is 40.
2. The development of the site shall be in conformance with the submitted Site Enhancement Plan dated August 18, 2006 with a latest revision of date of March 9, 2007.
3. All commercial vehicles used for the special use are to be stored inside an accessory structure when not in use.
4. No construction activity can take place on the portion of the subject parcel located in Section 9 of Na-Au-Say Township until such time that a detailed flood plain study has been forwarded to PBZ staff and Strand Associates, to ensure that there are no negative impacts to Aux Sable Creek.
5. A site development permit will need to be secured prior to construction of the proposed parking stalls demonstrating that the post construction elevations of that portion of the parking lot located within the flood plain as depicted on the existing FEMA FIRM maps dated July 19, 1982 (Community Map Panel 170341 0100C) will not exceed the existing elevations of the existing grades on the site.
6. No construction activity shall take place and no permits (building, occupancy or site development) shall be issued for the subject property located in Section 9 of Na-Au-Say Township until such time that the required 15 foot Regional Trail easement, and the additional ROW along Route 126 per the previous Agreed Court Order, has been supplied and recorded.
7. All renovations to existing structures must conform to a commercial standard per the provisions of the Kendall County Building Code, including handicapped accessibility of the structures.
8. Other than the outside storage of non-growing landscaping materials, no outside storage shall

be allowed on the site.

9. Occupancy in the existing residence will be restricted to an employee of the petitioner, for use as a caretaker's residence, and his/her immediate family members.
10. No composting will be done on-site. All grass clippings will be stored temporarily in a bin or dumpster and be hauled off the site periodically when the bin becomes full.

The Petitioner is requesting that conditions 1, 2, 3, and 8 be amended or repealed. Conditions 4, 6, and 7 have previously been met. The FEMA FIRM maps have been updated since the original special use permit was granted in 2007.

According to the site plan, there is one (1) approximately fourteen thousand (14,000) square foot metal building on the property that is used for office operations and maintenance. One (1) approximately one thousand six hundred (1,600) square foot wood frame machine shed is located on the northeast corner of the truck parking area. One (1) single-family home with a detached garage is located on the west side of the property.

Any new structures would require applicable building permits.

The property is served by well and septic.

There is floodplain as part of the Little Slough Creek on the property as shown on the flood zone aerial and plat of survey. This area is considered Zone A which means no flood elevation has been determined; therefore, this area is considered Floodway.

On October 26, 2021, the Petitioners and their engineer met with the Senior Planner, a representative of WBK, and the Planning, Building and Zoning Committee Chairman at the property. The Petitioners agreed that no hazardous or flammable materials would be stored in the floodway. The Kendall County Stormwater Management Ordinance forbids the storage of such materials in the floodway.

The property has two accesses off of Route 126. The western access would be used by the existing house and the eastern access would be used by the business operating out of the metal building.

According to the site plan, a parking area is shown north of the metal building. The parking area is gravel.

Contrary to the business plan, no additional lighting beyond the existing lighting on the building and light near the entrance is planned at this time. Section 11:02.F.12.A requires an illumination plan for parking lots with thirty (30) or more parking spaces.

There is one (1) existing four foot by eight foot (4'X8') freestanding sign. A light exists next to the sign. A picture of the sign was provided.

There is an existing wooden fence around the property and a single gate east of the metal building.

A berm and several mature trees are between the metal building and Route 126. Pictures of the landscaping were provided.

No information was provided regarding noise control.

No new odors are foreseen by the proposed use.

The proposed Findings of Fact were as follows:

That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. The operation of the special use will not be detrimental to the public health, safety, morals, comfort, or general welfare provided that the operator of the business allowed by this special use permit develops the site according to the submitted site plan, follows the agreed upon hours of operation, and follows the Kendall County Inoperable Vehicle Ordinance, Kendall County Junk and Debris Ordinance, and Kendall County Stormwater Management Ordinance, and related ordinances.

That the special use will not be substantially injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. Provided that the business operates as proposed, no injury should occur to other property and property values should not be negatively impacted.

That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. Adequate utilities exist on the site based upon the number of proposed employees at the property. No additional buildings are planned for the site. The Petitioners are aware that parking cannot occur in the front yard setback. Route 126 is a State maintained road and should be able to handle the traffic. The Petitioners are aware that floodplain exists on the property and certain materials cannot be stored in the floodplain per the Kendall County Stormwater Management Ordinance.

That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. This is true because the Petitioners are not asking for any variances.

That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. True, the proposed use is consistent with an objective found on Page 10-11 of the Kendall County Land Resource Management Plan which



calls for “a strong base of agricultural, commercial and industry that provide a broad range of job opportunities, a healthy tax base, and improved quality of services to County residents.”

Staff recommended approval of the requested major amendment to an existing special use permit subject to the following conditions and restrictions:

1. Conditions 1 (pertaining to number of employees), 2 (pertaining to the site plan), 3 (pertaining to outside storage of commercial vehicles), and 8 of Ordinance 2007-10 shall be repealed. The remaining conditions and restrictions in Ordinance 2007-10 shall remain in force and valid.
2. The site shall be developed substantially in accordance with the site plan. The property owner or operators of the business allowed by this special use permit may remove the frame residence, garage, wood frame machine shed, and corn crib without amending the site plan.
3. The owners of the business allowed by the special use permit shall maintain the parking areas shown on the site plan and in substantially the same location as depicted on the site plan. The parking area north of the building shall be gravel and the parking lot south of the building shall be asphalt. Any expansions of either parking lots shall require an amendment to the special use permit.
4. The building located on the northeast corner of the property inside the floodplain as shown on the site plan shall not be used as part of the business allowed by this special use permit. **(Added at RPC)**
5. The owners of the businesses allowed by this special use permits shall diligently monitor the property for leaks from equipment and vehicles parked and stored on the subject property and shall promptly clean up the site if leaks occur.
6. Any new structures constructed or installed on the property shall not be considered for agricultural purposes and must secure applicable building permits.
7. Equipment and vehicles related to the business allowed by the special use permit may be stored outdoors.
8. None of the vehicles or equipment parked or stored on the subject property related to the business allowed by the special use permit shall be considered agricultural vehicles or agricultural equipment.
9. All of the vehicles and equipment stored on the subject property related to the business allowed by the special use permit shall be maintained in good condition with no deflated tires and shall be licensed if required by law.
10. Except for the purposes of loading and unloading, all landscape related materials shall be stored indoors or in the designated outdoor storage bins as shown on the site plan. The maximum height of the bins or “tents” shall be thirty feet (30’) and shall look substantial like the structures shown in the pictures. The maximum storage heights inside the storage bins shall be capped at twenty-five feet (25’). No miscellaneous storage of vehicles, machinery, or equipment shall occur in the storage bins.
11. One (1) maximum four foot by eight foot (4’ X 8’) freestanding sign may be located on the

subject property. The sign may be illuminated.

12. No landscape waste generated off the property can be burned on the subject property.
13. A maximum of fifteen (15) employees of the business allowed by this special use permit, including the owners of the business allowed by this special use permit, may report to this site for work. No employees shall engage in the sale of landscaping related materials on the property.
14. No retail customers of the business allowed by this special use permit shall be invited onto the property by anyone associated with the use allowed by this special use permit.
15. The hours of operation of the business allowed by this special use permit shall be Monday through Saturday from 6:00 a.m. until 5:00 p.m. Business operations may occur outside the hours of operation in the event of bad weather and snow removal. The owners of the business allowed by this special use permit may reduce these hours of operation.
16. The noise regulations are as follows:
  - Day Hours: No person shall cause or allow the emission of sound during daytime hours (7:00 A.M. to 10:00 P.M.) from any noise source to any receiving residential land which exceeds sixty-five (65) dBA when measured at any point within such receiving residential land, provided; however, that point of measurement shall be on the property line of the complainant.
  - Night Hours: No person shall cause or allow the emission of sound during nighttime hours (10:00 P.M. to 7:00 A.M.) from any noise source to any receiving residential land which exceeds fifty-five (55) dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the property line of the complainant.
  - EXEMPTION: Powered Equipment: Powered equipment, such as lawn mowers, small lawn and garden tools, riding tractors, and snow removal equipment which is necessary for the maintenance of property is exempted from the noise regulations between the hours of seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M.
17. At least one (1) functioning fire extinguisher and one (1) first aid kit shall be on the subject property. Applicable signage stating the location of the fire extinguisher and first aid kit shall be placed on the subject property.
18. The owners of the business allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
19. The conditions and restrictions contained in Ordinance 2014-29 shall be separate and enforceable from the conditions and restrictions contained in Ordinance 2007-10 and this major amendment to an existing special use permit.
20. The property owner and operator of the business allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of this type of business,

including but not limited, the public health protection standards for properties in the floodplain contained in the Kendall County Stormwater Management Ordinance.

21. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
22. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
23. This special use permit shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.

Chairman Mohr asked about the difference between a landscaping business and an excavating company. Mr. Asselmeier responded that excavating companies were not allowed in the A-1 district. Landscaping businesses were not defined in the Zoning Ordinance; it was unclear where the line existed between a landscaping business and an excavating business.

Member LeCuyer made a motion, seconded by Member Thompson, to accept the Staff Report into evidence.

With a voice vote of seven (7) ayes, the motion carried.

Chairman Mohr opened the public hearing at 7:16 p.m.

Gregg Ingemunson, Attorney for the Petitioner, said Baish Excavating does more landscaping work than excavating work.

Dan Koukol, on behalf of his father, Philip R. Koukol, said that his family owns the neighboring farm. He felt the business would be a good fit. He noted that the property had a well and pump business without anyone's knowledge previously. An excavating business moved in, but everything was required to be indoors. He requested that excavator and landscaper be defined and that operations be kept indoors. He questioned the materials available at the Petitioner's current operations.

Member Vickery said she did not know Baish Excavating to be a landscaping business. She felt the special use was proposed for change as a matter of convenience and not truly what they do as a business. She also questioned the County's ability to enforce the existing regulations on the existing landscaping businesses and related special use permits. She did not believe that the proposal would be a good use. She favored indoor storage.

Chairman Mohr closed the public hearing at 7:21 p.m.

Member LeCuyer made a motion, seconded by Member Whitfield, to approve the findings of fact.

The votes were as follows:

Ayes (6): Cherry, Fox, LeCuyer, Mohr, Thompson, and Whitfield  
Nays (0): None  
Abstain (1): Vickery  
Absent (0): None

The motion passed.

Member Whitfield made a motion, seconded by Member LeCuyer, to approve the conditions proposed by Staff.

The votes were as follows:

Ayes (6): Cherry, Fox, LeCuyer, Mohr, Thompson, and Whitfield  
Nays (1): Vickery  
Abstain (0): None  
Absent (0): None

The motion passed.

Member LeCuyer made a motion, seconded by Member Whitfield, to recommend approval of the special use permit.

The votes were as follows:

Ayes (6): Cherry, Fox, LeCuyer, Mohr, Thompson, and Whitfield  
Nays (1): Vickery  
Abstain (0): None  
Absent (0): None

The motion passed.

The proposal will go to the Kendall County Planning, Building and Zoning Committee on Tuesday, December 14, 2021.

The Zoning Board of Appeals completed their review of Petitions 21-46 at 7:24 p.m.

The Zoning Board of Appeals started their review of Petition 21-48 at 7:24 p.m.

**Petition 21 – 48 – Brian Henrichs on Behalf of Baka Properties, LLC**

Request: Map Amendment Rezoning the Subject Property from A-1 Agricultural District to R-3 One Family Residential District  
PIN: 02-34-130-004  
Location: 55 Riverside Street (Lot 183 in Fox River Gardens), Bristol Township  
Purpose: Petitioner Wants to Rezone the Property in Order to Subdivide the Property and Construct Two Homes

Mr. Asselmeier summarized the request.

The Petitioner is requesting a map amendment rezoning the subject property from A-1 Agricultural District to R-3 One Family Residential District.

The Petitioner plans to submit preliminary and final plats dividing the property into two (2) parcels in order to construct one (1) house on each new parcel.

The application materials, plat of survey, topographic survey, and aerial of the property were provided.

55 ILCS 5/5-12014(b)(B) allows for written protests signed by the owner or owners of land immediately touching, or immediately across a street, alley, or public right-of-way from, at least 20% of the perimeter of the land to be rezoned. In such cases, a three quarters (3/4) vote of the entire County Board is necessary to approve the map amendment. On November 30, 2021, this type of written protest was submitted to the County; the protest was provided.

Following the Kendall County Regional Planning Commission meeting, upon further review, the subject property is an agriculturally zoned lot in a recorded subdivision established before Kendall County adopted a zoning ordinance and is eligible for one (1) single-family house per Section 5:15.B of the Kendall County Zoning Ordinance which states the following:

“A lot which was established in an agricultural district by recorded deed or is part of an approved plat of subdivision, or was otherwise legally established on or before the adoption of this amendatory ordinance, may be used for single family residence purposes provided that the yard requirements of the R-2 District are complied with.”

The property is addressed as 55 Riverside Street and is Lot 183 in the Fox River Gardens Subdivision.

The property is approximately two point seven (2.7) acres in size.

The current land is Vacant; the property was previously used as horse pasture.

The Kendall County Future Land Use Map called for the property to be Suburban Residential (Max 1.00 DU/Acre). Yorkville’s Future Land Use Map called for the property to be Estate/Conservation Residential.

Yorkville Road and Riverside Street are private streets.

Mr. Asselmeier read an email from Greg Chismark noting floodplain on the property and provided a map showing the approximate locations of the floodplain. There were no wetlands on the property.

The adjacent land uses were Single-Family Residential.

The adjacent properties were zoned A-1 and R-3.

The Kendall County Future Land Use Map called for the area to be Suburban Residential (Max 1.00 DU/Acre). Yorkville’s Future Land Use Map called for the area to be Estate/Conservation Residential.

Zoning districts within one half (1/2) of a mile included A-1, A-1 SU, R-1, R-2, and R-3 in the unincorporated area. Properties inside Yorkville were zoned R-2 and OS-2.

The A-1 special use to the north was for a campground (Hide-A-Way Lakes).

EcoCat submitted on November 10, 2021. Protected resources may be in the vicinity, but adverse impacts were unlikely and consultation was terminated.

NRI application submitted on November 12, 2021. The draft LESA Score was 120 indicating a low level of protection.

The United City of Yorkville was emailed information on November 16, 2021. The Yorkville Economic Development Committee reviewed this proposal on December 7, 2021, and did not issue a recommendation. The Yorkville Planning and Zoning Commission reviewed this proposal on December 8, 2021, and had no objections to the request. Emails regarding these actions were provided.

Bristol Township was emailed information on November 16, 2021. No comments have been received.

ZPAC reviewed this proposal at their meeting on December 7, 2021. Discussion occurred about floodplain on the lot and restrictions about building in the floodplain. Appropriate federal, state, and local permits would be needed to build in the floodplain and applicable insurance would be required. An alternative septic system would likely be needed.

Rick Porter, Attorney for the Objectors, presented an objection to the requested rezoning from several neighbors. He felt having a R-3 zoned property in the area was inappropriate. He noted the exemptions in the Zoning Ordinance that allows houses on A-1 zoned properties. He noted the deed restrictions and argued that only one (1) home was allowed on Lot 183. The density would not be compatible with area. He noted that wetlands are located on the property. He noted the area and streets are prone to flooding with odor issues from septic systems and sanitary issues will worsen. He also noted the large amount of hydric soils on the property. Additional buildings will create additional flooding on downstream property owners. He also stated that the Petitioner has a history of not complying with County regulations. The trend of development is not toward increased density. Mr. Porter said the Committee could recommend R-1 zoning under the Zoning Ordinance.

Chris Lannert said development of the site was difficult. He argued that the previous rezoning in the area was probably illegal. He noted that fill had been placed on the property. He said it was a beautiful natural area. The Petitioner should not be able to build more than one (1) house on the parcel. Only a small portion of the lot was buildable. He advised the Committee not to be put into a position to accept the subdivision because the rezoning was approved.

Boyd Ingemunson, Attorney for the Petitioner, noted that the lot and neighboring lot merged Parcel Identification Numbers, otherwise the Petitioner could build one (1) house. He noted that every lot in the area was challenging to build. He noted that the request meets the Land Resource Management Plan and the intent of the subdivision. Mr. Asselmeier asked if the Petitioner was aware that, if the request was approved, two (2) houses might not be able to be built on the lot. Mr. Ingemunson acknowledged that the lot has challenges and will have to meet regulations.

Mr. Klaas questioned the nature of the Petition. Mr. Asselmeier responded the present request is to rezone the property. If the rezoning was approved, the Petitioner could pursue a subdivision with the

intent of placing two (2) houses on the existing parcel. Mr. Ingemunson said the Petitioner would ideally like to have the ability to build two (2) houses. The item before the County is rezoning the property. Mr. Klaas felt the Petition was flawed with the possibility that more than one (1) house could be placed on the parcel. He felt that the parcel should be entitled to one (1) and only one (1) house.

Mr. Guritz noted that deed restrictions exist. Discussion occurred regarding the deed restrictions. The question was raised regarding which entity enforces the deed restrictions.

Mr. Asselmeier noted that agricultural activities could occur on all of the properties in the area. He also noted that, if the rezoning was approved, a future property owner could decide to do a subdivision.

Dee Studler described the neighborhood. She noted the animals in the area. She noted the people admiring natural beauty when traveling in their kayaks down the river. The area was not high density. She said the Petitioner has already violated the deed restrictions and will not follow the rules. Mr. Asselmeier asked Ms. Studler if she would be fine if the Petitioner used the property for a cattle or hog farm. Ms. Studler responded yes.

Mr. Asselmeier explained how the property was originally zoned A-1.

James Kohout, Dave Morgan, and Gerald Chase stated they were in favor of allowing the Petitioner to have one (1) house, but were opposed to multiple houses on the property.

Dave Morgan and JoAnn Willingham expressed concerns about stormwater runoff and standing water.

Dave Morgan also expressed concerns related to property values, lighting, and traffic congestion.

Shabbir Shamsuddin expressed concerns regarding the width of the road and septic issues.

Mr. Asselmeier asked Mr. Ingemunson if the Petitioner would be interested in obtaining a conditional use permit for single-family home while retaining the A-1 zoning. Mr. Ingemunson responded that he would need to discuss the matter with the Petitioner.

Chairman Gengler felt that only one (1) house should be on the property.

ZPAC recommended denial of the request map amendment by a vote of seven (7) against the proposal, one (1) in favor of the proposal and two (2) members absent. The minutes were provided.

The Kendall County Regional Planning Commission reviewed this proposal at their meeting on December 8, 2021.

Mr. Asselmeier noted that the County does not enforce or interpret the deed restrictions and the Petitioner might attempt to divide the property through a Plat Act exemption if the rezoning was approved.

Commissioners discussed the buildability of the lot and floodplain on the property.

Boyd Ingemunson, Attorney for the Petitioner, restated much of the same information that he said at ZPAC. He further noted that a mechanical septic system probably would be required and the buildability of the lot had not been determined. He also discussed the rights of property owners to rezone their property. He discussed the previous rezoning that occurred on the Petitioner's neighboring property in 2005. He stated the subject property was not suitable for agricultural uses. He stated that his clients have not violated any laws related to the placement of fill and the neighbors did not like the Petitioner.

Rick Porter, Attorney for the Objectors, restated much of the same information that he said at ZPAC. He stated that his clients favor having one (1) home on the property only and, if the property was going to be rezoned, it should be rezoned to R-1 or R-2. He stated that fill had been placed on the property and River Street experienced flooding. He said neighbors did not receive notification for the previous rezoning in 2005. He also discussed the facts required in order to prove the need for a rezoning.

Chris Lannert restated much of the same information that he said at ZPAC. He called the development of two (2) lots on the property unnecessary and noted the limited amount of land available on the property for even one (1) house.

Pat Kelsey provided a picture of the fill on the property. He discussed the drainage and plants in the area. He discussed the difficulty of putting septic systems in hydric soils and in the area. He discussed the engineering and earthwork that would need to occur to raise buildings out of the floodplain. He said the subject property was lower than the nearby houses along the Fox River. He said a wet stream flowed through the property and approximately twenty-five percent (25%) of the property was in wetlands. He also stated there was a culvert for the stream to flow through under Yorkville Road.

Brian Henrichs, Petitioner, stated he wanted the rezoning in order to keep his kids and grandchildren in the area. He also explained the water table in the area and said that he has not had any issues with his septic system. He also said no wetlands were located on the property.

Chairman Ashton noted the deed restrictions did not matter.

Dee Studler restated much of the same information that she said at ZPAC. She provided information regarding a recent judgement related to a tree dispute.

James Kohout restated much of the same information that he said at ZPAC. He stated that he still uses his property for agriculture. He favored one (1) house on the property and was opposed to two (2) houses on the property.

A neighbor said the southern portion of Fox River Gardens was different than the northern portion of Fox River Gardens. He noted the frequency of his sump pump running. He noted issues exist between neighbors. He was concerned about property values. He did not object to one (1) house on the property. The neighbors just want to protect and preserve the neighborhood.

James Clune was opposed to any buildings on the property because of the floodplain, stormwater, and mosquitos. He was concerned about the neighborhood getting a bad reputation with Realtors.



Shabbir Shamsuddin restated much of the same information that he said at ZPAC. He was not against the Petitioner. He did not receive notice of the rezoning in 2005. He discussed the septic issues he has at his property. His yard was underwater when it rains. He said building one (1) home will cause issues with hydrology. He was also concerned about property values and increased traffic.

Gerald Chase restated much of the same information that he said at ZPAC. He said that he had not received notice of the previous zoning change. He was concerned about drainage and the impact of a second house on the water situation.

Member Rodriguez felt that one (1) house was enough for the property and discussed the challenges of building multiple houses on the property.

Mr. Asselmeier provided the minimum square footages for R-1, R-2, and R-3 zoned properties. The subject property is less than the minimum one hundred thirty-thousand (130,000) square foot lot size required in the R-1.

The Kendall County Regional Planning recommended rezoning the property R-2 instead of R-3 by a vote of seven (7) in favor and two (2) in opposition with one (1) member absent. The minutes of the meeting were provided.

The Petitioner desires to rezone the subject property in order to subdivide the property into (2) parcels and construct one (1) house on each of the two (2) new parcels created for a total of two (2) new houses.

Section 8:07.H of the Kendall County Zoning Ordinance does not allow properties larger than ten (10) acres in size to rezone to the R-3 One Family Residential District. The subject property is less than ten (10) acres in size.

The minimum lot size in the R-3 One Family Residential District is forty-five thousand (45,000) square feet.

Any new homes or accessory structures would be required to meet applicable building codes.

According to the Plat of Survey, there is one (1) existing steel and frame pole building and one (1) frame stable on the property.

No public or private utilities are onsite. Electricity is at Yorkville Road and Riverside Street.

The property fronts Yorkville Road and Riverside Street, two (2) private roads.

Any new driveways constructed would be for residential purposes. Any new driveways would have to meet applicable regulations and secure proper permits.

No new odors are foreseen.

Any new lighting would be for residential use only.

Any fencing, landscaping, or screening would be for residential purposes.

Any signage would be residential in nature.

No noise is anticipated.

Any new homes would have to be constructed per Kendall County's Stormwater Management Ordinance.

The proposed findings of fact were as follows:

Existing uses of property within the general area of the property in question. The surrounding properties are used for single-family residential uses.

The Zoning classification of property within the general area of the property in question. The surrounding properties are zoned A-1 or R-3.

The suitability of the property in question for the uses permitted under the existing zoning classification. The property is presently zoned A-1. The property is less than forty (40) acres and does not qualify for any agricultural housing allocations. One (1) single-family residential home could be constructed on the subject property under the provision outlined in Section 5:15.B of the Kendall County Zoning Ordinance pertaining to non-conforming lots on agricultural zoned properties in certain subdivisions.

The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the day the property in question was in its present zoning classification. The Zoning Board of Appeals shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and is not solely for the interest of the applicant. The Zoning Board of Appeals may recommend the adoption of an amendment changing the zoning classification of the property in question to any higher classification than that requested by the applicant. For the purpose of this paragraph the R-1 District shall be considered the highest classification and the M-2 District shall be considered the lowest classification. The trend of development in the area is single-family residential uses found in rural settings with wooded lots.

Consistency with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. The Future Land Use Map in the Land Resource Management Plan classifies this property as Suburban Residential. The maximum density for the Suburban Residential classification is one density unit per acre (1.00 DU/Acre). The minimum lot size for R-3 One Family Residential District zoned land is slightly over one (1) acre at forty-five thousand (45,000) square feet. Accordingly, the R-3 One Family Residential District is consistent with the Suburban Residential classification.

Staff recommended approval of the proposed map amendment because the proposal is consistent with the Land Resource Management Plan.

Member LeCuyer made a motion, seconded by Member Thompson, to accept the Staff Report into evidence.

With a voice vote of seven (7) ayes, the motion carried.

Chairman Mohr opened the public hearing at 7:37 p.m.

Brian Henrichs, Petitioner, stated that he was forced to go R-3 by the County; he tried to stay A-1. He was withdrawing his Petition for a later date in 2022.

Rick Porter, Attorney for the Objectors, said that they tried to reach the Petitioner and his Attorney, but were unsuccessful. He said the Petitioner and his Attorney did not inform he and his clients because the Petitioner wanted the Objectors to incur additional expenses.

Chairman Mohr noted that the Petition was rescinded at the request of the Petitioner.

Chairman Mohr closed the public hearing at 7:39 p.m.

The Zoning Board of Appeals completed their review of Petitions 21-48 at 7:39 p.m.

The Zoning Board of Appeals started their review of Petition 21-37 at 7:40 p.m.

**Petition 21 – 37 – Kendall County Planning, Building and Zoning Committee**

Request: Text Amendments to the Kendall County Zoning Ordinance Pertaining to the Illinois Garden Act and Roadside Stand Regulations

Purpose: Petitioner Wishes Vegetable Gardens and Roadside Stands To Be Permitted Uses on all Residentially Zoned Properties, Establishes Sight-Line Requirements to Vegetable Gardens, Updates Appendix 9, Table of Uses, and Makes Citation Corrections to the Zoning Ordinance

Mr. Asselmeier summarized the request.

Earlier in 2021, the Illinois General Assembly passed and the Governor signed Public Act 102-0180 (formerly House Bill 0633) also known as the Garden Act.

The Garden Act allows people to plant vegetable gardens as the primary use on residential pieces of property. Further, no county in Illinois can prevent people from using residential property for the purpose of vegetable gardens. The Garden Act becomes effective January 1, 2022. A copy of Public Act 102-0180 was provided.

Presently, farming is a permitted use on A-1, RPD-1, RPD-2, and RPD-3 zoned property in unincorporated Kendall County.

Also, per Section 4:05.B of the Kendall County Zoning Ordinance, gardens may encroach up to all property lines.

At their meeting on September 13, 2021, the Kendall County Planning, Building and Zoning Committee voted to initiate text amendments to the Zoning Ordinance to allow vegetable gardening as a primary use on R-1, R-2, R-3, R-4, R-5, R-6, and R-7 zoned property, allow roadside stands selling agricultural products grown on the premises in the same residential zoning districts, and to restrict gardens from

forty foot (40') sight triangles where two (2) public streets meet. Roadside stands must be setback at least ten feet (10') from the nearest right-of-way.

Below please find the original redlined version of the proposal:

#### **8:02.A Permitted Uses in the R-1**

5. Lands and buildings used for horticulture or farm purposes **including vegetable gardens as defined by the Garden Act.**

#### **8:06.A Permitted Uses in the R-2**

1. Any permitted use in the R-1 One-Family Estate Residence District, Section 8:02.A except:

a. Lands and buildings used for horticultural or farm purposes, **not including vegetable gardens as defined by the Garden Act and roadside stands following the setback requirements in Section 8:02.A**

~~b. Roadside stands for the display, sale or offering for sale of agricultural products grown or produced on the property, and~~

~~c. b.~~ Farm-type animals shall be prohibited in the R-2 District with the exception of chickens.

#### **8:07.A Permitted Uses in the R-3**

1. Any permitted use in the R-1 One-Family Estate Residence District, Section 8:02.A except:

a. Lands and buildings used for horticultural or farm purposes, **not including vegetable gardens as defined by the Garden Act and roadside stands following the setback requirements in Section 8:02.A**

~~b. Roadside stands for the display, sale or offering for sale of agricultural products grown or produced on the property, and~~

~~c. b.~~ Farm-type animals shall be prohibited in the R-3 District with the exception of chickens.

#### **8:08.A Permitted Uses in the R-4, R-5, R-6, and R-7 Districts**

**6. Roadside stands for the display, sale or offering for sale of agricultural products grown or produced on the property, provided that the stands and produce on display are located ten feet (10') back from the nearest right-of-way line.**

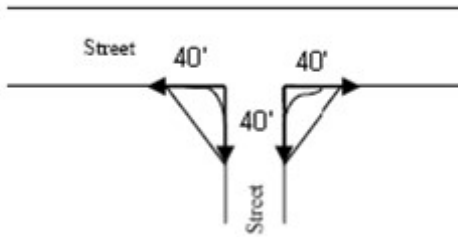
**10. Vegetable Gardens as defined by the Garden Act.**

**Remaining Permitted Uses to be Renumbered.**

**Amendment to Appendix 9, Table of Uses to reflect the addition of Vegetable Gardens and Roadside Stands as Permitted Use in all Residential Zoning Districts.**

Section 11:02.F.11 should be clarified as follows regarding sight triangles:

11. Landscape sight triangle. No landscaping including berms **and vegetable gardens as defined by the Garden Act** shall be planted within a forty foot (40') sight triangle measured at the intersection of two public streets.



Petition information was emailed to the townships on September 22, 2021. To date, only the Na-Au-Say Township Planning Commission has reviewed this proposal and they unanimously recommended approval.

ZPAC reviewed this proposal at their meeting on October 5, 2021. Discussion centered on the State imposing new regulations. ZPAC recommended approval of the proposal by a vote of seven (7) in favor, zero (0) in opposition, and one (1) present with two (2) members absent. The minutes were provided.

At the October 27, 2021, Kendall County Regional Planning Commission meeting, the consensus of the Commission was to establish a setback larger than ten feet (10') in the front yards and side yards of corner lots for Boulder Hill. The minutes were provided.

The Kendall County Zoning Board of Appeals started their review of the proposal on November 1, 2021. The discussion centered on increased traffic. They noted that existing garage sales, which are not regulated, caused additional traffic and parking issues. The Zoning Board also noted that the size of lots in Boulder Hill will restrict the amount produce available to be sold. The minutes of the hearing were provided.

Per the Zoning Ordinance, the required front yard setbacks in the R-4, R-5, and R-6 Districts are forty feet (40') from the right-of-way from freeway and arterial roads, thirty feet (30') for major and minor collector roads, and twenty-five feet (25') from all other roads. For the R-7 District, the front yard setbacks are fifty feet (50') for freeway and arterial roads, forty feet (40') from major and minor collector roads, and thirty feet (30') from all other roads. The side yard setback for corner lots in the R-4, R-5, R-6, and R-7 Districts is thirty feet (30').

A map showing the areas zoned R-4, R-5, R-6, and R-7 was provided.

The proposal could be amended to restrict roadside stands from the front yard and side yards of corner lots in the R-4, R-5, R-6, and R-7 Districts with the setbacks as noted in the previous paragraph. This would cause roadside stands to be placed closer to the house, including on porches and inside garages, on smaller lots.

Staff would like to point out that accessory structures are presently not allowed in the front yard or side yards of corner lot setbacks and that lawn furniture can be placed within two point five feet (2.5') of any property line. Staff has also been directed not to strictly enforce setback restrictions related to lemonade and similar stands in residential areas.

With the above information in mind, the Kendall County Regional Planning Commission met on December 8, 2021, and recommended that roadside stands be restricted from required front yard setbacks and side yard setbacks for corner lots in the R-4, R-5, R-6, and R-7 Districts by vote of nine (9) in favor and zero (0) in opposition with one (1) member absent. The minutes were provided.

Member Vickery asked who would be impacted by this proposal. Mr. Asselmeier responded the proposal would impact people zoned residential and not agricultural; properties in Boulder Hill for example.

Chairman Mohr opened the public hearing at 7:44 p.m.

The consensus of the Board was that the County would have difficulty enforcing setbacks.

Mr. Asselmeier provided a history of the State law.

Member Whitfield questioned the number of houses that would have roadside stands.

Chairman Mohr closed the public hearing at 7:50 p.m.

Member Whitfield made a motion, seconded by Member Cherry, to recommend approval of the text amendment as originally proposed with roadsides stands allowed up to ten feet (10') of the nearest right-of-way line.

The votes were as follows:

Ayes (7): Cherry, Fox, LeCuyer, Mohr, Thompson, Vickery, and Whitfield  
Nays (0): None  
Abstain (0): None  
Absent (0): None

The motion passed.

The townships will be notified of the results of the public hearing and will have thirty (30) days to object.

The proposal will go to the Kendall County Planning, Building and Zoning Committee on Monday, January 10, 2022.

The Zoning Board of Appeals completed their review of Petitions 21-37 at 7:51 p.m.

### **NEW BUSINESS/OLD BUSINESS**

Selection of Kendall County Zoning Board of Appeals Acting Chairman

Member Whitfield nominated Tom LeCuyer to the position of Acting Chairman, seconded by Member

Cherry. There were no additional nominations.

With a voice vote of seven (7) ayes, the motion carried.

**REVIEW OF PETITIONS THAT WENT TO THE COUNTY BOARD**

Mr. Asselmeier reported that Petitions 21-26, 21-32, and 21-36 were approved by the County Board.

**PUBLIC COMMENTS**

Mr. Asselmeier stated a special use permit and variance for landscaping business at 1038 Harvey Road and Petition 21-49 would be on the agenda on January 31, 2022.

**ADJOURNMENT OF THE ZONING BOARD OF APPEALS**

Member LeCuyer made a motion, seconded by Member Vickery, to adjourn.

With a voice vote of seven (7) ayes, the motion carried.

The Zoning Board of Appeals meeting adjourned at 7:55 p.m.

The next hearing/meeting will be on January 31, 2022.

Respectfully submitted by,  
Matthew H. Asselmeier, AICP, CFM  
Senior Planner

**Exhibits**

1. Memo on Petition 21-37 Dated December 9, 2021
2. Certificate of Publication for Petition 21-37 (Not Included with Report but on file in Planning, Building and Zoning Office)
3. Memo on Petition 21-46 Dated December 9, 2021
4. Certificate of Publication and Certified Mail Receipts for Petition 21-46 (Not Included with Report but on file in Planning, Building and Zoning Office)
5. Memo on Petition 21-48 Dated December 10, 2021
6. Certificate of Publication and Certified Mail Receipts for Petition 21-48 (Not Included with Report but on file in Planning, Building and Zoning Office)
7. December 7, 2021 Email from Dan Kramer RE: Quezada Zoning Petition
8. Certificate of Publication and Certified Mail Receipts for Petition 21-49 (Not Included with Report but on file in Planning, Building and Zoning Office)



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**DEPARTMENT OF PLANNING, BUILDING & ZONING**

111 West Fox Street • Room 204

Yorkville, IL • 60560

(630) 553-4141

Fax (630) 553-4179

**MEMORANDUM**

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To: Kendall County Zoning Board of Appeals  
From: Matthew H. Asselmeier, AICP, CFM, Senior Planner  
Date: January 27, 2022  
Re: Petitions 21-49, 22-01, 22-03, and 22-04

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The Kendall County Regional Planning Commission did not have a quorum for their January 26, 2022, meeting. As such, the Commission was unable to review at issue recommendations on the subject Petitions.

Accordingly, Staff requests that the Kendall County Zoning Board of Appeals meets as scheduled on January 31, 2022, and votes to continue the hearings on the subject Petitions to February 28, 2022, at 7:00 p.m.

As of the date of this memo, the subject Petitions would be the only Petitions on the February 28<sup>th</sup> agenda.

If you have any questions regarding this memo, please let me know.

MHA