

COPY

RECEIVED  
FEB 23 2023

In Re: Jeffrey and Lucinda : THE ZONING HEARING BOARD OF  
Newswanger - Petition for Special : MILLCREEK TOWNSHIP  
Exception :  
: LEBANON COUNTY, PENNSYLVANIA  
:  
: CASE # 4-22

**DECISION OF THE ZONING HEARING BOARD  
OF MILLCREEK TOWNSHIP**

**I. INTRODUCTION**

The Zoning Hearing Board of Millcreek Township (hereinafter "ZHB"), Lebanon County, Pennsylvania, met on Wednesday, January 11, 2023 at a duly advertised public session to hear a Petition for Special Exception submitted by Jeffrey and Lucinda Newswanger.

**II. FINDINGS OF FACT**

1. The Petitioners are Jeffrey and Lucinda Newswanger, with an address of 563 State Route 419, Newmanstown, PA 17073. (Hearing Exhibit 1).
2. The Petitioners are the owners of a 121.78-acre property, GPIN #24-2389890-368760, 563 State Route 419, Millcreek Township, Newmanstown, PA 17073 (Hearing Exhibit 1).
3. The Subject Property is located in the A – Agricultural Industry District. (Hearing Exhibit 1).

4. The Subject Property is improved with a single-family dwelling, barns, sheds and silos. The property is serviced by a private water source and on-lot septic system. (Hearing Exhibit 1).

5. Petitioner proposes to operate a kennel on the property. (Hearing Exhibit 1).

6. A Special Exception is being sought in accordance with Article 6, Section 604.J. of the Millcreek Township Zoning Ordinance to allow the proposed kennel use. (Hearing Exhibit 1).

7. A hearing to consider Petitioner's request for a Variance was scheduled for Wednesday, January 11, 2023 at 6:30 p.m. at the Millcreek Township Building, 81 East Alumni Avenue, Newmanstown, PA 17073. (Hearing Exhibit 2).

8. Notice of the zoning hearing was duly advertised in the *Lebanon Daily News* on Wednesday, December 28, 2022 and Wednesday, January 4, 2023. (Hearing Exhibit 3).

9. Notice of the zoning hearing was sent to neighboring property owners by United States First Class Mail. (Hearing Exhibit 4).

10. Notice of the zoning hearing was posted on the Subject Property. (Hearing Exhibit 7).

11. The Petition for Special Exception was heard by the Millcreek Township ZHB before Zoning Hearing Board Members Bob Beisel, Chairman; Timothy Bartow, Vice-Chairman; and Scott Sweigart, Secretary.

12. Present at the January 11, 2023 zoning hearing were:

Robert Beisel – ZHB Chairman

Timothy Bartow – ZHB Vice-Chairman

Scott Sweigart – ZHB Secretary

Jeffrey Newswanger – Petitioner/Property Owner

Lucinda Newswanger – Petitioner/Property Owner

Wendy Jegla, 174 W. Texter Mission Rd.

Linda Lauman, 105 S. Millbach Rd.

Susan Iezzi, 16 S. Millbach Rd.

Anatoliy Zaitsev, 7 S. Millbach Rd.

David and Ruth Zook, 4 Millbach Rd.

Greg Hetrick – Zoning Officer, Lebanon County Planning Department

Kathy J. Sheffy, Court Stenographer

Amy B. Leonard, Esquire – ZHB Solicitor

13. Petitioners Jeffrey and Lucinda Newswanger presented the case for the special exception. (Hearing Testimony).

14. Petitioners testified that they presently operate a dairy farm on the property. (Hearing Testimony).

15. Petitioners presently breed dogs, and have 3 males and 5 breeding female dogs at the property. They have already obtained a kennel license from the Commonwealth of Pennsylvania, Department of Agriculture. (Hearing Testimony).

16. Petitioners are subject to inspections twice per year and operate their kennel within the limits of their current license. They have a few litters of puppies per year. (Hearing Testimony).

17. Petitioners intend to use a former tobacco shed as the primary enclosure for the dogs. The dogs will also have outdoor access. The primary enclosure will be climate controlled with heat and air conditioning. (Hearing Testimony).

18. Petitioners intend to add a lean-to on the front of the primary enclosure as a dog run. Certain square footage is required for the dog run. Petitioners presented plans showing the location of the primary enclosure and the proposed dog run. (Hearing Testimony; Exhibits 8 and 9).

19. Petitioners testified that they intended to increase their number of dogs to twenty (20), but could ultimately increase to thirty (30) to forty (40) dogs depending on the size of the breeds. (Hearing Testimony).

20. Petitioners propose a total of 20 – 22 pens, and can have two (2) dogs per pen depending on the size of the dog. (Hearing Testimony).

21. Petitioners stated that there are an average of four (4) puppies per litter, and they average seven (7) litters per year with their current number of dogs. (Hearing Testimony).

22. The primary enclosure for the dogs is approximately 220 feet from the right of way of State Route 419. (Hearing Testimony).

23. The proposed dog run is 20 feet by 90 feet. A fence is proposed around the dog run. Use of shrubs or vegetative buffers was discussed. (Hearing Testimony).

24. Petitioners currently use collars on the dogs to control noise, but may not use them depending on the type of buffer used. (Hearing Testimony).

25. Petitioners have a compost pit on site that is used for their agricultural operations, and the same pit is used to dispose of animal waste from the kennel. (Hearing Testimony).

26. Petitioners presently advertise online and engage in direct sales of dogs, with customer scheduling appointments with Petitioners. (Hearing Testimony).



27. Petitioners stated that if they had more dogs, they might sell to a dealer or pet store. They acknowledged that an increase in number of dogs transferred and/or sales to dealers or pet stores may result in the need for them to obtain a different kennel license from the Commonwealth of Pennsylvania. (Hearing Testimony).

28. Requirements for setbacks, lot coverage, building height, and minimum acreage were reviewed with Petitioners. Petitioners are able to meet all minimum requirements for the proposed kennel use in the Agricultural Industry District. (Hearing Testimony).

29. In response to questions asked by Linda Lauman, Petitioners testified that every dog is examined by a veterinarian once or twice a year. Puppies get three (3) rounds of vaccinations, as well as deworming every two (2) weeks. A veterinarian examines the puppies before they leave the property. Purchasers of the puppies are given a one-year guarantee of genetic health. (Hearing Testimony).

30. Petitioners testified that females are bred until approximately age six (6) if they are healthy; then they are retired and re-homed as pets. (Hearing Testimony).

31. In response to questions asked by Susan Iezzi, Petitioners stated that the primary enclosure for the dogs is heated with propane and cooled with an electric air conditioning unit. Petitioners testified that the temperature requirements for the kennel are set by the state regulations.

32. Petitioners stated that they already have a generator if there is a loss of power, as this is part of their dairy operations. (Hearing Testimony).

### **III. HEARING EXHIBITS**

Hearing Exhibit 1 – Petition for Special Exception

Hearing Exhibit 2 – Notice of Public Hearing

Hearing Exhibit 3 – Proof of Publication in the *Lebanon Daily News* on December 28, 2022 and January 4, 2023

Hearing Exhibit 4 – Mailing List

Hearing Exhibit 5 – Plot Plan of parcel identifying structure for kennel

Hearing Exhibit 6 – Aerial view of parcel identifying structure for kennel

Hearing Exhibit 7 – Photo of public notice posted on property

Hearing Exhibit 8 – Plan showing buildings and driveway

Hearing Exhibit 9 – Plan showing proposed dog run measurements

#### **IV. DISCUSSION**

The Petitioners are Jeffrey and Lucinda Newswanger, owners of a 121.78-acre property, GPIN #24-2389890-368760, 563 State Route 419, Millcreek Township, Newmanstown, PA 17073. The Subject Property is located in the A – Agricultural Industry District. The Subject Property is improved with a single-family dwelling, barns, sheds and silos. The property is serviced by a private water source and on-lot septic system. Petitioner proposes to operate a kennel on the property. A Special Exception is being sought in accordance with Article 6, Section 604.J. of the Millcreek Township Zoning Ordinance to allow the proposed kennel use.

“A special exception is a conditionally permitted use, legislatively allowed where specific standards and conditions detailed in the ordinance are met. A special exception is not an “exception” to the zoning ordinance; rather it is a use permitted in accordance with the express standards and criteria in the zoning ordinance. The Applicant has the burden of proving (1) that the proposed use is a type permitted by special exception and (2) that the proposed use complies with the requirements in the ordinance for such special exception. It is presumed that the local legislature has

considered that the special exception use satisfies local concerns for the general health, safety, and welfare.” *Agnew v. Bushkill Tp. Zoning Hearing Board*, 837 A.2d 634, 637 (Pa. Commw. Ct. 2003). “Once an applicant for a special exception shows compliance with the specific requirements of the ordinance, the burden shifts to the protestors to prove that the proposed use will have an adverse effect on the general public.” *Id.*

Section 604.J. of the Millcreek Township Zoning Ordinance specifically allows kennels as a special exception use upon approval by the Zoning Hearing Board. Article 21, Section 21.02.E. enumerates the considerations to be made by the Zoning Hearing Board in determining whether satisfactory provisions and arrangements have been made concerning ingress and egress, off-street parking areas, refuse areas, utilities, screening and buffering, signs, required yards and open space, and general compatibility with adjacent properties and other properties in the zoning district.

Petitioners presented testimony regarding the sufficiency of the access driveway and off-street parking areas to accommodate customers by appointment, and that such traffic would not interfere with their existing dairy farm use. They testified about the refuse plan for waste associated with the dog kennel. They provided details about the utilities that would service the kennel. Adequate screening and buffering to reduce any noise from the kennel was discussed. Petitioners showed that they exceeded the minimum lot area of fifty (50) acres. There were no buildings proposed with a height exceeding thirty-five (35) feet. They did not exceed the 15% maximum lot coverage restriction. Petitioners demonstrated they can meet the minimum setback requirements and lot width requirements. Petitioners also showed compliance with state-level regulations by familiarizing themselves with kennel licensing requirements imposed by



the Commonwealth of Pennsylvania and by obtaining the appropriate license to enable them to operate a dog kennel.

The Petitioners demonstrated through their testimony that the proposed use of the Subject Property was a permitted Special Exception use that meets the conditions of Section 21.02.E. Likewise, the Petitioners' testimony established by credible evidence that the proposed use would be able to meet the general standards for special exceptions, that the proposed use was compatible with adjacent and nearby properties, and would not adversely affect the public health, safety, or interest. However, the Zoning Hearing Board determined that reasonable conditions and safeguards were necessary to ensure that the use will be in harmony with the A – Agricultural Industry District.

### **DECISION**

Now, therefore, this 11<sup>th</sup> day of January, 2023, the Zoning Hearing Board of Millcreek Township, by a 3-0 vote, hereby GRANTS the Petition for Special Exception with the following conditions:

1. Petitioners must maintain a license with the Commonwealth of Pennsylvania, Department of Agriculture, Bureau of Dog Law Enforcement, that is appropriate for the operation of the kennel, with the maximum number of dogs on the property to be in accordance with the license.
2. Any changes to the tobacco barn serving as the primary enclosure for the kennel shall comply with the Building Code.
3. There shall be a vegetative buffer around the proposed dog run area.



4. No kenneled dogs shall be outside in the dog run between 8:00 p.m. and 5:00 a.m.
5. The tobacco barn must have adequate soundproofing so that sound from the kennel cannot be heard at any lot line of a neighboring residential dwelling.
6. Calming devices shall be used if there are noise complaints from the neighbors.
7. Customers shall be by appointment only.

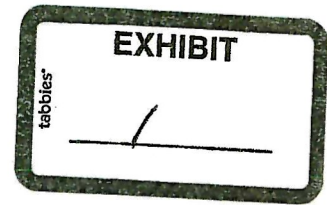


---

Robert Beisel, Chairman  
Millcreek Township  
Zoning Hearing Board

Date: Feb. 22, 2023

PETITION FOR  
Special Exception  
BEFORE THE ZONING HEARING BOARD  
OF  
Millcreek Township  
LEBANON COUNTY, PENNSYLVANIA



CASE # 4 -22

DATE: 11/21/2022

APPELLANT/PETITIONER(S): Jeffrey and Lucinda Newswanger

ADDRESS: 563 State Rt 419 Newmanstown, Pa. 17073

PROPERTY LOCATION 563 State Rt 419 Newmanstown, Pa. 17073

OWNER(S): Jeffrey and Lucinda Newswanger

ADDRESS: 563 State Rt 419 Newmanstown, Pa. 17073

Reasons for Appeal/Petition:

Petitioners are the owners of a 121.78-acre parcel, 563 State Rt 419 Newmanstown, PA. 17073, Millcreek Township, GPIN# 24:2389890-368760. The property is located in A Agriculture Industry Zoning District. The property is improved with a single-family dwelling, barns, sheds and silos. Property has private water and sewer.

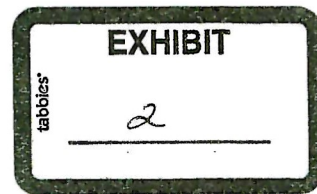
Petitioner proposes to operate a kennel on the property.

Petitioner is seeking a special exception to Article 6 Section 6.04 J of the Millcreek Township Zoning Ordinance to allow the kennel. .

Fee of \$ <sup>300.00</sup>~~400.00~~ received on 11/21/2022 Check <sup>5790</sup>~~5639~~

I hereby certify the above to be correct and accurate. Furthermore, I waive my right to have a stenographic record of the hearing proceedings; in lieu thereof, I agree to the utilization of a sound recording tape to record the proceedings of the hearing. I further agree to payment of a fee of \$3.00 per page of hearing transcript, upon appeal of any decision in conjunction with this case and will pay the required minimum deposit fee.

  
Signature of Appellant/Petitioner



#### NOTICE OF PUBLIC HEARING

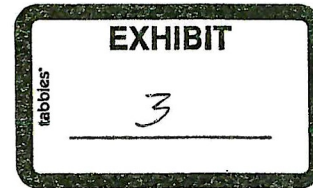
The Zoning Hearing Board of Millcreek Twp. will meet in public session, Wed. Jan 11, 2022 @ 6:30 pm in the Twp. Bldg. 81 East Alumni Ave. Newmanstown, to hear a petition for special exception from Jeffrey and Lucinda Newswanger, 563 St Rt 419, GPIN#24:2389890-368760. The property is in the A Zoning District. Petitioner is requesting a special exception to operate a kennel.

Petitioner is seeking Special Exception to Section 6.04 J of the Millcreek Township Zoning Ordinance. Questions and concerns may contact LCPD @ 228-4444.



## Lebanon County Planning Department

Lebanon Daily News  
8<sup>th</sup> & Poplar Streets  
Lebanon, PA 17042



Please publish the attached public notice(s) for:

- 1) Jeffrey and Lucinda Newswanger

on the following date(s). The heading should be typed in **Bold** and the contents should be typed in regular type (non-bold).

- 1) Wednesday December 28<sup>th</sup>, 2022
- 2) Wednesday January 4<sup>th</sup>, 2023

Please invoice the Lebanon County Planning Department at the address below and forward proof of publication with the billing. Please forward the proof prior to the date of the hearing referenced in the advertisement.

Thank you for your time in this matter.

Sincerely,

Janelle Deitz  
Secretary



# Lebanon Daily News

PART OF THE USA TODAY NETWORK

LEBANON COUNTY PLANNING  
400 SOUTH 8 TH STREET ROOM 206

LEBANON, PA 17042

Publication Cost: \$138.48

Ad No: 0005520679

# of Affidavits: 1

Customer No: 1427482

This is not an invoice

## Affidavit of Publication

Proof of Publication  
State of Pennsylvania



The **Lebanon Daily News** is the name of the newspapers(s) of general circulation published continuously for more than six months at its principle place of business, 718 Poplar Street, Lebanon, PA.

The printed copy of the advertisement hereto attached is a true copy, exactly as printed and published, of an advertisement printed in the regular issues of the said The Lebanon Daily News published in the editions dated on the following dates, viz:

Editions Dated: 12/28/2022, 01/04/2023

I, being first duly sworn upon oath depose and say that I am a legal clerk and employee of The Lebanon Daily News and have personal knowledge of the publication of the advertisement mentioned in the foregoing statement as to the time, place and character of publications are true, and that the affiant is not interested in the subject matter of the above mentioned advertisement.

Linda Helt

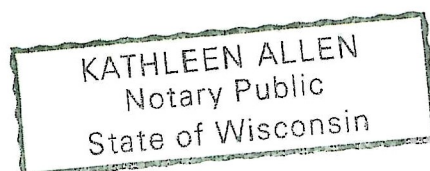
Subscribed and sworn to before on January 4, 2023:

Kathleen Allen

Notary, State of Wisconsin, County of Brown

1-9-23

My commission expires



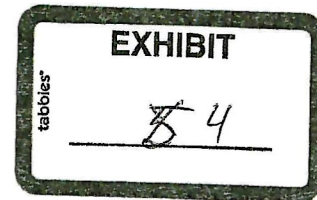
# **NOTICE OF PUBLIC HEARING**

The Zoning Hearing Board of Millcreek Twp. will meet in public session, Wed. Jan 11, 2022 @ 7:00 pm in the Twp. Bldg. 81 East Alumni Ave. Newmans-town, to hear a petition for special exception from Jeffrey and Lucinda Newswanger, 563 St Rt 419, GPIN#24:2389890-368760. The property is in the A Zoning District. Petitioner is requesting a special exception to operate a kennel.

Petitioner is seeking Special Exception to Section 6.04 J of the Millcreek Township Zoning Ordinance. Questions and concerns may contact LCPD @ 228-4444.

MILLCREEK TOWNSHIP

Mailing List Case #



SUPERVISORS

Scott Moyer  
289 S. Mountain Rd.  
Robesonia, PA 19551

Dan Hogeland  
7 Hogeland Rd.  
Newmanstown, PA 17073

Eric Weidman  
42 Village Drive  
Newmanstown, PA 17073

ZONING HEARING BOARD

Bob Beisel  
150 S. Mountain Road  
Robesonia, PA 19551

Scott Sweigart  
95 Round Barn Rd.  
Newmanstown, PA 17073

Timothy Bartow  
131 W. Park Street  
Newmanstown, PA 17073

ZHB ALTERNATE

Malcolm Sonnon  
101 Sonnens Rd.  
Richland, PA 17087

ZHB SOLICITOR

Amy Leonard, Esq.  
937 Willow Street  
Lebanon, PA 17046

SOLICITOR

John Enck, Esq.  
P.O. Box 1188  
522 S. Eighth St.  
Lebanon, PA 17042

TWP. SECRETARY/TREASURER

Lorie Kupp  
Millcreek Twp. Office  
81 E. Alumni Avenue  
Newmanstown, PA 17073

PLANNING COMMISSION

Karen Krater  
135 Cocalico Road  
Robesonia, PA 19551

Glen Eberly  
102 Stricklerstown Rd  
Newmanstown, PA 17073

Craig Thompson  
10 Stouchsburg Rd.  
Newmanstown, PA 17073

Mervin Horst  
108 N. Kalbach Rd.  
Newmanstown, PA 17073

Donald Leibig  
34 W. Park Street  
Newmanstown, PA 17073

PETITIONER

MARTIN, BURNELL H  
MARTIN, DARLENE H  
112 N KALBACH RD  
NEWMANSTOWN, PA 17073-9125

NEWSWANGER, LLOYD S  
NEWSWANGER, JOYCE L  
316 S MILLBACH RD  
NEWMANSTOWN, PA 17073-9204

HORNING, MERVIN R  
HORNING, GRACE ANN  
505 STATE ROUTE 419  
NEWMANSTOWN, PA 17073-9130

MARTIN, BURNELL H  
MARTIN, DARLENE H  
112 N KALBACH RD  
NEWMANSTOWN, PA 17073-9125

HORST, KIRBY L  
HORST, SHERYL A  
10 N MILLBACH RD  
NEWMANSTOWN, PA 17073-9134

BOROUGH OF RICHLAND  
PO BOX 676  
RICHLAND, PA 17087-0676

NEWSWANGER, HARRY S  
NEWSWANGER, SHERYL ANN  
21 N MILLBACH RD  
NEWMANSTOWN, PA 17073-9127

WEAVER, LESTER Z TRUSTEE  
WEAVER, LESTER Z REVOCABLE LIV  
TRUS  
506 STATE ROUTE 419  
NEWMANSTOWN, PA 17073-9131

TRUSTEES OF MILLBACH  
MENNONITE CHURCH OF THE  
606 ROUTE 419  
NEWMANSTOWN, PA 17073-9133

HEHNLY, BETSY S  
6 S MILLBACH RD  
NEWMANSTOWN, PA 17073-9136

RICHLAND DISTRICT SCHOOL  
BOARD OF THE EASTERN PENNA  
601 STATE ROUTE 419  
NEWMANSTOWN, PA 17073-9132

BOEHLER, JEFFREY J JR  
BOEHLER, EMILY J  
9 S MILLBACH RD  
NEWMANSTOWN, PA 17073-9137

D&R ASSETS MANAGEMENT LLC  
554 PRESTON RD  
WERNERSVILLE, PA 19565-9403

EISENHAUER, ANDREW G  
EISENHAUER, SUSAN K  
285 COPPER BEECH LN  
WOMELSDORF, PA 19567-7013

ST PAULS UNITED CHURCH OF CHRIST  
13 CHURCH RD  
NEWMANSTOWN, PA 17073-9213

MILLBACH CEMETERY CORP  
653 STRICKLERSTOWN RD  
NEWMANSTOWN, PA 17073-0000

ZAITSEV, ANATOLIY  
7 S MILLBACH RD  
NEWMANSTOWN, PA 17073-9137

NEWSWANGER, JEFFREY H  
NEWSWANGER, LUCINDA K  
563 STATE ROUTE 419  
NEWMANSTOWN, PA 17073-9130



Scott Moyer  
289 S. Mountain Rd.  
Robesonia, PA 19551

Eric Weidman  
42 Village Drive  
Newmanstown, PA 17073

John Enck, Esq.  
P.O. Box 1188  
522 S. 8<sup>th</sup> Street  
Lebanon, PA 17042

Lorie Kupp  
Millcreek Twp. Office  
81 E. Alumni Avenue  
Newmanstown, PA 17073

Richard Brandt  
3 E. Bethany Road  
Newmanstown, PA 17073

Donald Leibig  
34 W. Park St.  
Newmanstown, PA 17073

Karen Krater  
135 Cocalico Road  
Robesonia, PA 19551

Glen Eberly  
102 Stricklerstown Rd  
Newmanstown, Pa 17073

Bob Beisel  
150 S. Mountain Road  
Robesonia, PA 19551

Scott Sweigart  
95 Round Barn Road  
Newmanstown, PA 17073

Dan Hogeland  
7 Hogeland Road  
Newmanstown, PA 17073

Timothy Bartow  
131 W. Park Street  
Newmanstown, PA 17073









Craig Thompson  
10 Stouchsburg Road  
Newmanstown, PA 17073

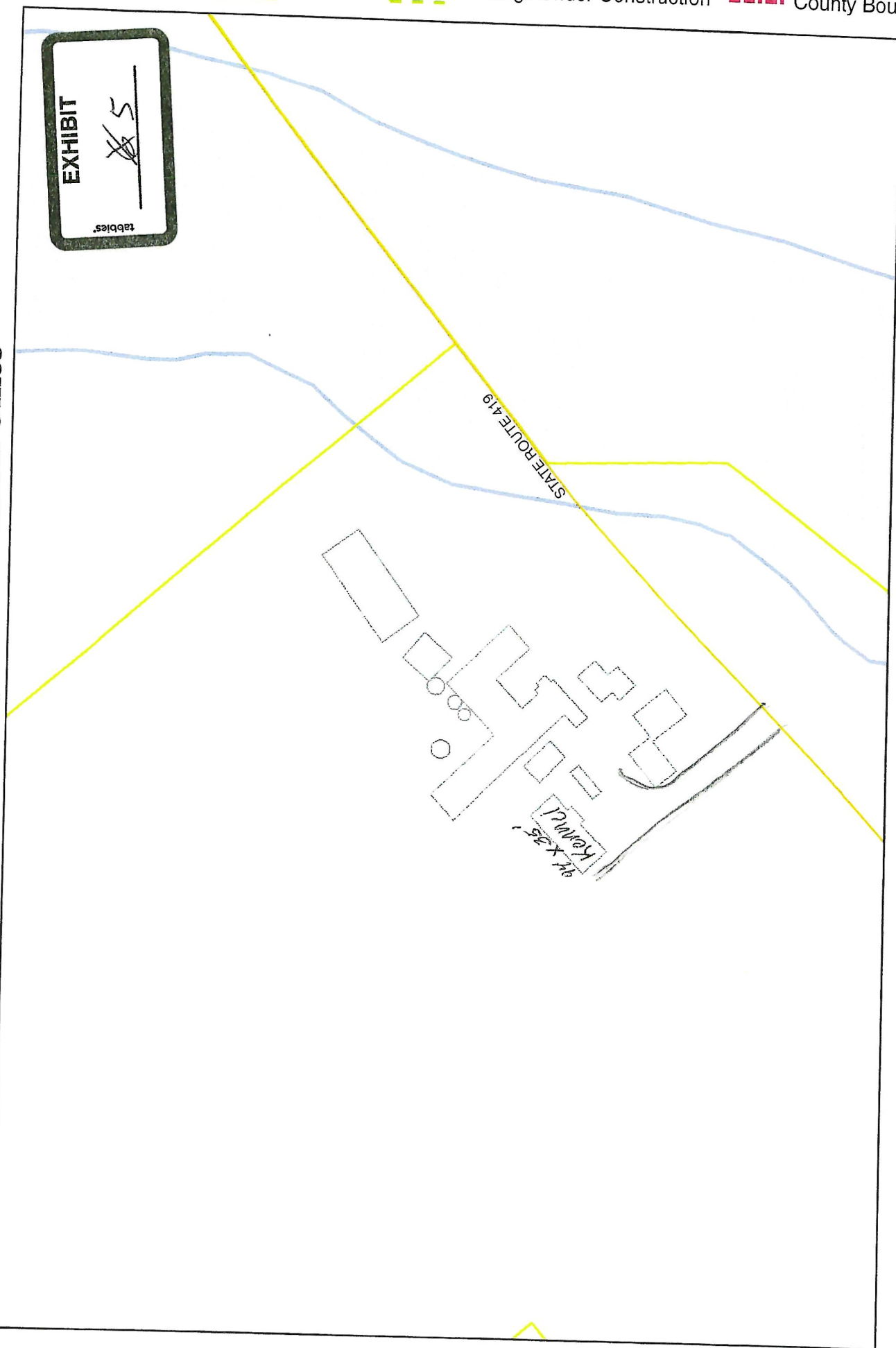
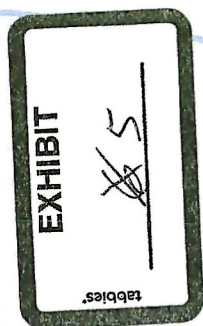
Malcolm Sonnon  
101 Sonnens Road  
Richland, PA 17087

Mervin Horst  
108 N. Kalbach Road  
Newmanstown, PA 17073

Amy Leonard, Esq.  
937 Willow Street  
Lebanon, PA 17046

# Lebanon County Tax Assessment Office

-  Tax Parcels
-  Tract
-  Subdivision Lot
-  Municipal Boundary
-  Buildings
-  Buildings Under Construction
-  County Boundary
-  Roads

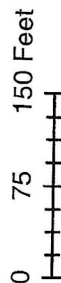


Disclaimer:  
Tax maps show the approximate boundaries of taxable and non-taxable property. The property boundaries depicted should not be interpreted as the legal boundary description. The legal boundary description can be obtained from the property's deed.











1 inch = 155.58 feet

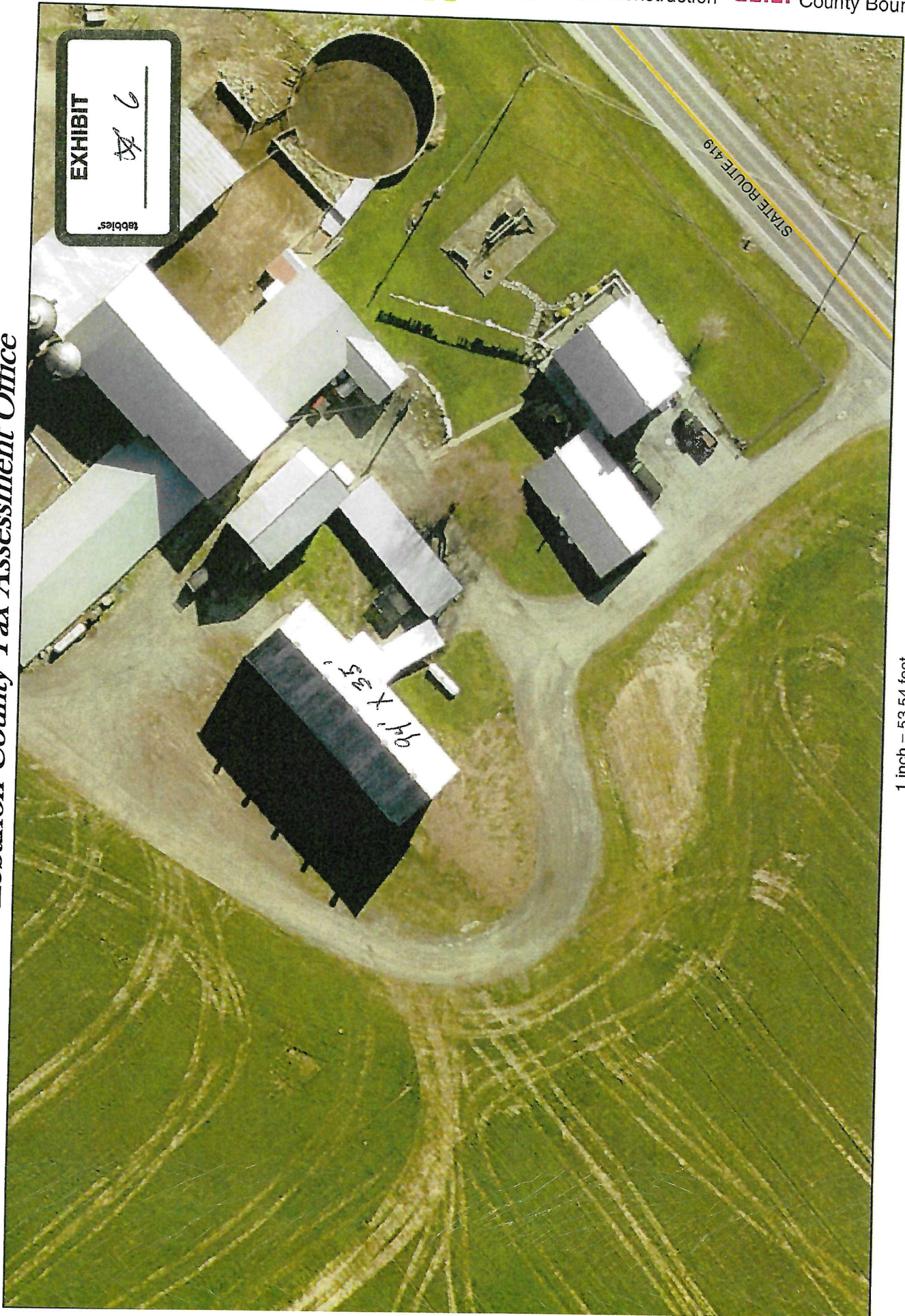
Tax Maps Compiled from 1997 Aerial Photography  
Map Projection - PA State Plane Coordinate System  
South Zone, NAD83, Coordinates in Feet





# Lebanon County Tax Assessment Office

-  Tax Parcels
-  Tract
-  Subdivision Lot
-  Municipal Boundary
-  Roads
-  Buildings
-  Buildings Under Construction
-  County Boundary



0 25 50 Feet

Tax Maps Compiled from 1997 Aerial Photography  
Map Projection - PA State Plane Coordinate System  
South Zone, NAD83, Coordinates in Feet

1 inch = 53.54 feet



Disclaimer:  
Tax maps show the approximate boundaries of taxable and non-taxable property. The property boundaries depicted should not be interpreted as the legal boundary description. The legal boundary description can be obtained from the property's deed.



EXHIBIT

tabbies

~~8~~ 7

BOARD OF ADJUDICATION  
SENSORS

5  
6  
3

**NOTICE OF HEARING  
BEFORE THE  
ZONING HEARING BOARD**

A public hearing will be held on a petition for Special Exception for this property. The petitioner(s) have submitted the necessary forms applying to the Zoning Hearing Board at

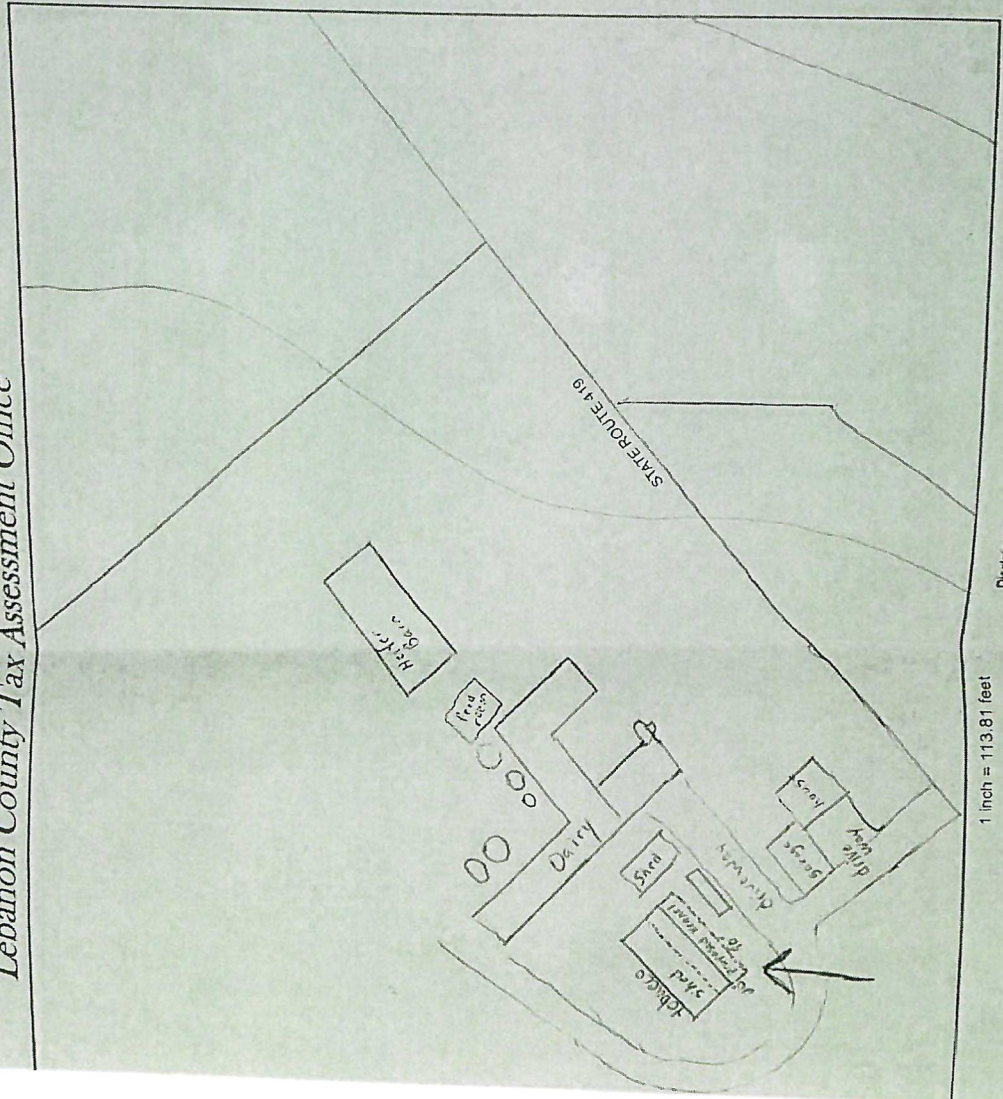
PLACE HERE:  
DATE: Jan. 17, 2018  
TIME: 6:30pm  
Reason for Petition:

Interested parties may contact the Lebanon County Planning Department at 717-264-2000 ext. 2200 to review the petition.  
All persons who wish to speak at the hearing should make their opportunity to be heard.



# Lebanon County Tax Assessment Office

Tax Parcels Roads Buildings Buildings Under Construction - - - - County Boundary



Disclaimer:  
Tax maps show the approximate boundaries of taxable and non-taxable property. The property boundaries depicted should not be interpreted as the legal boundary description. The legal boundary description can be obtained from the property's deed.



1 inch = 113.81 feet

Map Compiled from 1997 Aerial Photography  
Projection - PA State Plane Coordinate System  
NAD83, Coordinates in Feet

Ex #8

