

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21TH DAY OF AUGUST 2008 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Robert Homan, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; Ann Prough, Code Enforcement Officer; Kathy Wilson, Officer Administrator and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Homan/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of July be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Lantz/Wolgamood*) that the legal advertisements, having been published on the 11th day of August 2008 in the Goshen News and on the 9th day of August 2008 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.
4. A motion was made and seconded (*Homan/Lantz*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Lantz/Homan*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.
6. There were no postponements of business items.
7. The application of **Leonard R. Miller** for a Special Use renewal for an agri-business in an A-1 district for the processing of cattle, swine, and deer (Specifications F - #56) on property located on the Northwest corner of East County Line Road and CR 26, common address of 59989 East County Line Road in Middlebury Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082382*.

There were 5 neighboring property owners notified of this request.

Leonard Miller, 59989 East County Line Road, Middlebury, was present on behalf of this request. Mr. Miller explained he would like to renew his Special Use permit and increase the number of carcasses to 24 which would result in more traffic.

On the application, Mr. Homan indicated that the petitioner is asking for five employees rather than three from the original questionnaire. Mr. Miller indicated that is correct.

Mr. Homan asked if there will be any retail sales and Mr. Miller said everything is custom right now. He is also doing some work for people to take the items to the Farmer's Market. Mr. Miller said he does have some repeat customers.

Mr. Hesser asked if they are doing eight carcasses per week, then how do they have ten customers per day. Mr. Miller said there is a possibility that there will be that many customers with the 24 carcasses per week. There is a lot of phone contact with this business.

Mrs. Wolgamood asked how many buildings are actually used for the business and the petitioner said two. The new structure is used for processing, which he then pointed out on the site plan.

Mrs. Wolgamood asked if the portion that is used for storage is for personal storage or storage for the business. The petitioner indicated it would be used for both because he may store some of his business tools in it. There is no meat processing done in that portion of the building.

Mr. Homan said he would like to hear the staff's comment on the request for expanding this operation. Mr. Harrell said it has been there for two years and there haven't been any complaints. There is a Dutchman RV plant to the north that is still standing empty. As long as he handles the 24 carcasses as he did the eight carcasses, Mr. Harrell indicated the staff won't have a problem with this request.

Mr. Homan said if the Board is leaning towards approval, he thinks it would be appropriate to have the staff review it in one year since the number of carcasses is tripling.

With 24 carcasses, Mrs. Wolgamood asked if a larger holding pen would be required. Mr. Miller indicated they would still be in the existing holding pen because he would have a three day slaughter instead of a one day slaughter.

Mr. Homan asked if he has refrigeration space and capacity for the waste products. The petitioner said yes and indicated the waste would be picked up within 24 hours of the slaughter. Mrs. Wolgamood indicated that would be happening three times a week versus the one day a week he currently is approved for.

Mrs. Wolgamood asked what type of vehicles would be coming to pick up the animal waste and Mr. Miller said box trucks.

The Board then questioned if the State Health Department continues to monitor the business and the petitioner said yes. The State Board of Health is there every week and whenever he is slaughtering because it's required.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said his concern is the volume and he thinks slaughter houses are being pushed more into commercial zones. If this were approved, he would like to have a staff review at some point.

Mrs. Wolgamood indicated the petitioner has only two acres and an agricultural use requires three acres. Mr. Lantz said he's not raising them, but Mrs. Wolgamood said the petitioner is still increasing the intensity of the use.

Mr. Hesser said he is hesitant to triple the expansion without any staff input.

The Board has a number of options as explained by Mr. Kolbus. He said they could meet halfway on the number of carcasses and then require a staff review in a year or two.

Mrs. Wolgamood indicated he currently has three employees and he's asking for two more.

Mr. Homan then asked the petitioner if he currently has three employees, but he said he only has two part-time employees.

Mrs. Wolgamood asked the staff if they are prepared to give the Board some additional input on 24 employees. Mr. Harrell said he wouldn't have a problem with that because most commercial properties wouldn't have two acres. There have been no complaints on this property.

In Mr. Miller's original questionnaire, he asked for five employees and three were not occupants of the resident on site. She indicated that number has not changed.

Mr. Kolbus asked if the number of carcasses changed and Mrs. Wolgamood said yes, the previous questionnaire said eight.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use renewal for an agri-business in an A-1 district for the processing of cattle, swine, and deer (Specifications F - #56) be approved with the following conditions imposed:

1. The number of carcasses per week is limited to a maximum of twenty-four (24).
2. All Health Department regulations to be adhered to regarding waste products, fly control and septic approval.
3. Permit granted for an indefinite period of time provided there are no valid complaints received by Code Enforcement.
4. No more than three (3) outside employees (other than those that live on the property).
5. The representation made by the petitioner regarding the cooker and storage of the carcasses to be adhered to.
6. Approved with a staff review in one (1) year to verify compliance with a report being placed in the file.

A roll call vote was taken and the motion was unanimously carried.

8. The application of **Ronald Payette (buyer) and Brett Garner (seller)** for a Special Use for a home workshop/business for a door and window installation business (Specifications F - #45) on property located on the North side of CR 142, 1,900 ft. West of CR 19, common address of 21381 CR 142 in Jackson Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082503*.

There were 6 neighboring property owners notified of this request.

Ronald C. Payette, 9141 Linderman Road, Bear Lake, Michigan, was present on behalf of this request. The petitioner explained that he currently has a business in Michigan. The existing barn on the property is ideal for what Mr. Payette wants to do, but he would like to add some additions to it. He would like to store his lawn mowers, tractors, and equipment in the building, but he needs a little more space.

Mr. Payette said he is in the business of window sales. He advertises in the newspapers and receives a lot of phone calls. When a customer is interested, Mr. Payette goes out to the property and gives the customer a bid and then orders the windows if the bid is accepted. He would have his employee come to the proposed property each day and pick up the needed supplies for the job.

Currently, he has an Office Manager who takes care of the office when he's gone. He has one delivery per week and it only takes 15 minutes to unload the windows into the shop. The gentleman in the shop would be the office manager and take care of the warehouse. He doesn't know the area yet, but he thinks it will go well.

Mr. Homan asked if there is sufficient space for a truck turn-around and the petitioner said he believes there is room to do that. He could put a driveway in that wraps around the barn, but he didn't want to have to do that. Mr. Homan told the petitioner that they won't allow the trucks to back out onto the county road. The petitioner said the area is pretty large, so he doesn't feel there will be a problem.

Mr. Homan asked what type of vehicles will be required to operate the business. Mr. Payette said his installer will require an F-150 pick up truck with a trailer behind.

Mr. Payette said he will have an area where the customers can look at sliding glass doors and windows. As far as customer traffic, he might get two or three cars on a busy day. The cars will not be on site for very long.

Mrs. Wolgamood asked the petitioner if he is going to occupy the house and he said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said her only concern is that the petitioner mentioned a possible addition and lean to which aren't shown on the site plan. The petitioner indicated he didn't even think about the addition until he started gathering up the equipment.

Mr. Homan asked the petitioner if the addition would be for personal storage or storage for the business. Mr. Payette said it would be used for both because his machines/equipment will be stored in the building. The current building he has to store his supplies in is 50 x 90, but it is too big. The storage building on the proposed property is 36 x 56, so he would like to add on about 24 ft. to the structure.

Mr. Homan indicated that the Board needs to see an accurate representation of where the business will be occupied.

Mr. Hesser asked if the house is a one story house and the petitioner indicated its two stories with an attached garage. He indicated he wants to store everything inside.

Mr. Payette said there will have to be a dumpster on the property and he would want to put it towards the rear of the property.

Mrs. Wolgamood said depending on how many square feet everything is, he might possibly need a Developmental Variance. Mr. Hesser indicated that if he needs a Variance, then they would have to come back to the Board.

Having the staff approve this particular expansion would be alright, but Mrs. Wolgamood not in favor of having any other expansions approved.

Mr. Payette said adding on the 24 ft. to the front of the building would be the square footage he needs to have. Anything added onto the sides would allow him to pull tractors in. He would be well within the property lines.

Mr. Homan said it seems the building will be for personal storage.

Mr. Kolbus asked the Board if the petitioner doesn't need the Developmental Variance, then will they allow the staff to approve the expansion or does the Board need to see it.

Mr. Homan said the dumpster sitting outside is problematic, but the petitioner said it will be right behind the barn. Mr. Payette said he could put PVC privacy fence around it.

Mr. Lantz said he doesn't see a need for a fence and he feels the staff could handle the approval of the expansion.

Mr. Miller said he's alright with what has been presented and thinks the staff could handle the expansion as well. If the petitioner goes beyond the proposed expansion, then he needs to come back and go through the process.

The staff doesn't indicate that the home workshop/business is limited to owner/occupant and Mr. Hesser asked if that should be included. Mr. Kolbus said it's good to put it in there for the public to see. A general statement to comply with all conditions of the home workshop would also be acceptable.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a door and window installation business (Specifications F - #45) be approved with the following conditions imposed:

1. Days and hours of operation Monday through Friday, 8:00 a.m. to 5:00 p.m.
2. One (1) employee who does not occupy the residence on site.
3. No backing onto or off of CR 142.
4. One (1) double-faced sign, four (4) sq. ft. per side and unlighted.
5. Approved as per site plan submitted.
6. No outside storage or display related to the business.
7. Limited to the owner/occupant of the residence on site.
8. The dumpster should be fenced, attached to the building and out of sight.
9. Any additions to the building up to the maximum square footage where a Developmental Variance is not needed are to be approved by the staff.

A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – yes; Hesser – yes.

9. The application of **Betty Lupkes** for a Special Use for a kennel with indoor/outdoor pens and outdoor runs (Specifications F - #15 & 15.10) and for a Special Use for an agricultural use for the keeping of eight (8) chickens on a tract of land containing less than three acres (Specifications F - #1) on property located on the West side of Wade Street, 800 ft. North of CR 8, being Lot 10 of David Wade, common address of 52953 Wade Street in Washington Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082368*.

There were 12 neighboring property owners notified of this request.

Betty Lupkes, 52953 Wade Street, Bristol, was present on behalf of this request. When she first moved to this location, she called the Humane Society to find out how many dogs she could have living in the county. The Humane Society told her that she could have an unlimited number of dogs. At that time, Ms. Lupkes said she acquired more dogs than she's ever had in her life because she's an animal lover. She was unaware that she needed to call the county before having chickens on her property because the Humane Society told her there were no restrictions.

Ms. Lupkes indicated the dogs are never left outside when someone is not home. The chickens are on the property for eggs and she said you can't even see them from the road. Somebody would have had to come onto her property to see that she has chickens, which she feels is disturbing.

One of the puppies was rat poisoned and she is unsure of who did it. The puppy was rushed to the animal hospital and Ms. Lupkes had to spend over \$1,000 to save it's life. If she can't put up the kennel, she feels the dogs are fine the way they are.

Will Lynch, 52921 Wade Street, Bristol, was present in opposition to this request. Mr. Lynch indicated he lives directly north of the proposed property. He has concerns regarding the barking. He understands that dogs are going to bark, but if a kennel is put in with this large amount of dogs, then the barking will be continuous. If the kennel goes in, then the barking ordinance is null and void at that point. His other concern is property value because he lives directly next door. Mr. Lynch understands that the Elkhart County Zoning Ordinance allows four dogs and he believes there are at least eight to twelve dogs on the property now.

Greg Lantz, 53047 Wade Street, Bristol, was present in opposition to this request. Mr. Lantz explained he lives two lots south of the proposed property. He indicated that he was the one who walked the petition around to the neighbors and gathered some opinions. His opinion is that the petitioner had a good idea of how the neighbors felt about having the dogs. Six to nine months later, he had a conversation with her about how he felt about her dogs. At that point, he gave Ms. Lupkes a copy of the Ordinance and asked her to keep the dogs under control. Mr. Lantz said there are too many barking dogs in the neighborhood already. He also has a concern with property values and the ability to sell the properties. He indicated the neighborhood doesn't want a kennel or a farm in their subdivision.

Also present in opposition to this request was Devon Hollar, 52922 Wade Street, Bristol. Mr. Hollar said he lives directly east from the petitioner. When she first moved in, there were only a couple dogs and the amount began progressively larger. The barking became a problem because they heard it all day long and sometimes at night. After Ms. Lupkes was presented by Mr. Lantz with the Ordinance, it cut back a little bit.

Mr. Hollar said the petitioner will put her dogs out for 20-25 minutes and then they will start barking, so she will put them back in the house. After about an hour of being inside, she will put them back outside and they do the same thing. Mr. Hollar explained that this went on constantly and he moved to this neighborhood because it was quiet. It's located on a dead end street and he likes the neighborhood, but he doesn't want to tolerate a dog kennel with barking. The Elkhart County Sheriff has been out to the property twice and the Bristol Police have been out to the property once to speak to Ms. Lupkes about the barking. He doesn't feel the petitioner is concerned that the barking bothers people in the neighborhood and it will affect the property values.

Willa Phillips, 53017 Wade Street, Bristol, was present in opposition of this request. Mrs. Phillips indicated her property adjoins the petitioner's property. Her husband has been disabled for 52 ½ years and the dogs barking drive him crazy. The dogs wake him up at 3:00 in the morning and they fight a lot. She likes to sit out on her front porch, but all she hears is dog barking. Mrs. Phillips is also concerned about her property value.

As far as the property value, Ms. Lupkes said when she bought the land it was very trashy. It took her weeks to clean up the property and they did landscaping as well as planted

flowers. The neighbors came over and they were shocked because of all the updating they had done to the home.

She wants a quiet neighborhood, but there are other dogs in the neighborhood that bark. They moved their fence line back to help prevent the dogs from barking. Ms. Lupkes said she has never left the dogs out and let them bark while she was home, but her daughter had previously been watching after the dogs. Therefore, some of this may have happened while her teenage daughter was in charge. Ms. Lupkes explained that she never had to take her dogs into the emergency room because they were fighting. She has proof that all of the dogs have had all of their vaccines and she has bought a year's worth of Heart Guard. The dogs are very well taken care of and have never been without water.

The public hearing was closed at this time.

Mr. Hesser asked if the staff if you don't have three acres in an A-1 zone, then are you not permitted to have chickens. Mr. Harrell indicated you could have up to four small animals, which includes chickens.

Mr. Homan said he believes the petitioner is taking good care of her animals, but it goes against what the Ordinance says. There is a community problem in the neighborhood with the number of animals and there is no way to get past the close proximity of neighbors. He believes there are too many dogs on the property.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a kennel with indoor/outdoor pens and outdoor runs (Specifications F - #15 & 15.10) and for a Special Use for an agricultural use for the keeping of eight (8) chickens on a tract of land containing less than three acres (Specifications F - #1) be denied. Petitioner should revert back to four (4) dogs as permitted by ordinance within sixty (60) days. After a unanimous roll call vote was taken, the motion was carried.

Mrs. Prough then indicated that in an agricultural area, you must have more than three acres to keep chickens. The petitioner has no choice but to keep only four dogs since the chickens aren't allowed.

10. The application of **Mark Slabaugh, AMMF Trustee Corp.** for a Special Use for an agri-business for a custom livestock meat processing facility (Specification F - #56) on property located on the East side of CR 101, 1,100 ft. South of US 6, common address of 72700 CR 101 in Locke Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082509*.

There were 4 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner, Mark Slabaugh. A packet was then submitted to the Board which included a map, aerial photos, photos of the property, a petition in support of this request, an Affidavit of Verification for the petition, previous approval letters from agri-businesses, a site plan of the property, and a list of proposed conditions [*attached to file as Petitioner Exhibit #1*]. Mr. Sloat also submitted an article from the Elkhart Truth website regarding the RV industry [*attached to file as Petitioner Exhibit #2*]. The petitioner is asking for a butcher shop located south of US 6 in Nappanee. The area is very rural and the petitioner shows several signatures in favor of the request.

Mr. Sloat said they re-filed this as an agri-business and before it was filed as a home workshop/business. Since the last time the petitioner was here, this business has become more serious due to the RV companies continuing to have problems. They felt it was in their best interest to convert this to an agri-business because processing animals and livestock is specifically permitted.

The site plan was then explained to the Board. Mr. Sloat explained they had a fifth wheel livestock trailer on the property to make sure it could turn around. He said there was ample room for a 30 ft. livestock trailer to pull in and exit by pulling out onto CR 101. When a trailer brings livestock in for processing, it will back up to the holding pen area. The holding pen is approximately 14 x 24 and will have a concrete floor with six ft. walls. Secondly, there would be a move from the holding area to the 10 x 25 kill area, which has not yet been constructed. Mr. Sloat said that will be built and maintained according to the Indiana State Board of Health standards. The offal from the animal will be collected and placed in barrels inside the area for collection by a waste product management company. The waste product will be picked up on a contractual scheduled basis. The animal will then be taken inside the building and processed there.

Mr. Sloat explained that customer parking was also an issue, but there will be a gravel area for that purpose. There will also be a designated area east of the building for customer parking. The petitioner doesn't intend on having a lot of traffic.

When looking at the intensity of this use, the petitioner has come up with a program to review livestock and processing on Monday and Friday. The times of review will be between 3:00 p.m. and 7:00 p.m. The petitioner also intends to have the same trucker pick up animals in the local area from the different farmers/owners who want to bring livestock in for processing. They may bring three or four animals in on one trailer.

Mr. Hesser asked how many animals will be there per week and Mr. Sloat said he would get to that later in his presentation.

Mr. Sloat said the petitioner will kill in the designated area on Tuesdays and Saturdays. The blood and water will be collected and put into a six thousand gallon tank to be buried outside of the building, which will be picked up and processed on a regular basis by a waste processing company. The only thing that will go into the petitioner's septic is the toilet facility in the building and a hand washing sink. Mr. Slabaugh has been working with Bill from the Health Department in regards to the holding tank and other processing concerns. After the animals are killed, then they will be placed in the chill cooler. The capacity of the chill cooler is ten head. He indicated they are going to be constrained by the size of their facility with regard to how many animals they can have per week. The carcass needs to be chilled down to just above freezing. They will be moved from the chill cooler to the holding cooler, which has the capacity to hold approximately 15 carcasses. Depending on how fast the carcasses are processed, it will determine what the turnover will be. The aging process helps to make the meat more tender, so it could take up to 14 days.

The business will only have three outside employees, so they aren't sure yet how many animals they will be able to handle. Due to the economy and the RV situation, Mr. Sloat feels the petitioner should be able to process as many as he can, but they aren't sure how many that will be. He suggests that the Board approve the request and then the petitioner can have a staff review in one year to determine whether they are creating too much traffic, having neighbors complained, or other issues that need to be addressed. If the staff feels the issues need to be

reviewed, then they could be brought back before the full board for a public hearing to make a determination. Mr. Sloat said it's hard to put a maximum number on the amount of animals because some animals don't take as long as others to process.

Mr. Hesser said that the proposed conditions state the petitioner would be receiving animals on Friday from 3:00 p.m. to 7:00 p.m. He asked what would happen if someone shoots a deer over the weekend. Mr. Sloat said that there is an exception in case of an emergency.

Mr. Hesser also questioned the general hours of operation. Mr. Sloat said it will be 6:00 a.m. to 2:30 p.m. and everything will be done inside. The hours of operation won't really have an impact on the community. Mr. Sloat said customer pickup would be designated during the normal operating employee hours. The petitioner would like to control things from his perspective and from the community's perspective. All of the surrounding properties are all rural farming areas. The neighbor to the east would like Mr. Slabaugh to process his meat.

Mr. Slabaugh has filed with the Indiana Homeland Security Department for the building permits and he is working with the Health Department in regards to the disposal of the waste products. The petitioner has also been working with the Indiana State Board of Health to meet all of the state codes concerning livestock and meat processing.

Overall, Mr. Sloat said he feels they will be consistent with the spirit, purpose and intent of the Zoning Ordinance because an agri-business specifically provides for animal processing. He doesn't feel the business will cause substantial or permanent injury to the appropriate use of the neighboring properties because it's a rural area. The location of this property is half a mile from Nappanee and half a mile from an industrial park. One of the concerns of the staff is that it should be in an industrial park, but he feels there is more land at this location than there would be in an industrial park.

Mr. Sloat also indicated that it will cost the petitioner the same amount of money for diesel to run electricity because he has to keep the coolers at the correct temperature. Therefore, Mr. Slabaugh would like to run as close to capacity as possible, so Mr. Sloat doesn't feel a need to put a number constraint on this request.

Mr. Hesser asked if this request is approved, then will the tabled Special Use for Mr. Slabaugh be withdrawn and Mr. Sloat said yes.

Mr. Homan asked if plans have been submitted to the state and Mr. Sloat said yes. He asked if there is a time line for having those reviewed and Mr. Sloat said he's unsure.

Mr. Hesser asked if granting this request would exempt the petitioner from any building code requirements and Mr. Harrell said no. Mr. Kolbus indicated that issue is covered in number eight of Mr. Sloat's list of conditions. Any building is subject to applicable state and local building codes.

Mr. Homan asked what the difference is between having a slaughter house in an M-2 zone and an agri-business under the Ordinance specifications. Mr. Harrell indicated he couldn't answer that, but Mr. Sloat said the only conclusion he could come up with is that the larger businesses need to be in a manufacturing zone because the animals would be brought in much more often. Mr. Harrell said when the Ordinance was established, it was more for places such as Yellow Creek.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she thinks Mr. Sloat has addressed all of the questions she had. If the Board were to have any major discussion on this request, she believes it should be regarding

the number of head. Mr. Miller was granted 24 and is on two acres with a good track record. She feels they should put a number on it so they don't end up with 100 in a year's time.

Mr. Hesser said he would like something in the conditions about the hours of operation. The petitioner has indicated 6:00 a.m. to 3:00 p.m. with the exception of scheduled pick-ups.

Mr. Homan asked Mr. Sloat if they can record how many pounds of meat are being processed. Mr. Watkins indicated that the petitioner is required to have a Veterinarian there while he kills the animals, so it should be recorded there. Mr. Sloat said they will follow all of the Health Department regulations.

Mr. Hesser suggested shortening the duration as to when it will be reviewed. Mr. Kolbus said the Board could set the duration shorter since this is the first time it's being granted because they don't know how it's going to go. Mr. Hesser indicated there is only so much you can do with three employees.

Mr. Sloat said that will also vary with experience, but if they are just learning, then it will be pretty slow.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that based on the findings that this will be consistent with the spirit, purpose and intent of the Zoning Ordinance; will not cause substantial and permanent injury to the appropriate use of neighboring property; and will substantially serve the public convenience and welfare, this request for a Special Use for an agri-business for a custom livestock meat processing facility (Specification F - #56) be approved with the conditions submitted by the petitioner (as amended by the Board) imposed as follows:

1. The Special Use shall be confined to the accessory building and area identified on the site plan submitted dated August 21, 2008.
2. No outside storage of anything related to the business.
3. One (1) sign, four (4) square feet per side and unlit.
4. No retail sales.
5. Number of employees limited to three (3) who are not residents of the property.
6. The residence on site to be occupied by the owner/operator of the business.
7. No expansion of the buildings or building operation without Board of Zoning Appeals approval.
8. Existing accessory building to be modified, if necessary, to meet applicable state and local building codes and health department codes.
9. All blood, water and animal tissue waste (offal) to be collected and disposed of per state and local Health Department regulations; will not be placed in the domestic sewage system. Offal to be collected separate from blood and rinse water, and disposed of properly.
10. All Indiana State Board of Health Department regulations to be adhered to regarding waste product disposal and pest control with record keeping if applicable.
11. Schedule/Hours:
 1. Receipt of Animals
 - a. Scheduled Monday and Friday, 3:00 p.m. to 7:00 p.m.
 - b. Other times only in case of an emergency.
 2. Customer Pick-up
 - a. Monday through Friday, 6:00 a.m. to 3:00 p.m., Saturday from 8:00 a.m. to 12:00 p.m.

3. General hours of operation to be Monday through Saturday, 6:00 a.m. to 3:30 p.m.
12. The duration of the Special Use is to be for two (2) years with renewal before the Board of Zoning Appeals at that time. Conditions to be reviewed by staff in one (1) year to determine if use is too intense for the neighborhood. If so, set for hearing before the Full Board for a review.
13. A vehicle turn-around is to be provided on site to assure there be no backing out onto the county road.
14. The curb cut is to be in accordance with Elkhart County Highway & Engineering standards.

The motion was carried after a unanimous roll call vote.

11. The application of **Ronald Gordon (buyer) and Randy Hodgson (seller)** for a Special Use for warehousing and storing for mini storage units in a B-3 district and for a 45 ft. front setback Variance to allow for said mini storage units 75 ft. from centerline of Old US 33 (Ordinance requires 120 ft.) on property located on the Northeast corner of Old US 33 and Belden Avenue, being Lots 1 & 2 of Kountry Island Auto Subdivision, common address of 30841 Old US 33 in Baugo Township, zoned B-3, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082434*.

There were 16 neighboring property owners notified of this request.

Ronald Gordon, 29549 Wild Cherry Lane, Elkhart, was present on behalf of this request. Mr. Gordon submitted a picture page from Miller Builders showing what the proposed storage facility would look like *[attached to file as Petitioner Exhibit #1]*. There is a retention ditch to the rear of the property, so he is sure that it will be able to handle a three inch rain. He could also install swells on the 25 ft. side. The buildings would go from north to south to allow the water to drain back to that ditch. There would be run off on both sides if the buildings were running east and west.

Mrs. Wolgamood asked if the landscaping facility will be eliminated and the petitioner said the storage bins will be removed.

Mrs. Wolgamood said she realizes the petitioner is in the beginning stages, but a number of things haven't been addressed. The property is in a B-3 zoning district and she asked if there will be any lighting. The petitioner said there will be dusk to dawn lighting and security cameras.

On the site plan, Mrs. Wolgamood indicated it shows a proposed driveway to the south. The petitioner said there is already a driveway to the north, but he would like to bring it closer towards the south to allow a 45 ft. drive-in area. The driveway to the north will be closed off completely. She asked if he has spoke with the Elkhart County Highway Department and the petitioner said no, not yet. Mrs. Wolgamood said she believes you have to stay a certain distance away from the intersection. The petitioner said there is a driveway there already for the landscaping business with a deceleration lane. He doesn't think he needs a deceleration lane for his business, so he decided to change it and put it on the side for easier access. This would allow the customers to pull out onto a street rather than onto a major U.S. highway.

Mrs. Wolgamood asked if he has a time frame for the business and Mr. Gordon said he hopes to get it going this year.

Signage was also questioned by the Board because the questionnaire indicates a 4 x 8 double faced and lighted sign. Mr. Burrow said that would be in compliance with the regulations. The petitioner indicated the sign won't be lighted, there would just be floodlights shining on it. Mr. Burrow clarified that floodlights classify the sign as being lighted.

Mr. Lantz said the petitioner needs to make sure that the water retention is done right.

Mrs. Wolgamood said when Mr. Gordon submits his plans to the state, he has to submit a site plan that goes through the Health Department, Planning Department, Drainage Board and Zoning. If those submittals are not followed through with, then the permit will not be issued.

Mr. Hesser asked if there are businesses or residences to the west. The petitioner indicated there is a car window tinting business to the west and there is a residence to the north.

There were no remonstrators present.

Mr. Hesser said the site plan isn't really detailed and considering there are residences nearby, lighting is an issue.

Mrs. Wolgamood asked the Board if they have any issues about timeframes and landscaping, but Mr. Hesser indicated they had already been mentioned. She said the petitioner is also asking for a Variance, but she doesn't see anything justifies the need for a Variance. The petitioner indicated that if the Board doesn't allow for the Variance, then it takes away approximately 36 to 40 units, which would be the owner's profit. If he doesn't get the Variance, he indicated he won't be putting the storage facility in because it won't be feasible.

Mr. Miller asked if the facility would be self serve and the petitioner said yes, it would be an automated code system.

The public hearing was closed at this time.

Mrs. Wolgamood asked the staff if they had any concerns with the new entrance and Mr. Harrell said that would be up to the Elkhart County Highway Department. They will have to meet the standards before the permit is issued.

She then asked if there is any concern with the lighting because there are residents to the west. Mr. Burrow indicated that the Ordinance already requires that the lights be directed downward on site.

Mrs. Wolgamood also asked about landscaping and the petitioner said that would be to the petitioner's discretion. Mr. Gordon indicated he plans on doing landscaping on the property.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for warehousing and storing for mini storage units in a B-3 district and for a 45 ft. front setback Variance to allow for said mini storage units 75 ft. from centerline of Old US 33 (Ordinance requires 120 ft.) be approved with the following conditions imposed:

1. A detailed site plan to be submitted with a drainage retention system to handle a 3-inch rain.
2. Storage shall be used for private domestic storage only. There shall be no storage of raw or finished goods or inventory used for commercial or manufacturing businesses.

After a unanimous roll call vote was taken, the motion was carried.

12. The application of *Jaime Navarro* for an amendment to an existing Special Use for warehousing and storing of a semi tractor and trailer in an A-1 zone to eliminate condition #1 (building to be constructed to house tractor and trailer within one year) (Specifications F - #44)

on property located on the North side of US 20, 1,470 ft. West of CR 19, common address of 21031 US 20 in Jefferson Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082498*.

There were 5 neighboring property owners notified of this request.

Mr. Harrell said the reason this request was brought back before the Board is because Parkwell is entering into an agreement with the petitioner regarding the purchase of his property. The petitioner doesn't want to spend the money putting up the storage unit at this time.

Mrs. Wolgamood asked Mr. Harrell if he has that agreement in writing and he said they don't have that yet because the petitioner has just been approached.

Jaime Navarro, 21031 US 20, Goshen, was present on behalf of this request. Mr. Navarro had a representative present to speak for him. The representative explained that Gateway sent a letter to Mr. Navarro regarding their interest in purchasing his property. Mr. Navarro is interested in selling his property at this time. After further conversation with Gateway, Mr. Navarro decided he doesn't want to spend any money putting up a building when he wouldn't get his money back out of it. A copy of the letter was then submitted to the Board *[attached to file as Petitioner Exhibit #1]*.

Mr. Kolbus said the petitioner wants to eliminate original condition number one.

There were no remonstrators present.

Mrs. Wolgamood indicated there are two semis on site and asked who owns those. The representative said one of them belongs to Mr. Navarro and one of them belongs to him. Mr. Navarro's representative asked when the photos were taken and it was clarified that they were taken on July 23, 2008.

Mrs. Wolgamood noted that the letter states there was an attached conceptual site plan. The petitioner indicated he didn't have that with him. She also asked if he attended the meeting on July 16, but then it was noted that the letter is dated from 2007.

Mr. Lantz said they are looking for permission for one semi trailer and more time to sell the property. He asked if they should extend it for a year or two years and Mr. Harrell said they should have some type of indication as to what's going to happen within one year.

Mr. Kolbus indicated the Board could extend the time to put up the building for one year and if the land is not sold at that time, then the building would have to go up.

Last year at this time, Mrs. Wolgamood said the Board asked the petitioner at the previous meeting if he would be able to complete the building within one year and he indicated he didn't know.

Mr. Lantz said if they limited the request to one semi for parking and extended the time limit for one year to see what develops, he thinks that would be good.

Mr. Hesser said the only change they would need to make is to extend it for one year.

Mr. Burrow said the PUD pertaining to this request will have a fifteen to twenty year build out, so this may be one of the last phases. One of the major improvements that will be adjacent to this property will be a major intersection and will come out onto US 20. The staff supported the amendment based on the fact that there was a significant change in the zoning in this area.

The public hearing was closed at this time.

Mr. Hesser said the staff is recommending the outside storage of one semi, which is a change that would be subject to renewal. The other alternative is to stick with what they have, but provide an additional year to put the building up.

Mr. Homan said it seems that the nature of the land has changed. It is no longer A-1 because it's in the process of having a completely new identity. He's not so sure he wants to lay over the older standard on a piece of property that is destined to completely change.

Mrs. Wolgamood said the zone map doesn't show where the GPUD is at all and asked where it's located. Mr. Burrow indicated it wraps completely around this property. The GPUD takes in the large 40 acre piece of land to the west and north of the proposed property.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for warehousing and storing of a semi tractor and trailer in an A-1 zone to eliminate condition #1 (building to be constructed to house tractor and trailer within one year) (Specifications F - #44) be approved with the following conditions imposed:

1. Parking of one (1) semi tractor and trailer on site.
2. The tractor trailer shall not be parked on the access road.
3. No backing onto or off of the access road.
4. The second semi should be removed from the site within 15 days.
5. Approved for a period of two (2) years with renewal before the Board of Zoning Appeals.

A roll call vote was taken and the motion was unanimously carried.

13. The application of *Elon Martin* for a Special Use for a home workshop/business for custom woodworking of caskets and furniture (Specifications F - #45) on property located on the North side of CR 38, 985 ft. East of CR 11, common address of 24835 CR 38 in Harrison Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082463*.

There were 14 neighboring property owners notified of this request.

Elon Martin, 24835 CR 38, Goshen, was present on behalf of this request. Mr. Martin said he has been in the woodworking business for 45 years and he has worked at the current site for 13 and half years. Mr. Martin also indicated he works by himself.

Mrs. Wolgamood indicated that there is nothing on the site plan that indicates a turn-around. The petitioner indicated they do have a turn around on site.

Loren Sloat, 63083 CR 7, Goshen, was present in favor of this request. Mr. Sloat indicated that Mr. Martin has been doing this for years and he is a great asset to the community. The petitioner didn't realize he needed a Special Use permit.

The public hearing was closed at this time.

Mr. Lantz indicated he doesn't have any problems with this request.

Mrs. Wolgamood said there are a number of things that need to be added to conditions including no backing of vehicles onto the county road, owner/occupant of the residence on site, no outside storage and the sign should be conformed to the home workshop/business standards.

Mrs. Wolgamood clarified that there is a sign on the property that is bigger than what is allowed, but the petitioner has indicated that he would make the sign conform.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for custom woodworking of caskets and furniture (Specifications F - #45) be approved with the following conditions imposed:

1. Approved as per site plan submitted.
2. The non-conforming sign should be replaced with a sign that conforms to the home workshop/business standards (4 sq. ft. per side and unlighted).
3. No backing of vehicles onto the county road.
4. Approved for the owner/occupant of the residence on site.
5. No outside storage.

After a unanimous roll call vote was taken, the motion was carried.

14. The application of **Wayne R. Kuhns** for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance on property located on the South side of CR 50, 2,070 ft. West of CR 11, common address of 25338 CR 50 in Union Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082470*.

There were 3 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing Mr. Kuhns. Mr. Sloat submitted two aerial photos of the property at this time *[attached to file as Petitioner Exhibit #1]*. The parcel is currently three acres and the church currently uses 26 ft. to the east side of the petitioner's parcel. The church would like to buy that piece of land subject to an easement leading back to the petitioner's property. He then explained the site plan to the Board. This is an area where there are several residences and some are on smaller parcels. The Union Center Cemetery is in the area as well as the church. Mr. Sloat said this Appeal probably should have been asked for when the three to one Variance was requested.

Mr. Hesser asked if they will build a house on the property to the east and Mr. Sloat indicated there is already one there.

Mr. Hesser asked what the dimensions of the parcel are currently and Mr. Sloat said approximately 158 x 322. The small piece of land will be sold to the church and the remaining land will be deeded to the parcel to the east, which Mr. Kuhns owns as well. In order to keep the three acres, the petitioner may need to deed a small sliver off of the farm to the rear. Mr. Sloat then pointed out the location where the church property ends.

Mr. Hesser asked what is to the south and Mr. Sloat indicated it's a cornfield. Both properties are used together because Mr. Kuhns owns both of them.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said if the property was to go through the Subdivision Control Ordinance, it looks pretty landlocked because there is building all around the field.

Mrs. Wolgamood said the staff is suggesting that the lot in yellow go through the subdivision regulations as a one lot minor. She asked if a well and septic system are currently on this lot. Mr. Sloat said yes and indicated they are not near an easement or part of what will be sold.

Mrs. Wolgamood asked if they have animals and Mr. Sloat said no.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance be approved based on the representations made at the August 21, 2008 Board of Zoning Appeals meeting by the petitioner's representative. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – yes; Hesser – no.

15. The application of **Norine Borkholder** for an Appeal to allow for the construction of a second residence on a single zoning lot on property located on the South side of CR 34, 1,450 ft. East of CR 33, common address of 14750 CR 34 in Clinton Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082502*.

There were 5 neighboring property owners notified of this request.

Paul Hochstetler, 64244 CR 34, Goshen, was present representing Norine Borkholder. Mr. Hochstetler explained that they would like to build a second residence on this property. Since the property is in an A-1 zone, which allows for duplexes, they prefer to have the houses detached rather than attached to the house.

The Staff Analysis indicates that granting this request will adversely affect some of the properties. The petitioner indicated that a property across the road was divided for elderly folks that are living there. Simon and Martha Schmucker live behind the proposed property and they have a three acre parcel deeded off separately for family. Therefore, he doesn't feel this will adversely affect the neighboring properties to build the residence detached. The reason they would like to build this detached rather than attached is because of the contour of the soil. They would like to have a single story dwelling built on a slab so it is better accessible for handicapped purposes. They felt it would be better to attach it to the accessory building rather than attach it to the house.

Mr. Miller said based on the site plan, there is a septic area noted. He asked if that is for the existing house on the property or for the new construction. Mr. Hochstetler indicated that is for the existing house and he had checked to see what they need to do with that if the request is approved. He has worked with the Health Department and they are requiring that he do a new mound system that would be adequate for both residences. The well and septic system would be shared.

Mr. Miller asked if they would use the same driveway and the Mr. Hochstetler said yes.

John Borkholder, 14108 CR 36, Goshen, was present in favor of this request. Mr. Borkholder submitted a petition in favor of this request *[attached to file as Petitioner Exhibit #1]*.

Mrs. Wolgamood asked Mr. Borkholder where he lives and he indicated Norine is his sister and he lives within one mile of the proposed property.

David Miller, 14782 CR 34, Goshen, was also present in favor of this request. Mr. Miller indicated he lives next door to Norine. They are adjoining landowners to the west. In his culture and way of life, they encourage taking care of their elders. It seems important that they do something to downsize their house because of the petitioner not being able to take care of the house and do the maintenance on it.

Also present in favor of this request was Larry Borkholder, son of petitioner, 14835 CR 34, Goshen. Mr. Borkholder suggested to his mother that she downsize her home. She is not able to take care of the property, so he is in favor of this request.

Mrs. Wolgamood asked if the ditch is a legal drainage ditch and Mr. Hochstetler indicated it's called Horn Ditch. He checked with the Drainage Board because they wanted to cross it for the septic system and he has obtained the proper application forms.

Mrs. Wolgamood indicated he would also have to stay a certain distance away from the top of the bank. She asked how far away the existing building is from the ditch that they would like to attach the new structure to. The petitioner indicated it is about 15 ft. and Mrs. Wolgamood said she believes the setback is 75 ft. from the top of the ditch.

Mr. Kolbus then indicated that the staff information shows it as Berkey and Gardner ditch, which is a legal drainage ditch.

Mr. Miller noted that the petitioner said the slope of the ground was one of the determining factors for not making the existing residence a duplex. He asked if that is the only reason why they want them detached.

Mr. Hochstetler explained that the existing house has a walk-out basement to the south, so the contour of the land on the front of the house is up and then it drops. The existing house may be 32 ft. deep, so there is approximately an eight ft. drop. He said it flattens out as it goes back towards the ditch.

The public hearing was closed at this time.

Mr. Lantz said there is already an accessory building closer to the ditch than what the proposed house would be. Mrs. Wolgamood said any construction needs to be 75 ft. from the top of the bank and Mr. Miller indicated that is correct. There is a format you can go through to request to place the building closer than 75 ft.

Mrs. Wolgamood indicated these types of requests are rather difficult for her because she greatly admires how these people want to take care of their families. Unfortunately, the Board has to look at all of the other aspects of this and she thinks there are way too many possible things that could interfere. She said she couldn't support this request. She suggested the petitioners review the plans and find a way to attach it to the existing home because then there wouldn't be an issue.

Mrs. Wolgamood doesn't feel they could even split this property to create a two lot minor subdivision because there isn't adequate road frontage.

Mr. Miller said another issue would be that the petitioner's would have to cross the ditch in order to put in a septic system.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of a second residence on a single zoning lot be denied. A roll call vote was taken

and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – yes; Hesser – yes.

16. The application of *Wesley & Sheila Miller* for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance on property located on the West side of CR 33, 440 ft. North of CR 14, common address of 55925 CR 33 in Middlebury Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082500*.

There were 5 neighboring property owners notified of this request.

Wesley Miller, 55925 CR 33, Middlebury, was present on behalf of this request. Mr. Miller said he is attempting to sell the northern 35 ft. of his property. He then submitted color photos of the property *[attached to file as Petitioner Exhibit #1]*. Mr. Miller wanted to make sure he got the approval from the Board to do this in case of a natural disaster or fire to assure that he could rebuild his home.

The first reason the staff recommended denial was because it would be contrary to the public interest by creating a parcel less than three acres in an A-1 zone. Mr. Miller said there are a lot of three acre and five acre parcels around him and nobody in his area has agricultural activities going on. He has no intention of doing anything agricultural, so it won't change the use of the land he has.

The second issue was that he didn't demonstrate anything that would warrant the sale of the 35 ft. from the parcel eliminating an agricultural use. Mr. Miller said his neighbor had a desire to extend his land further away from his driveway and the south side of his house slopes downhill, so for him to transfer the 35 ft. gives him a little more yard. The colored pictures show some brush that comes up and it works as a natural dividing line. Neither of the landowners have any plans to clean that up.

The third use is that a literal enforcement of the provision of the Ordinance would deny the applicant the necessary preservation and enjoyment of the property rights possessed. By creating a parcel that is less than three acres, the agricultural use will be eliminated. Mr. Miller handed out a copy of the Subdivision Ordinance *[attached to file as Petitioner Exhibit #2]* that talks about parcels less than three acres being a subdivision. As you read further, it goes on to list some exceptions. The exception says "The sale exchange of parcels of land to or between adjoining property owners where those sales or exchanges do not create additional building lots." Mr. Miller said the 35 ft. on his property wouldn't create an additional building lot. It would be very uncomfortable to put a house in between the two properties. The 35 ft. is at a location where there is poor visibility to the north and it would be hard pulling out onto the road.

Mr. Hesser said with the line being moved, the shed would be within nine ft. of the property line. He asked Mr. Harrell if that would create an issue and Mr. Harrell said it has to be ten ft. The petitioner would be required to move it or get a Variance, but Mr. Miller said it's movable because it's on skids.

By transferring the 35 ft. from the property, the petitioner indicated the well and septic won't be affected. He also will not have a three to one depth to width ratio problem once the 35 ft. is taken off, nor will he need an area Variance.

Mr. Hesser asked how current the exhibit from the Subdivision Ordinance is and Mr. Kolbus said he's not sure why this request is here because it's not the subdivision of land.

Mrs. Wolgamood asked when Mr. Miller comes in and wants to get a building permit to put up an accessory building, how will that work. Mr. Kolbus said if the current Ordinance is in affect and the petitioner has less than three acres, then he will have to get a Variance to allow the building to be constructed.

Mr. Miller said he spoke to a couple of different staff members about this situation and he was told that the safest thing for him to do is get approval from the Board. Mr. Kolbus said it would confirm that this provision applies to him.

Mr. Burrow said the three acre exemption doesn't have any application to the secondary that is established in the Ordinance. That is how it has been treated up to a certain period of time, which was in the 90's. It became important that they maintain the continuity of the three acre tract. A building lot is not a lot in a subdivision, it is just a term used for what is a buildable parcel. This parcel and the parcel to the north were previously buildable lots because building permits were issued.

Mr. Hesser said having permitted the existing building, if something happened to it, then the petitioner could rebuild even after the transfer. Mr. Burrow said yes, he feels Mr. Miller could rebuild.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that based on the findings that this will not be contrary to the public interest by creating a parcel with less than three acres in an A-1 zones, will not adversely affect other properties in the same zone or neighborhood, exceptional or extraordinary circumstances and conditions do apply in this case which are unique in nature, and that a literal enforcement of the provisions of the Ordinance would deny the applicant the necessary preservation and enjoyment of any substantial property rights possessed, this request for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance be approved with no additional conditions imposed. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – yes; Hesser – yes.

17. The application of **Ron Foeckler** for an Appeal to allow for the construction of an addition to the existing accessory structure without a primary structure, for an Appeal to allow for said accessory structure on property not subdivided in accordance with the Subdivision Control Ordinance and for a 7 ft. Variance to allow for the construction of an addition to said accessory structure 43 ft. from the centerline of the right-of-way (Ordinance requires 50 ft.) on property located on the West side of Fairwind Drive, 120 ft. South of Cypress Court, 1,075 ft. South of CR 22, common address of in Concord Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082443*.

There were 5 neighboring property owners notified of this request.

Randy Hershberger, contractor, Coach House Garages, 1709 E. Monroe Street, Goshen, was present representing Mr. Foeckler. Mr. Hershberger explained that Mr. Foeckler didn't do

anything wrong with the initial building that is already there because it was done by the previous owner.

Mr. Hesser asked if this lot is outside of the subdivision and Mr. Hershberger said yes. It is treated separately and is not big enough to put a residence on because it's less than three acres.

Mrs. Wolgamood asked what the building to the north is and the petitioner said it's a house. She also questioned the area to the south and Mr. Hershberger indicated those are fairly wooded lots.

Mr. Hesser asked if all of the conditions recommended by staff are acceptable and Mr. Hershberger said yes.

Mrs. Wolgamood also asked if gas and electric have been run to the building and he indicated only electricity.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of an addition to the existing accessory structure without a primary structure, for an Appeal to allow for said accessory structure on property not subdivided in accordance with the Subdivision Control Ordinance and for a 7 ft. Variance to allow for the construction of an addition to said accessory structure 43 ft. from the centerline of the right-of-way (Ordinance requires 50 ft.) be approved with the following conditions imposed:

1. Approved as per site plan submitted.
2. Building to be used for personal domestic storage only.
3. Building permit to be obtained.
4. Property owner to record a commitment that this lot and the residence at 59202 Fairwind Drive be maintained under single ownership.

A roll call vote was taken and the motion was carried unanimously.

18. The application of ***Samuel Schmucker*** for a Special Use for a home workshop/business for small engine repair and sales (Specifications F - #45) on property located on the East side of CR 35, 1,650 ft. North of SR 4, common address of 61262 CR 35 in Clinton Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082251*.

There were 8 neighboring property owners notified of this request.

Mr. Hesser asked the petitioner how long he's been doing this operation and Mr. Schmucker said he started in 1997. Mr. Hesser indicated a Special Use was granted in 1997 and then he decided he didn't want to operate the business. Mr. Schmucker explained that the staff told him his signs were too big. He took them down and told the staff that if it was too much hassle, he would just forget about it.

Mr. Hesser asked if he continued to operate the business and the petitioner said he did some repairs, but nothing serious.

Mrs. Wolgamood asked if the signs are gone now and the petitioner said he can take them down.

The original home workshop was granted in a 16 x 25 building and the petitioner is now running it in half of the 30 x 50 building. Mrs. Wolgamood asked if he had retail sales in the smaller building and Mr. Schmucker said yes, he had some of his new stuff in there. He would like a 10 x 30 portion of that building to be used for retail sales.

Mr. Hesser asked the Board if the questionnaire addresses the questions they had from the previous meeting and they indicated yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser indicated he doesn't necessarily have an objection to this because he's been operating. From looking at the map, it's not a place that's in the middle of nowhere. Therefore, he would like some restrictions as far as hours of operation, noise, etc.

Mr. Miller asked if it's in the result of a complaint and the staff indicated no. He said he doesn't have a problem with it.

Back in 1997, Mrs. Wolgamood indicated the petitioner took out a building permit for the 30 x 50 building as an accessory building for domestic storage. The business was then moved into that building.

Mrs. Prough indicated that Mr. Schmucker came in to get a building permit and the staff did a history check. At that time, they found the history of the property and talked with the petitioner to find out that he was running a business. The staff then told him that he would need to apply for a Special Use permit.

If the Board is going to grant the request, Mr. Kolbus said the staff could create the conditions using the questionnaire and then the Board could approve them next month.

Mr. Hesser said he would prefer to do that because some of the answers in the questionnaire are fairly short.

Mrs. Wolgamood indicated they would be tabling the request.

Mr. Homan said he wants to make sure that the request complies with the home workshop definition.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for small engine repair and sales (Specifications F - #45) be tabled until the September 18, 2008, Board of Zoning Appeals meeting to allow the staff to acquire a list of recommended conditions that would be appropriate for this home workshop/business. After a unanimous roll call vote was taken, the motion was carried.

19. The application of **Mark Slabaugh, AMMF Trustee Corporation** for a Special Use for a home workshop/business for a custom butchering operation (Specifications F - #45) on property located on the East side of CR 101, 1,100 ft. South of US 6, common address of 72700 CR 101 in Locke Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082291*.

There were 5 neighboring property owners notified of this request.

Mr. Hesser indicated this petition is to be withdrawn because the petitioner applied for an agri-business which was approved earlier at today's meeting.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Hesser*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a custom butchering operation (Specifications F - #45) be withdrawn. A roll call vote was taken and the motion was carried unanimously.

20. There were no items transferred from the Hearing Officer.

21. There were no audience items.

22. Mr. Burrow then explained that he has a request for a site plan consideration for the Spring Meadow Farms Golf Course. This property was granted a Special Use in 1995 for a golf course on 165 acres. They would like to locate a sign along SR 13 near the pro shop. Spring Meadow Farms Golf Course would also like to establish a sign along US 20, between CVS Pharmacy and the golf course maintenance building. At the time when the Special Use was granted, there wasn't any information about signage.

Mrs. Wolgamood indicated the US 20 sign says they are proposing a billboard. Mr. Burrow said that is a pejorative term and it would be an 8 x 14 sign. He believes it's going to be an on-premise sign, but he suggested asking Ms. Hoover. Mr. Burrow indicated a billboard is only a definition of size and it's not a definition of use or topic.

Present on behalf of this request was Mary Hoover, 814 Spring Meadow Farm Drive, Middlebury. Ms. Hoover indicated the sign would be an on-premise sign advertising Spring Meadow Farms Golf Course. She started working at the golf course in 2002 and cleaned up a lot of things. They don't currently have any good signage advertising the golf course, so she talked with the state about an on-premise sign. The state said that as long as the sign is on her property, it can be as big as she wants as long as it only advertises business related to Spring Meadow Farms. She was also told that she needed to abide by the county ordinances.

Mrs. Wolgamood asked the petitioner how big the proposed sign will be. Ms. Hoover said due to the golf course not being visible from the road on US 20, they would like to have it billboard size. She indicated there is one down the road and across the street for McDonald's.

Mr. Kolbus asked if she knew the height of the sign and she wasn't sure.

The other sign would be for changeable letters, which would be located in front of the pro shop and towards the north. The reason for that being there is because there is a hill on SR 13 and she felt like anything towards the top of the hill would be more of a danger. Anything towards the bottom of the hill would give people going both directions time to read the sign without any danger to traffic whatsoever.

Mr. Hesser asked if there is an existing sign there and Ms. Hoover said yes, at the entrance. The entrance is up at the top of the hill, but she would not like to redo that particular sign. The intersection tends to be a little bit dangerous, so she would prefer to have it at the bottom of the hill.

Mrs. Wolgamood asked if the signs will be lighted and Ms. Hoover said the sign on SR 13 will be lighted due to the changeable letters. The billboard on US 20 will not be lit.

In 1995, Mr. Burrow indicated there were no sign restrictions on Special Uses. It wasn't until later when they established a standard trying to encourage people to establish their signs on the Special Use application. At this point in time, there is no true standard other than under the present code, they would be allowed a 64 sq. ft. sign and a 20 sq. ft. façade sign.

Mrs. Wolgamood asked Mr. Burrow if he is considering this a minor change and he said yes. Considering they are located on 165 acres and never had a sign before, he feels it would be a minor change. He did suggest that the sign on US 20 be more of a monument type sign that is smaller. Billboards are usually 12 x 25, so he feels a monument type sign would be more appropriate and closer to the 64 sq. ft. He indicated the 64 sq. ft. is only for the sign area and not the enhancements around the sign.

Mr. Hesser asked Ms. Hoover if that size of a sign would work for the golf course. She said the purpose for the proposed sign on US 20 is to be big enough to display the logo on the front side with the wording "Turn Right Here" and the back would say "You just passed Spring Meadow Farms Golf Course."

Mr. Hesser asked if the property on US 20 towards SR 13 is owned by the golf course, but Ms. Hoover said that is owned by CVS. The property belonging to the golf course abuts CVS Pharmacy's property.

A motion was then made and seconded (*Hesser/Wolgamood*) to approve a minor change to the Spring Meadow Farms Golf Course site plan to allow for one sign on SR 13 and one sign on US 20 as proposed with the following conditions imposed:

1. The sign is to be monument style and double faced.
2. Only the sign on SR 13 is permitted to have lighting.

23. Mr. Kanney then explained that he is asking for a clarification to the Variance/Appeal for DMB Custom Carpentry (#20081987). The property is out on CR 22 and needed a 2,000 sq. ft. lot size Variance. They asked for an Appeal to be relieved of the responsibility of a minor subdivision. Mr. Kanney explained that the Board granted the Variance and denied the Appeal. Blake Doriot has been hired as the surveyor to do the subdivision. When someone goes through a subdivision, the county requires the dedication of additional right of way. Doing so, it bumped this property's lot size down to 12,140 sq. ft, which is an additional 860 sq. ft. He said when the Appeal was denied, there was a loss of property.

Blake Doriot, P.O. Box 465, New Paris, was present on behalf of this request. Mr. Doriot said in the Subdivision Control Ordinance, you are required to dedicate so many feet of ground for public right of way. He has spoken to Mr. Bowers with the Elkhart County Highway Department and he said it's alright for Mr. Bates to match the 30 ft. dedication for the subdivision to the west, but they are still short. The petitioner will no longer have title to all of the ground because he will have given some to the county.

Mr. Kolbus asked Mr. Doriot what clarification he would need. Mr. Doriot said he would need the clarification that if it was the intent that this site is large enough to be built on and through the process of the dedication of right of way, it was still the intent of the Board that the site has ample size to be built upon.

A motion was then made and seconded (*Hesser/Wolgamood*) that the granting of the Variance was prior to the subdivision process and therefore subject to any conditions that would be imposed through that process.

24. The meeting was adjourned at 12:22 p.m.

Respectfully submitted.

Kate A. Barghahn, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary