

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF JANUARY 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, Meg Wolgamood, with the following board members present: Robert Homan, Randy Hesser, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Dan Piehl, Planner; Mick Slater, Code Enforcement Officer; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Lantz/Hesser*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of December be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Homan/Lantz*) that the legal advertisements, having been published on the 5th day of January 2008 in the Goshen News and on the 7th day of January 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/Hesser*) 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.

During a brief discussion, the following Board members were nominated to service Officers for 2008; Randy Hesser, Chairman; Robert Homan, Vice Chairman; and Tom Lantz, Secretary.

The nominations were closed and a motion was made and seconded (*Wolgamood/Homan*) that the slate be as previously stated.

Mrs. Wolgamood welcomed the new Board of Zoning Appeals member, Doug Miller.

7. The application of ***Kerm Schrock*** for a Use Variance to allow a semi-trailer to be used for personal domestic storage on property located on the West side of CR 21, 2,800 ft. South of CR 26, common address of 60541 CR 21 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 #20073948*.

There were 7 neighboring property owners notified of this request.

Present on behalf of this request was Kerm Schrock, 60541 CR 21, Goshen. Kerm Schrock said he did not realize there was any violation with having a semi trailer parked on the property, so he has gone through all of the proper steps to apply for this Use Variance. The semi would be used for storage for his brother and it would only be temporary.

Karl Schrock, 623 Lions Drive, Rome City, Indiana, was also present on behalf of this request. He indicated he shares a business partnership with his brother, Kerm. The business is at Kerm Schrock's residence, 60541 CR 21, in Goshen and has been there for around 11 years.

Karl Schrock indicated that he was totally unaware that there is a code he was in violation of by having the semi on his property for storage. Once he received the letter stating he was in violation, he came and filled out the application form.

Karl Schrock said he has several things he would like the Board to look at. He questioned how this request will be injurious to the public health, safety and morals of the community. He indicated that the property is surrounded by heavily wooded areas. His business is running dump trucks, trailers and equipment in and out of Kerm Schrock's residence.

The Staff Analysis also states the request will be devaluating to the adjacent properties. He asked how it will be devaluating if they have a storage trailer parked there for two to three years until he adds on to his existing house in order to move the equipment to that location.

Karl Schrock said two of the neighbors that live right beside them drive semis for a living. It doesn't mean they've always got semis parked at their house, but that is the way they make their living.

Economically, it made sense for Karl Schrock to buy a trailer and store his things in it for a couple of years. He could then re-sell it rather than paying rent to a storage company which he will never have returned. Karl Schrock said he could sell the semi for the same amount of money he bought it for and he wouldn't lose a dime.

Karl Schrock took a series of pictures from all different angles and has marked them to show the view around the whole property. The only house which is able to see the trailer is their neighbor, Steve Yoder, who is present in the audience today.

A complaint was made and Karl Schrock said he knows who it came from. It has been a long time running with the neighbor in back of him, Mr. Kirk Zimmerle. Karl Schrock believes this is another way for him to put a thorn in their side. As seen on the photos submitted by Karl Schrock [*attached to the file as Petitioner Exhibit #1*], you can't see Mr. Zimmerle's house from the Schrock's shop or semi. In the summer, it becomes even less visible because of the leaves on the trees.

Karl Schrock said he went around the neighborhood, within a quarter mile each way of their property, and he had a petition in support of this request signed by the homeowners. He then submitted the petition in support of this request with 13 signatures [*attached to the file as Petitioner Exhibit #2*].

Also submitted by Karl Schrock was an aerial view of his property with the location of the semi trailer highlighted in pink, and an aerial view of the properties who signed the petition in favor of this request highlighted in yellow [*attached to the file as Petitioner Exhibit #3*]. He indicated that everyone is in favor apart from one person, who can't even see the semi from his house. He

asked why he wouldn't be allowed to do this on a temporary basis to store his personal goods when there are already heavy equipment trucks and trailers there already.

Mr. Kolbus indicated it is not the Staff's or the Board's burden to disapprove the statutory requirements. It is the petitioner's burden to prove that he meets them. His position today is not to question what the Staff has to say, but to present evidence to show that he meets those requirements.

Mrs. Wolgamood asked how long he wants the semi there when he says temporarily. Karl Schrock said it's been there for three months and he would like it there for another two to three years. He's planning on adding on to his house down in Rome City in the next few years. At that point he plans to move his items, the trailer will be sold, and it will be off the property.

Mrs. Wolgamood questioned whether Rome City has anything against having the semi tractor on his property. Karl Schrock said not that he is aware of, but it's a small lake property and he doesn't have room there to park the semi. The property is small, close to the road, and close to the lake.

Steve Yoder, 60471 CR 21, Goshen, is the neighbor to the north of the proposed property. Mr. Yoder said he can't see the trailer because the trees are so thick, so he doesn't have a problem with it.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said you can tell from the pictures that the property is obviously screened. He doesn't see anything unique on this land that warrants a Use Variance. Mrs. Wolgamood agreed.

Mr. Homan said the request needs to meet all five criteria. One of those things is whether or not there is anything peculiar about the property that would require this type of Variance to be issued, but there really isn't.

In the county, there are several people who make a living in the transportation/delivery system. When the Board starts allowing trailer parking in areas that the ordinance doesn't allow, then it's difficult to say no to other people.

Mrs. Wolgamood asked if a motion is made to accept the Staff Analysis, is the Board going to look at a time frame for the removal of the unit. Mrs. Wolgamood asked if 90 days would be enough time for removal. Mr. Homan said that is plenty of time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow a semi-trailer to be used for personal domestic storage be denied with the following conditions imposed:

1. The unit is to be removed from the site within 90 days.

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

8. The application of ***John & Judith Kuhn*** for a Use Variance to allow for an existing mobile home to remain on site while a residence is being constructed with said mobile home to be removed by January 2011, and a 3 to 1 depth to width ratio Variance on Tract A; and for a 3 to 1 depth to width ratio Variance for an existing residence on Tract B (the result of a parent-to-child split) on property located on the East side of Ash Road, 2,350 ft. South of CR 16, common address of 56610 Ash Road in Baugo Township, zoned R-1, came on to be heard.

A photo of the property was 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 #20074095*.

Mr. Harrell amended the Staff Analysis by adding “or when the residence is built” at the end of the condition #2.

There were 9 neighboring property owners notified of this request.

Marcee Gorce, 56610 Ash Road, Osceola, was present on behalf of this request. Ms. Gorce explained she would like to help John and Judith Kuhn medically and maintain their land until she is financially stable to build a house. She said they owed more on the manufactured home than they thought, so they have to finish paying that off before building the new house. She anticipated it would be two years at the most.

Mr. Hesser asked if there is also a house on the parcel and not just the mobile home. Mr. Harrell indicated that there was a parent to child split, which had previously been approved by the Board.

Mrs. Wolgamood asked if they have been recorded and the parcel is in Marcee Gorce’s name. Ms. Gorce said no because they have to get it notarized and then it will be in her name.

Mr. Hesser said they approved them to have the house and mobile home on the same parcel, but now it seems it’s being changed to have two houses on the same parcel. Ms. Gorce said they want that eventually.

Mr. Hesser asked how many houses are going to be on that property. Mr. Harrell said the only thing they are approving right now is what they granted before. Mr. Hesser clarified it’s only the extension of the mobile home. Mr. Harrell explained when the mobile home was originally put on the property, it was because of medical hardship reasons. They are now splitting the property so they can build a house. A permanent house can’t be built until the property has been split.

Mr. Homan asked if they want to build the house on Tract A and Ms. Gorce said yes. The manufactured home will be gone when the house is built.

Mr. Homan asked if medical hardship is still a factor here and the petitioner said yes. Ms. Gorce explained that Mrs. Kuhn had her thyroid taken out and has been in bed for over three months. Mr. Kuhn is doing a little better, but the hardship does still exist.

Mrs. Wolgamood indicated the reason it’s a Use Variance is because it’s in an R-1 zone. A Special Use for a mobile home cannot be asked for in an R-1 zone. It’s not a part of the ordinance.

Mr. Homan asked if there is a need for a lot width Variance on Tract A because it’s 71 ft. Mr. Hesser indicated it’s also less than one acre. Mrs. Wolgamood said the parent to child split alleviates that, but the 71 ft. is a different story.

Mr. Hesser asked what conditions A was regarding to. Mr. Harrell said conditions A is when they check it every year for inoperable vehicles, outside storage, skirting, tie downs, etc., to make sure it is being properly maintained.

Mrs. Wolgamood said this shouldn’t have happened to begin with. In her opinion, the Use Variance was stretched far beyond what it should be. When they came before the Board last, they indicated that they would have a house there for three years. The Board approved all of that based on what had been indicated. The question presented today is whether or not they will renew the original request.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said the Use Variance was based on the medical hardship and it's not unique to the property. Since it has already been granted, the question is whether or not the Board wants to renew it. Mrs. Wolgamood said if they want to renew it, then she would feel more comfortable if a couple of things were changed in the approval. She suggested that they approve it with yearly reviews to verify compliance with conditions A and take out "medical hardship." Also, she suggested the mobile home be removed when the new residence is constructed.

Mrs. Wolgamood asked Mr. Kolbus if the Use Variance could become null and void as of January 31, 2011. Mr. Kolbus said that is fine as long as it's set for a specific time.

Mrs. Wolgamood said she understands the family hardships, but the petitioner has also indicated the financial aspect of it which the Board cannot address.

Mr. Homan said granting the Use Variance hinged very strongly on the medical hardship issue. He would hate to extract that from the conversation because it's the only unique characteristic of the property and why they want to use it in this way.

He agreed that there should be a time limit and indicated three years would be okay. He believes the petitioners have really depended on the decision that the Board makes today. If the request were to be extended for three years, that would be fine, but it can't be stretched out for longer than that. Mr. Hesser agreed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) 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 Use Variance to allow for an existing mobile home to remain on site while a residence is being constructed with said mobile home to be removed by January 2011, and a 3 to 1 depth to width ratio Variance on Tract A; and for a 3 to 1 depth to width ratio Variance for an existing residence on Tract B (the result of a parent-to-child split) be approved with the following conditions imposed:

1. Approved subject to the medical hardship being necessary with yearly reviews to verify compliance with Conditions "A".
2. The mobile home is to be removed when the medical hardship no longer exists or when the residence is built.
3. Approved for a period of three (3) years.
4. The Use Variance will become null and void as of January 31, 2011.

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

**(Mr. Hesser stepped down from the Board at this time due to a potential conflict of interest.)*

9. The application of *Mike & Laquita Closson (LC purchasers) and Larry Smith & Andrew Odebrecht (LC holders)* for a Use Variance for a lawn service business, and for an Appeal for the construction of an accessory structure prior to the construction of a residence on property located on the Southwest corner of CR 20 and CR 31 in Jefferson Township, zoned A-1, came on to be heard.

A photo of the property was 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 #20074109*.

There were 9 neighboring property owners notified of this request.

Laquita Closson, 19462 Country Creek Court, Goshen, was present on behalf of this request. Mrs. Closson explained that she and her husband rent a building from the city of Goshen and they are tearing the building down as of 2009. Due to the loss of the rental building, they need to put up a building. The reason for filing the petition at this time is because they are completely jammed from mid-March until mid-December, so they can't wait until the last minute to put the building up.

They have met with their realtor and the house will be listed this week, but the market is really down right now. If their house isn't sold right away, then they won't be in a financial position to build their new house. She understands the Board can't look into the financial problem, but she has two small children that she doesn't want to move around a whole lot. Mrs. Closson said their finances are already in line and they are just waiting on the house to sell.

The Closson's goal is to have the house and the building put up at the same time because they need the money from the sale of their house to finish paying for the property as well as putting their building up. With the lawn service, they have trucks, trailers and lawn equipment which need to be stored. They also have a couple classic cars that they need to store.

When they are working from March to December, they have two full time employees. As the employees arrive, everything will already be loaded in the trucks and they will be ready to leave. People won't be coming in and out and they don't advertise the business.

Mrs. Closson explained that their rent for the current building is very reasonable. They have looked into commercial properties and it's not even feasible for them to maintain their business without having to offset the expense of a new building. She explained they won't have a lot of people coming and going, so there won't be any added traffic.

Mrs. Closson said the owners of the lot to the south of the property are planning to put up a pole building for storage. She also indicated the neighbors to the north have no problem with them putting up the building first.

Mr. Homan asked how many trucks and trailers the business operates. The petitioner explained they have two one-ton dump trucks, two mowing trailers that carry two 60 inch commercial mowers, two push powers, and blowers. There is also one other trailer they use when they fertilize because they don't need as long of a trailer to put the fertilizer cart in.

Mr. Homan also questioned how many people work for them during the lawn care season. Mrs. Closson said her husband and herself, and two other employees.

Mr. Lantz asked how many acres they have and the petitioner said 4.71 acres.

Mrs. Closson explained they want to put the pole building closest to CR 20 and they have already done the soil borings, so they know where the septic needs to go. They also plan to line the property with blue spruce for privacy.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated this is tough for her. She said the Board needs to keep in mind that this is a Use Variance and what they are asking for is a pole building for storage, which will look like an agricultural building. However, there is currently no house there. If there were a house there, they could be asking for a Special Use permit instead of a Use

Variance. She doesn't have an issue with what they want to do, but she has an issue with the Use Variance request.

Mr. Homan said they have allowed people to simultaneously construct a storage building and a house if they can prove or show that is what their building intent is. Unfortunately, they are waiting for their property to sell, so the Board doesn't have the assurance that it's going to happen this way. Mr. Homan said a lot of people simultaneously build a pole building and house at the same time.

Mr. Homan asked why they need a Variance for a lawn business in an A-1 zone. The business would probably be more commercial than agricultural. A Use Variance is being asked for today and they need to meet the five criteria for the request. If the house were there, then they might feel fine about the lawn service. Since its five acres and looks like an agricultural building, it could be a different consideration.

Mrs. Wolgamood said if there were a residence there, they would be falling into the home workshop business criteria and she wouldn't have an issue with that.

Mr. Homan indicated the Board is held to the five criteria. One of them is whether there is anything peculiar to the property that requires the agricultural building and he doesn't feel that there is in this situation.

Mr. Lantz indicated that the largest crop in the county is grass, so it's hard to say they aren't dealing with agriculture. Any of the people in this area could be doing a lawn service out of their garage. He doesn't believe it will have a very big impact. If he were to move to the area and all that was there was a pole barn, Mr. Lantz indicated he would like that. All he would need to do then is build a house.

Mr. Lantz said he understands why they can't afford commercial properties because they are very expensive.

Mrs. Wolgamood asked if a Use Variance were to be granted and it's granted for a particular use and then the use is no longer there, would the Use Variance become null and void. Mr. Kolbus said not unless you put a specific condition on it. Once they invest in the property and make the improvements, the Use Variance vests with the land and stays unless there is a condition causing it to become null and void.

Mrs. Wolgamood doesn't believe there has been anything demonstrated that warrants a Use Variance.

Mr. Homan asked if the request is two separate things and Mrs. Wolgamood said they go hand in hand. If one is approved, then the other needs to be approved and vice versa.

Mr. Homan expressed a concern about the uncertainty or unknown fact as to when the home may be built. It could be six months or two years, but the Board does not know at this point. If the Appeal could be granted with the condition that the accessory building and home were to be built simultaneously, then they would need to come back for that type of request.

Mrs. Wolgamood didn't think the petitioners would need the Board's permission to build simultaneously. That is something that the staff readily issues building permits for. If the petitioners wanted to have the lawn service, then they would have to come back.

Mr. Lantz asked if they could live in the pole building. Mrs. Wolgamood indicated that request would require a Developmental Variance because the accessory portion would be larger than the actual living space.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for a lawn service business, and for an Appeal for the construction of an accessory structure prior to the construction of a residence be denied. A roll call vote was taken with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – no.

Mrs. Wolgamood asked what the Board's options are since the roll call resulted in a tie. Mr. Kolbus said they could have the two Board members who voted no come up with a motion and have further discussion on it. The Board could also table it to have a member appointed due to Mr. Hesser's potential conflict of interest. The appointed person could read the minutes and then come back and vote. If they decided to appoint someone, then it would have to be tabled until March due to Mrs. Wolgamood being gone for the February meeting.

Mr. Lantz said if the Board were to come up with a way, then the petitioner's could get done. Mr. Kolbus indicated that the building is not coming down for a while. He has seen two different dates stating 2008 and 2009.

Mr. Homan said the lot hinges on the sale of the property and that would move the project along as far as the construction of the residence.

Mr. Kolbus suggested tabling the request until March, getting an appointment for the alternate, and then finding out at that time how the sale of the home is going.

Mr. Lantz asked what they have to sell first and the petitioner indicated the home they are currently living in. Mrs. Closson said their realtor doesn't think they will have a problem selling the house because they are in a really good school system, but there are a lot of houses sitting on the market right now.

Mr. Lantz asked if they would consider an auction and Mrs. Closson said no because they will be using that money to finish paying for the property and the building. She explained they make all of their money in about eight months and then they have to either pray for snow or pray that they save enough back so they can feed their children. They don't want to use their money that is being saved back to put up the building because they don't know what the next two months will bring.

Mrs. Wolgamood said the Board understands their situation.

Mr. Lantz asked if they could creatively come up with something so they could live in part of the pole building. Mrs. Wolgamood indicated that is not up to the Board, it would be the petitioners' decision.

Mr. Homan said he would like to see it tabled until March. They could find a fifth person to fill in for Mr. Hesser and see what develops. Mr. Miller agreed.

Mr. Kolbus asked if everyone will be present for the March meeting and everyone said they would be, apart from Mr. Hesser due to a potential conflict of interest.

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 Use Variance for a lawn service business, and for an Appeal for the construction of an accessory structure prior to the construction of a residence be tabled until the March 20, 2008 meeting with an appointed person to alternate for Mr. Hesser.

*(Mr. Hesser returned to the Board at this time.)

10. The application of **Timothy & Stella Fry (LC purchasers) and Ammon & Edna Martin (LC holders)** for a Special Use for an agri-business in an A-1 district for a welding shop (Specifications F-#156) on property located on the West side of CR 17, 2,150 ft. North of CR 46, common address of 68563 CR 17 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 #20074049*.

There were 5 neighboring property owners notified of this request.

Mrs. Wolgamood asked if this petition is because of the change of ownership and Mr. Harrell said yes.

Mr. Sloat submitted a packet of information to the Board containing photos of the property and a list of conditions *[attached to file as Petitioner Exhibit #1]*.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. Mr. Sloat said this petition is because of a change in ownership. This petition was heard back in 2001 and the previous owner had an agricultural business for manufacturing gates, cattle restraining devices, etc. The previous owner moved to Michigan last summer and sold his property and business to Mr. Fry.

The permit had been renewed back in 2004 by the staff. In 2007, the Fry's received another renewal letter, which is when they contacted Mr. Sloat. Mr. Sloat then spoke to Ann Prough from Code Enforcement and they re-filed the petition.

Mr. Sloat indicated nothing has changed apart from ownership. Mr. Kolbus said it is for owner/occupant and Mr. Sloat said that is correct, the conditions will remain the same. There haven't been any complaints filed and this is a low traffic area.

Mrs. Wolgamood asked since this has been there for that length of time, is there an area where semis, vehicles, or trucks can drive in and turn around to avoid backing out onto CR 17. Mr. Sloat said there is no backing out onto the road and he pointed out the turn around area on the aerial photo. He indicated that has not been a problem.

Lastly, Mr. Sloat said they accept the Staff's Recommendation and asked that the Board allow the change of ownership from Mr. Martin to Mr. Fry.

There were no remonstrators present.

Mr. Hesser said they are normally talking about owner/occupant, but in this situation they are talking about the occupant. He asked if the land contract purchaser is considered the owner and Mr. Kolbus said yes. Mr. Hesser said he would like to specify that the conditions say owner/occupant, with the understanding that it includes a land contract purchaser and not a renter of the premises.

Mr. Hesser indicated that in the previous history, parking was specifically mentioned. Although, in the questionnaire and Mr. Sloat's presentation, parking was offered as a continuing condition, but wasn't in the final report. He asked if there was a reason why that was excluded. Mr. Harrell said it's such a large area that he wouldn't have any problem with parking. Mr. Harrell estimated that he could fit about 50 cars on the property, but he doesn't have a problem with it being included in the conditions.

Mrs. Wolgamood would also like to include a truck and semi turn-around on the site as one of the conditions.

Mr. Hesser said condition number four should say "owner/occupant" and then a condition number nine would be added indicating there are to be eight to ten parking space. A condition number ten would also be added to say there is to be ample room for truck turn around.

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 (*Lantz/Hesser*) 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 an agri-business in an A-1 district for a welding shop (Specifications F-#156) be approved with the following conditions imposed:

1. No more than two (2) outside employees who live off-site.
2. Hours of operation to be 7:00 a.m. to 5:00 p.m., Monday through Friday.
3. No retail sales.
4. Approved for the owner/occupant of the residence on site.
5. The business to be conducted from the existing building.
6. No expansion of the business without approval from the Board of Zoning Appeals.
7. One (1) sign no larger than four (4) sq. ft. per side and unlighted.
8. Approved for a period of three (3) years with renewal by the staff if no valid complaints are received by Code Enforcement.
9. Parking for 8-10 vehicles is to be provided along with a tractor/trailer turn around area.

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

**(Mr. Hesser stepped down from the Board at this time due to a potential conflict of interest.)*

11. The application of ***Patrick Industries, Inc.*** for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the Northwest corner of CR 20 (Mishawaka Road) and Kreighbaum Street, common address of 28163 CR 20 in Baugo Township, zoned M-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 #20074053*.

There were 60 neighboring property owners notified of this request.

Jean Cruzie, Maplenet Wireless, 4561 Pine Creek Road, Elkhart, was present representing Patrick Industries. Mr. Cruzie explained this tower is currently at the Adorn plant on Nappanee Street, which is just north of the proposed property. Patrick Industries acquired Adorn, so they want to take down the tower at the Adorn building and move it a quarter mile south to the Mishawaka Road property.

When Damon owned this property, there was a 100 ft. tower there and then it was taken down. Technically, the tower is being put back up where it had been for 20 years.

Mr. Cruzie then submitted a collapsibility letter and an interference letter *[attached to file as Petitioner Exhibit #1]*. The petitioner then pointed out the proposed location for the tower on the aerial photo.

Mrs. Wolgamood asked if that is where the other tower was located. Mr. Cruzie said yes, the foundation is there, but it's not big enough. Therefore, they will have to tear it out and put a new foundation in.

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 (*Lantz/Wolgamood*) 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 wireless communications facility (Specifications F - #31.50) be approved with the following conditions imposed:

1. Approved for a 130 ft. tower.
2. The tower must be available for collocation.
3. A letter to be placed in the file depicting collapsibility of the tower and radio, TV and telephone interference.
4. All other terms of the Elkhart County Tower Policy to be adhered to.

The motion was carried after a unanimous roll call vote was taken.

**(Mr. Hesser returned to the Board at this time.)*

12. The application of **Sara Avery** for a Special Use for a home workshop/business for pet grooming (Specifications F - #45) on property located on the East side of SR 13, 960 ft. South of SR 120, common address of 53150 SR 13 in York 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 #20074037*.

There were 8 neighboring property owners notified of this request.

Mr. Harrell amended the Staff Analysis to add #6 to the conditions list to state, "There is to be no overnight boarding of dogs." Condition #7 was also added to state, "A turn-around should be provided on site so there is no backing out onto SR 13."

Michael Avery, 53150 SR 13, Middlebury, was present on behalf of this request. Mr. Avery explained that he and his wife opened this business to substantiate and help with income due to him being on disability. They decided to have the business on their property for Mr. Avery's continuous health and to operate a small business which his wife can be an employee of. By having the business on their property, it will help with bills and future expenses.

Mr. Avery indicated he had a couple questions about the Staff Report because of the signage and number of employees. He asked if his daughter, who lives next door, could come over to help his wife lift, bath dogs, or answer the phone if her help was needed. They would like to have her as an employee in the future.

The petitioner said his wife pays taxes on all of her wages. They have been paying taxes for a small business for the past two years. Mr. Avery indicated he wants to be legal so they don't have any problems further down the road because his health will increasingly diminish every year.

Mr. Avery indicated they presently have a 3 x 5 business sign on the property. When he went to get the permit for the culvert, he told the state that he would like to up a small business

sign. With the amount of traffic and speed of traffic going down SR 13, a two ft. square sign could cause a rear-end collision coming into their business. Therefore, they were given the approval to put up a 3 x 5 ft. unlighted sign. The visibility is 500 ft. in both directions.

Mr. Homan questioned where the sign is located on the property. The petitioner indicated they put in a turn lane, so that will help out with visibility. The farther away their customers see the sign, the more time they will have to prepare to turn and use their turn signal.

Mr. Kolbus said based on the sign's location, the size of the sign, small or large, shouldn't matter.

Mr. Harrell indicated there are business signs up and down the road. He doesn't think the proposed sign sticks out very much.

Mr. Homan asked how long the sign has been there and Mr. Avery said since 2003.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan indicated that the one employee being requested falls within the definition of a home workshop, so he wouldn't have a problem with that. He asked the Board what they think about the sign since it's been there for four years and the staff doesn't think it's a safety issue.

Mrs. Wolgamood understood that he had to take it down and asked if the sign had been put back up yet. The petitioner said yes, it's on his property and not even close to the state's property. Instead of putting it in front of his fence, which would have put it another 10-15 feet towards the road, he put it farther back on his property.

Mr. Homan asked if the size is 3 x 5 and the petitioner said yes. Mr. Avery said it is unlighted. Mrs. Wolgamood then asked if it is double faced and he said yes, it can be seen from 500 ft. to the north and south.

Mrs. Wolgamood said the Board needs to be careful with granting Special Uses for home workshop businesses that ask for something out of the ordinary. She thinks that Mr. Avery realizes that he's had this business there for a few years and he wasn't legal before.

Assuming that everyone who comes to the house has an appointment, they could convey to that person exactly where the house is located. There are other options apart from having a sign to convey the location.

Mr. Hesser said the sign isn't a huge issue, but the Board should consistently apply that to Special Use requests. He indicated that he doesn't have a problem with the Special Use because they are well within the definition.

Mr. Avery indicated part of the reason for having a larger sign is for advertisement reasons. Mr. Hesser said the Board understands, but they want to conform to what the ordinance says.

Mr. Homan explained that last year they had a request which was almost identical to this one. That petitioner was required to reduce the size of her sign due to the restrictions of the ordinance.

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 home workshop/business for pet grooming (Specifications F - #45) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.

2. Days and hours of operation to be Monday through Friday, 8:00 a.m. to 5:00 p.m.
3. One (1) sign no larger than four (4) sq. ft. per side and unlighted.
4. One outside employee is to be allowed.
5. Five (5) parking spaces to be maintained and adequate turn around space, so backing out onto the state highway is not required.
6. No overnight boarding of dogs on the property.

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

13. The application of *Hoosier Holdings, LLC (Lessor) and Goshen Stars Soccer Club (Lessee)* for a Special Use for an athletic park for a soccer club (Specifications F - #4) on property located on the South side of CR 36, 950 ft. East of CR 19 in Elkhart 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 #20074101*.

There were 11 neighboring property owners notified of this request.

Millard Graber, President of Goshen Stars, 1512 E. Lincoln Avenue, Goshen, was present on behalf of this request representing Hoosier Holdings. Mr. Graber explained that Goshen Stars is a member organization of the Goshen Youth Soccer Organization. The Goshen Youth Soccer Organization was started in 1985 and its basic purpose was to teach soccer skills at a younger age. In spring of 2007, there were around 650 youth members who participated in the organization. Currently, Goshen Youth Soccer Organization is using the Goshen College fields for this program.

Goshen Stars was started as a member of Goshen Youth Soccer Organization in 1995 by parents of youth players. The reason for the Goshen Stars was to bring more competitive soccer playing into the area. Mr. Graber indicated they are a travel soccer team and they play teams such as Middlebury Magic, Elkhart Flames, etc.

As a beginning team, they had some difficulties with level of play. Within the last five years, they have had one or two teams each session who have been league champions or tournament champions. The winnings have benefited the community. In the last five years, the girls' soccer team for Bethany Christian Schools has won the sectional championship. A few of the players have even played soccer for Goshen College and made it to nationals. Of the 22 players that went to State Tournament this year, 20 of them have come through the Goshen Stars Program.

The current Board consists of Susan Stiffney, Jan Kay, James Yoder, and Mr. Graber. They are all parents of players and their children have been in the system through Bethany Christian School or Goshen Schools. The organization is very parent oriented and they want the best for their children.

Gary Weaver developed fields on CR 27 which are no longer available. They only have access to them for another year or two, so that is the reason for this request.

Mr. Graber believes the site they have chosen will have low impact on the neighbors and will enhance the neighborhood in the future. He believes within 10 or 20 years, the area will be full of residential houses. Granting this request would help keep some of the green area. Elkhart County doesn't have enough soccer fields available for all of the participants in the sport. This

would be a way to help alleviate part of that issue. The Goshen Park Department is working on a five year plan to put some soccer fields in, but Goshen Stars doesn't have that long to wait for their club to continue.

The proposal would start with five fields and they would be using the east section of the property. Two of the fields would be U-9, which are a smaller size. There would also be two U-11 fields and one U-13+ field. The second phase would add another full size field and a practice area. Eventually, they would develop the entire 20-21 acres.

In the CR 27 area, the Goshen Middle School field and Bethany Christian School field are considered some of the best fields in Northern Indiana. Mr. Graber indicated they pride on playing on good fields. They are expecting the park to be top class and to have good fields to play on. Mr. Graber said they plan to follow the Staff's Recommendations and they will be in accordance with the site plan submitted. The sign they would like to put up will follow the recommendations of the Staff.

Mr. Graber indicated they would like to have food concessions. Non-profit organizations are allowed to sell non-hazardous and pre-packaged foods. They also allow up to 15 days of prepared foods each year without a permit. He indicated they would follow those guidelines.

For safety reasons, the site plan had an entrance and an exit into the area. The county requirements give only one entrance. If this were approved, Mr. Graber indicated they would be asking for a Variance from the Elkhart County Highway Department to allow for an entrance and an exit. The approval of that would be determined by where the sign is located to allow sufficient visibility from both directions. Those factors still have to be determined and approved by the Elkhart County Highway Department.

At this point, no lights are being planned. If in the future lights are needed, they would follow through with asking the Board for permission.

Depending on the grass development, they hope to do the excavation and plant grass as soon as the weather permits. There is about a one year cycle for the grass to development and be ready for practicing and playing on. Depending on how that develops over the summer, their first practice and games would be in the spring of 2009, or in the fall of 2009 at the latest.

Mr. Graber believes that Goshen Stars has been a great contributing factor to the 120+ players that come through the program each year. It keeps them in extra curricular activities and out of things they shouldn't be into. He asked that the Board take into consideration the Staff's Analysis and approve this request.

Mr. Homan asked how many parking spaces there are on site and Mr. Graber said it would be perimeter parking. He estimated that there would be around 120 parking spaces once the second phase is completed.

Mr. Homan questioned if the first phase would be the east side. The petitioner said it will be two thirds of the east side.

Mr. Homan asked about the parking services being maintained in a dust free condition. Mr. Graber said they will start out with gravel or slag. He indicated that there is grass you can plant which is similar to golf greens. They aren't completely sure what they will use yet, but it would not be asphalt.

Mrs. Wolgamood asked if they will be constructing a building for the concessions. Mr. Graber said no, it will only be in a tent on game days. That will be one way to help raise money to cover costs.

Mrs. Wolgamood asked if they will have any storage buildings. The petitioner said they have one shed that will be in the woods, which is 16 x 30, to store the athletic equipment and field equipment. Mrs. Wolgamood indicated she would like to direct the one year implementation question to the staff later in the discussion.

Don Yoder, 20672 CR 36, Goshen, adjoining neighbor to the east, was present in support of this request. Mr. Yoder indicated he is in favor of the request, but he does have some questions. He has been a landscape architect in the South Bend area for 40 years and likes the idea of having some green in the area.

Mr. Yoder indicated he and his wife have a house in Granger, but they have a log cabin on CR 36 next to the proposed property. He is very interested in the surrounding area being kept natural, but noise, drainage, and lighting are some concerns. The petition states "Specifications F-4" and he asked what that meant.

One problem that Mr. Yoder would like to have addressed is the issue of drainage. The water flows downhill, but the county ditch has served a great need and purpose. Although, the water in back of that still continues to flow. The grass which will be placed there will be helpful. He asked how they might try to maintain as much of the water as possible on their particular site. The water currently flows toward the wooded area, but then it flows over onto Mr. Yoder's land. He would like to know how that will be handled.

Mr. Yoder suggested having an engineering department look and see if drains could be placed underneath the road. One should be placed on the east side property line. Another one should be placed on the west side property line because the current one can't handle all the water.

Mr. Homan indicated the drainage is a county issue, but it isn't the responsibility of the petitioner in this case. He indicated that they would talk about that further in the discussion. Mr. Homan then asked him to point out his property on the map.

Mr. Yoder suggested installing a fence along the property line from CR 36 to the back of the property. The fence would help to make sure young children aren't wandering off of the property. He also applauded the petitioner for keeping the land natural because there are several deer and birds in the area.

Mr. Yoder doesn't want a chain link fence, but there should be some division there. If there were a farm fence with some barbs on it, he thinks that would easily handle things. It would make him feel more comfortable.

The noise level is also a concern that he would like someone to address. Mr. Yoder indicated he and his wife have built a retirement cabin in the area. This is not a place they are living permanently, but they are in and out of the cabin.

Mr. Yoder said he understands the hours of play will be in the daylight because there is no lighting at the present time. He believes there will be lights there eventually.

Mr. Yoder thought the site plan was rather vague compared to what he is used to. He didn't feel it gave very much information. He asked what the "P" on the site plan stood for. Lastly, he thinks there should be a need for restrooms.

Lamar Null, 20745 CR 36, Goshen, who pointed out his property on the aerial photo, was present to speak in favor of this request. Mr. Null said his biggest concern is all of the added traffic on CR 36. There is a tremendous amount of speeding going down the road already when

the speed limit is only 45 mph. He indicated that cars pass his house going around 70 mph. Traffic should be a big consideration with all of the kids coming around.

Mr. Null said his second concern is water. He has seen the ditch overflow three times. He believes that problem is because of the culvert system going from one side of the road to the other. His property was recently completely flooded over. He indicated he would rather see a soccer field there than residences.

Jan Kay, 1917 Woodstone Court, Goshen, was present in support of this request. Mrs. Kay said she currently has four kids involved in Goshen Stars and she is on the Board. She believes this serves a need in the community. There are a lot of problems when kids don't have positive things to do, so this helps kids interact together and provides a place for them form relationships. Goshen Stars serves a large population of kids and it needs to be someplace where parents can get to. She also mentioned that no games are scheduled on Sundays before 12:30 P.M.

Mr. Kolbus indicated the zoning ordinance lists a number of uses that are permitted. Number four says, "Athletic park, athletic field, stadium, arenas, and other similar places for public or private events, in the A-1, R-1, R-2, R-3, R-4, B-1, and B-2 districts." The ordinance lists a particular use that can go in that zone, but it has to go before the Board in order to be approved.

Mr. Lantz said a woven wire fence should be enough for this use. It would be useful on the east side and a barb may be placed on top to keep kids from crossing the property line. He also indicated that the Elkhart County Highway Department and the Drainage Board should address the drainage.

Mr. Kolbus asked about the cost of a farm fence. Mr. Lantz said it is usually split between property owners. The cost could be discussed with the neighboring property owner or the Goshen Stars organization could pay the entire cost. Mr. Graber asked about the size of the fence and Mr. Lantz indicated 40 or 42 inches tall. Mr. Graber said he would talk about that with Mr. Yoder.

Concerning the restrooms, Mr. Graber said there would not be any sewage or water on the premises. There will be portable toilets placed on the property and they would use a professional service to do the servicing of those. The Health Department said they wouldn't need a permit for that as long as it's done by a professional service. Goshen Stars organization has been using this service for 15-20 years.

Mr. Graber said they have been out there when there has been a significant amount of rain. With the proper aeration and compaction to the fields, it probably drains better than an open farmland does. He indicated they will follow the guidelines of the Elkhart County Highway Department and put culverts underneath the one or two entrances and a swale that would run from right to left. There is also a drain that goes under the road and over to the county drain.

Mrs. Wolgamood asked the petitioner to address the noise. Mr. Graber said with the natural barriers that are already there, he doesn't see that there would be any more noise than a loud car driving by. There will be some cheering going on at games, but not to the point where it will be so loud that you can hear it from hundreds of yards away.

Mr. Homan asked if there has been any conversation with the Elkhart County Highway Department about slowing down the speed at this location. For the number of vehicles that will

be at a single event, Mr. Graber said it would increase the number of cars going through the area. Generally, it will be parents bringing children to games or practice. In the spring, there may be young drivers there also. By having an entrance and an exit, it will help with traffic congestion. Mr. Graber indicated there has been no conversation about slowing down the speed in this location. As houses are brought to the area, the speed limit will probably be lowered.

Mr. Homan asked if the driveway around the field area is one way in and one way out. Mr. Graber said yes, they are required to do only one entrance. The drive around will still be one way. There will be a turnaround in the front area with a two way exit/entrance. Having a one way entrance and a one way exit will help eliminate traffic congestion.

There were no remonstrators present.

The public hearing was closed at this time. Mrs. Wolgamood indicated the petitioner did a fine job addressing the concerns of the remonstrators. The one issue that she sees is the drainage aspect. If there are legal drainage ditches, then they are under the jurisdiction of the Elkhart County Surveyors Office. Mrs. Wolgamood suggested contacting the office to make sure there aren't any drainage tiles on the site and that there are no legal drainage ditches that they have jurisdiction over before going further. The Board could add that as a condition and comply with anything they would require.

Mr. Lantz said to get the water to the ditch is one thing, but he may want to hold it because the fields may have a little bit of a slope to them. The water will move faster and if it moves through the series of ditches and culverts faster, then it may create some problems. He suggested that Mr. Graber contact the Surveyors Office to see about putting in a holding area to slow the water down.

Mr. Homan indicated that the Board is not requiring the petitioner to handle all of the water for the surrounding properties, but the Elkhart County Surveyors might have some good suggestions.

Traffic will be the responsibility of the Elkhart County Highway Department. Mr. Homan suggested that Mr. Graber have that conversation with them for safety reasons.

Mr. Homan pointed out that the hours of operation are not included in the Staff's Recommendation. He asked if those hours are implied in the application or is there any reason to add those to the recommendation. Mr. Kolbus said the Board could specify the hours as designated in the application if they feel comfortable with those. Mr. Harrell said the hours are somewhat dependent on the lighting situation.

Mr. Homan said one of the speakers mentioned that games will be scheduled only at certain times on Sundays. Daylight will be a limiting factor.

The response to question five of the questionnaire indicates, "Weekend activity will be 8 a.m. to 9 p.m." Mr. Kolbus indicated that question is very specific.

Mr. Hesser said in a situation like this, there will be questions about noise. He questioned whether the Board should set up a time for a renewal or if they should work off of complaints. Mr. Kolbus said that is the Board's decision in granting it because there will be some noise.

Mr. Homan asked if they are leasing the property or purchasing it. Mr. Graber said they are leasing it with the option to buy. They are committing to a 20 year lease.

Mr. Homan said it is a wide open space out there and the adjacent property owner is in a wooded area which will give him some relief from the noise.

Mr. Kolbus indicated that one of the conditions is to maintain the natural buffer, which will give some protection, but not complete protection.

Mrs. Wolgamood asked if the fencing issue is something the Board should address. Mr. Homan believes it makes a clear distinction between an athletic field and a private property. One of the speakers indicated a six foot fence with a couple rows of barbwire and Mr. Homan feels that is beyond agriculture. A fence is reasonable and the responsibility of the developer of the property.

Mrs. Wolgamood said they need to be very specific as to whether they want the fence. Mr. Kolbus suggested they state from the north property line to the south property line on the east side.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) 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 an athletic park for a soccer club (Specifications F - #4) be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted.
2. Sign to be erected in accordance with the Elkhart County Sign Ordinance.
3. A permit to be obtained from the Elkhart County Health Department for food and sanitary services.
4. The natural barriers around the property to be maintained with an earthen mound to the front along CR 36.
5. The entrance to be in compliance with Elkhart County Highway Standards.
6. No lights to be added to the park without approval from the Board of Zoning Appeals.
7. All building permits and inspections must be obtained for any building on site.
8. All parking surfaces must be maintained in a dust-free condition.
9. Substantial progress towards completing the field to be completed within one (1) year. If for the petitioner is unable to play in 2009, as long as there has been a good faith effort to construct the roadway, parking spaces, and proper seeding of the field, then that will be considered as fulfillment.
10. The days of operation are to be from the middle of March through the middle of November. The hours of operation when school is in session will be 3:00 p.m. to 9:00 p.m. During the summer, the hours of operation will be 8:00 a.m. to 9:00 p.m. The hours of operation on weekends will be as follows: Saturday from 8:00 a.m. to 9:00 p.m. and Sunday from 12:00 p.m. to 9:00 p.m.
11. The petitioner is to install a farm fence no less than 40 inches in height along the east property lines going from north to south, including the full length of the field.

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

14. The application of *Elkhart County Parks Department* for a Special Use for a museum (Specifications F - #28) on property located on the North side of Vistula (SR 120), 200 ft. East of Chestnut Street, common address of 304 West Vistula in Washington Township, zoned B-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 #20074088.

There were 25 neighboring property owners notified of this request.

Matt Duthie, J.A. Wagner Construction, 3325 Middlebury Street, was present representing the Historical Museum Society. Mr. Duthie explained they want to build a 5,700 sq. ft. addition to the original building for storage use only.

Mr. Homan asked if the addition will be in conformity with the general appearance of the building. Mr. Duthie said the west wall will match exactly what is there now.

Nick Hoffman, Museum Director, Employee of Elkhart County Parks Department, 22436 Breakwater Drive, Apt. 3B, Elkhart, was present in favor of this request. Mr. Hoffman said this addition will have a very low impact on the neighborhood. It is primarily used to house artifacts with specially designed storage with humidity and temperature control. The addition won't house any exhibits, so it won't necessarily be drawing people in, but it will allow them more space. Mr. Hoffman indicated that professional museums only display about 20% of their collections, but in this case they are displaying 100% of the collections.

Dean Hupp, 1203 Kilbourn Street, Elkhart, President of the Historical Society, was present in favor of this request. Mr. Hupp said the museum is a partnership between the Elkhart County Park Department and the Elkhart County Historical Society. The Elkhart County Park Department owns the land and the building. The Elkhart County Historical Society owns the collections. Historically, the partnership goes back to the middle 60's. The latest formal agreement is from March of 1991. In 1998, the society decided to upgrade, but the biggest problem was space. There was a fundraising program launched and they are now to the point where they can finance it.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked why they had the provision for releasing the site plan from the Town of Bristol. Mr. Harrell indicated that it's a courtesy to allow the town to look over the site plan and approve of it. They also need to look at the drainage and water plans.

Mrs. Wolgamood asked the representative of the petitioner if he has any objection to submitting the plans to the Town of Bristol for their review and he said no. She then asked if he has had conversation with them about this at all and he said not yet.

Mr. Homan said it's a small change to the property and will have a low impact. Mr. Harrell indicated that he believes the Town of Bristol is for this request and they don't have a problem with it. They only are doing this for courtesy reasons. Mr. Harrell spoke to Bill, the Town Director, and he seems to be for it.

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 museum (Specifications F - #28) be approved with the following conditions imposed:

1. Approved as per site plan submitted.
2. A release of the site plan review to be obtained from the Town of Bristol.

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

15. The application of **Leroy Burgess** for a Special Use for a home workshop/business for retail firearms sales (Specifications F - #45) on property located on the Southeast corner of Sun Bow Drive and Sun Valley Blvd., being Lot 43 of Sunlit Acres Phase II, common address of 58554 Sun Bow Drive 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 #20074102*.

There were 27 neighboring property owners notified of this request.

Leroy Burgess, 58554 Sun Bow Drive, Goshen, was present on behalf of this request. Mr. Burgess explained he would like to operate a home-based FFL. As stated in the conditions, they do not intend on offering any classes.

Firearms will be sold by appointment only within the established hours of operation, between 8 a.m. and 4 p.m. on Tuesday, Thursday and Saturday. Deliveries will also only be accepted on those three days.

Mr. Burgess has previously had an FFL and has surrendered it in good standing to the ATF. At the time, he lived in Michigan City.

As far as safety and knowledge, he has been a police officer for eleven years. His wife will be helping with the business and a life-time family friend who has been a police officer for ten years. He indicated his friend does live on premises also.

Mr. Burgess explained if someone were to indicate to him a type of firearm they are interested in purchasing, he would then go ahead and order the firearm. When the firearm arrived at his location, the customer would come to his house and fill out all of the necessary paperwork. All compliance checks with ATF and the state would be conducted at that point. Lastly, the gun would be transferred to the customer.

Mr. Hesser asked if there is a firing range on the property and the petitioner said no. He asked if the customer would try out the gun first and Mr. Burgess said no, there's no place for that. The type of class he is offering is a basic hand gun qualification class, but they would meet at an approved range if there were enough people to conduct a class. Mr. Burgess assured the Board that there will be no gun fire on premises.

Roland Helmuth, 19739 CR 20, Elkhart, was present in opposition to this request. Mr. Helmuth said he is not against gun ownership, but doesn't feel a residential neighborhood is the place for it. He believes it brings a negative feel to the neighborhood. He lives directly across the street from the property in question. The location of his property was pointed out on the aerial photo.

The crime rate in Jefferson Township has gone up with home break-ins, and this would only provide another target.

The City of Goshen no longer allows gun shops downtown. The one that is there now is going to be grandfathered in. Mr. Helmuth asked if it's not allowed in a business area, why would it be allowed in a residential setting.

Bruce Galbreath, 58526 Sun Bow Drive, Goshen, was present to state some concerns about this request. Mr. Galbreath said the part that bothers him is parking. If there is going to be more than one car there at a time, there isn't enough room. He indicated the petitioner hardly has any driveway at all, so that is a concern.

Mr. Galbreath explained there are around 16 kids that live on Sun Bow Drive, which is also a concern. He agrees with Mr. Helmuth when he says a subdivision is not the place for a gun shop.

There were no remonstrators present.

Mr. Burgess said there are a number of kids living in the subdivision and two of them are his own. He explained his driveway meets the standards. The reason for having customers come by appointment is to limit how many people and cars are there at one time. There won't be a ton of people coming to his residence at one time.

Mr. Hesser asked if he will have any inventory at all. Mr. Burgess he might have a small inventory of guns, but the majority of the guns sold would be someone coming to him wanting something specifically. Next, he would order the item and then it would be transferred to the customer. Mr. Hesser asked if people would just be stopping by to look through and the petitioner said no.

Mr. Burgess indicated the sign he will putting up won't even mention firearms on it. There won't be any reference to firearms or guns on the sign itself. It will strictly give a business name and that's it.

Mrs. Wolgamood asked what constitutes a small inventory. The petitioner said no more than ten guns at one time in his home. He has three gun safes, which will be locked up.

Mr. Homan asked how he secures the guns considering there are several teenagers in the area. Mr. Burgess said the gun safes will stop them and he also has security measures for his own home. He reassured the Board that his guns are always locked up. The petitioner allows his son to shoot guns on an approved shooting range, but he never has access to them at home.

Mrs. Wolgamood said he had a reference regarding to future plans of the business in the letter he addressed to the Board. The letter states it will include an expansion into an anticipated on-site out building and then finally expanding into a commercial building. She asked how and when he is planning to implement this. Mr. Burgess said pointed out the proposed location for the out building on the aerial photo, which was located towards the back corner of the property. He said it wouldn't be for the purpose of storing the guns, but for the purpose of not having people track through his home. The building would be a storage area for light equipment, which is not gun related. Also, an area he would use as an office. Mr. Burgess said his plan is to make enough profit to be able to open a commercial building, but that will take time.

Mrs. Wolgamood asked if he would have any objections if they said no to an outbuilding completely. Mr. Burgess said that would be perfectly acceptable. He was only considering the out building for future plans.

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/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 retail firearms sales (Specifications F - #45) be approved with the following conditions imposed:

1. Approved for firearm sales by appointment only with no classes to be conducted on site.
2. One (1) employee or associate outside of those who live on site.
3. Signage limited to the mailbox only.

4. Days and hours of operation to be Tuesday, Thursday and Saturday by appointment only between the hours of 8:00 a.m. and 4:00 p.m.

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

16. The application of **Glen C. Ramer** for a Special Use for a home workshop/business for manufacturing lawn furniture (Specifications F - #45) on property located on the West side of CR 21, ½ mile South of CR 146, common address of 69515 CR 21 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 #20074111*.

Mrs. Wolgamood questioned which of the two maps is the correct one and Mr. Hesser indicated that the one stating "Site Plan" at the top is correct.

There were 10 neighboring property owners notified of this request.

Glen Ramer, 69515 CR 21, New Paris, was present on behalf of this request. Mr. Ramer explained he would like to manufacture lawn furniture. He has made contact with all of the adjacent property owners except for one. None of the neighbors had any objection to this request.

The petitioner is not looking to be a top manufacturer in the sense of volume, but he does have a large family with six boys and he would like to provide the opportunity for them to be employed. They currently raise chickens for Pine Manor, so they already have some trucks coming into his business. He indicated that the driveways are accommodated so there will be no backing out onto CR 21.

Mr. Ramer said there are several people who attend their church who have construction related jobs. In the winter time, there might be some times where those people won't have as much work. He wondered what the process would be if he wanted them to work a couple days a week.

Since this would be a wholesale business, they would look at dealers who would be coming to the location to pick up product. He is not anticipating that to be a daily situation. It would probably be several times a week at the most.

Mr. Hesser said if someone else is working for him that isn't living in the house, then that is considered an employee. He then asked the ages of his children because the questionnaire indicates they are all family members living on premises. Mr. Ramer said they all currently live in the home. Mr. Hesser asked if he has any older children who will be moving out soon and Mr. Ramer said no. His oldest son is 19 and he is working for a contractor, but he still lives at home.

Mr. Hesser asked the staff if the request were changed to permit two outside employees, would it change the Staff's Recommendation. Mr. Harrell said the ordinance allows two, but he didn't ask for two.

Mr. Kolbus asked if he does have two, would that change the Staff's Recommendation based on the intensity. Mr. Harrell said no.

Mrs. Wolgamood asked if they have a time frame for placement of the mound and the trees. Mr. Ramer said they are working on it now, but this spring they will have the mound in so they can do the trees.

Mrs. Wolgamood then asked the size of the mound. He said three ft. high and 15 ft. wide, tapered down to the ground. They will also plant a row of evergreen, pine trees, or blue spruce. It will be around 100 ft.

Mrs. Wolgamood asked how many trees they are looking at doing and Mr. Ramer said 10 to 15 because they want them to grow up and form together. Mr. Lantz suggested planting them seven or eight feet apart.

Mr. Ramer said they had white pine in there before and when they grew together, the branches died. Mr. Lantz said the white pine is more susceptible to that. He suggested that the petitioner go with a norway or blue spruce and the structure of the trees will blend in.

Mr. Homan asked if he's currently producing furniture in his shop and the petitioner said no. He then asked what the furniture is like that they will be making. Mr. Ramer said it will be outdoor lawn furniture made out of treated lumber.

Mr. Ramer said he has a woodshop there now and he's made some furniture for himself over the last couple of years. He has had to buy two pieces of equipment for this purpose, but other than that, everything is already there.

Mrs. Wolgamood indicated that in the photo which was submitted by the staff, it looked like there was a lot of outside storage. She asked if that is an issue. Mr. Ramer said there is firewood and a trailer outside.

Mrs. Wolgamood said anything having to do with the business must be stored inside the building. Mr. Ramer said he won't be able to store everything inside. Mr. Homan indicated that will be a problem because the ordinance is very clear about home workshops. He understands what the petitioner would like to do and he is showing proposed expansion for a building, but he is explaining this as a commercial business. One of the requirements of a home workshop business is to be very low impact with no outside storage. Mr. Homan said there have been low impact commercial processes granted under a home workshop, which have grown into way more than that and caused a serious problem. It needs to be clear to the petitioner that if this request is granted, there is to be absolutely no outside storage.

Mr. Ramer asked if he can bring a load of lumber in and have it stored at his residence. Mr. Homan said he can bring it in, but it can't sit outside.

Mr. Lantz said this situation is a little different because he is in an agricultural zone instead of a residential area. He indicated that farmers tend to get a little messy every now and then.

Mrs. Wolgamood said he is a farmer and his mess is affiliated with farming. This is a manufacturing business.

Mr. Lantz said they are doing both. Mr. Ramer indicated he has a chicken house there. Mrs. Wolgamood said that would all be inside. Mr. Lantz indicated they might have bins or other things that are associated with that placed outside.

Mr. Ramer asked if the no outside storage rule is related to the property being messy. Mr. Homan said it's related to the definition provided in the ordinance. Mr. Kolbus said it's a home workshop and something incidental at a residence, so it's not to be noticed.

Mr. Ramer said the wood will already be processed, so it just has to be cut and put together.

Mrs. Wolgamood said the reason for the request is because it's something special. She explained that the chicken houses are a permitted use because it's an agricultural zone on more than three acres, but now he is asking for something special.

There were no remonstrators present.

Mr. Hesser said he doesn't have the facilities to operate this business without outside storage. Mr. Ramer said the only option he will have is to find a place where he can store his materials. He explained that he will have inventory built up due to this being a seasonal business from March to October. He already has off-site storage for the finished product, but for the initial product, it would be impractical to have it off of his property.

Mr. Lantz asked how big of a pile of lumber they will have and Mr. Ramer said a semi load. He will be putting four bundles into the current workshop he has because he would like to use them right away. There are eleven bundles coming, so that will leave seven bundles left outside. The material is 14 ft. long and approximately 40 x 40 inches high.

Mr. Ramer indicated that the location where he is storing his materials cannot be seen from the road, but he understands the guidelines of the ordinance. He then pointed out the location on the map where the materials would be stored.

Mr. Lantz questioned if he has room to extend the roof out. Mr. Ramer said he hopes to extend the pole barn out and then there will be enough room to store the lumber inside. That would have to wait until this fall.

Mr. Hesser said based on the way the request was presented, their options are to either deny it or table it. If he is going to proceed, he will need to have a revised site plan that provides for storage of materials inside.

Mr. Hesser asked the petitioner if he would like to come up with an alternative for storing materials inside or would he rather not do it. Mr. Ramer said he would probably pursue storing the materials inside.

Mr. Kolbus said they can grant it and turn it over to Code Enforcement because the Board knows the petitioner will be on site.

Mr. Hesser said if they have a new site plan, they will need to have a public hearing. Mr. Kolbus said if it requires a change, such as the square footage of the accessory structure exceeding the square footage of the residence, then that would require a public hearing. If there's no new public hearing items and the petitioner is just changing the site plan, then nothing needs to be re-advertised. Mr. Kolbus said it depends on what he discusses with the staff and whether there are additional Variances he might need.

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/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 manufacturing lawn furniture (Specifications F - #45) be tabled until a revised site plan conforming with the Special Use ordinance is submitted. At that time, the petitioner may request that it be brought back to the Board for approval. A roll call vote was taken and the motion was carried with the following results: Wolgamood – yes; Hesser – yes; Lantz – yes; Miller – yes; Homan – no.

Mrs. Wolgamood asked what additional information they need. Mr. Hesser said he needs a site plan to conform with the ordinance. If he can revise his site plan and come up with a plan

that addresses the outside storage issue, then the Board can consider it without having him wait and then come back to reapply. Mr. Lantz indicated that will give him time to investigate what he wants to do.

17. The application of *Douglas & Sharon Delagrang*e for a Special Use for warehousing and storing of a commercial vehicle (concession trailer) (Specifications F - #44), for an Appeal to allow for the existing residence and detached garage and for the construction of an accessory building on property served by an access easement, and for a Developmental Variance to allow the total square footage of accessory structures (3,336) to exceed the total square footage in the primary structure (2,534), a difference of 802 sq. ft. on property located on the 650 ft. South off of CR 126, 3,400 ft. West of CR 19, common address of 21144-2 CR 126 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 #20074110*.

There were 6 neighboring property owners notified of this request.

Mrs. Wolgamood asked to see the file to clarify what the square piece was on the aerial photo. Mrs. Delagrang indicated that is her garden.

Sharon Delagrang, 21144-2 CR 126, Goshen, was present on behalf of this request. Mrs. Delagrang explained she and her husband would like to build a barn to put their commercial trailer in to protect it from the weather. They just bought a camper and they currently have a boat and two vehicles. It is too crowded right now and they are outgrowing their house and garage.

Mrs. Wolgamood asked if it's only one concession trailer and the petitioner said yes.

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/Homan*) 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 of a commercial vehicle (concession trailer) (Specifications F - #44), for an Appeal to allow for the existing residence and detached garage and for the construction of an accessory building on property served by an access easement, and for a Developmental Variance to allow the total square footage of accessory structures (3,336) to exceed the total square footage in the primary structure (2,534), a difference of 802 sq. ft. be approved. A roll call vote was taken and the motion was unanimously carried.

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

19. There were no audience items.

20. There were no Staff/Board items.

Mr. Harrell presented the petition for Indiana & Michigan Power Company as a major/minor change. The lower left hand corner of the aerial photo is where the Board had

approved a tower for Forest River. He indicated that this is an Indiana & Michigan Power Company tower, but it's on Forest River's property. The proposed location ended up being in a wetlands area and the DNR would not let them place the tower there.

Indiana & Michigan Power Company is proposing to put the tower on a separate parcel on Forest River's property. Rather than to bring this petition back in for a parcel change, the staff doesn't feel anyone surrounding the area would be against it.

The manufacturing to the east of this property is 650 ft. away and they have no problem with it. The only difference would be the changing of the location.

Mrs. Wolgamood said its one piece of property going to another piece of property and Mr. Harrell indicated that is correct. The property entirely belongs to Forest River, but it is on two parcels.

Mr. Hesser asked what was advertised and whether that makes a difference. Mrs. Wolgamood said the site plan that was submitted originally. Mr. Kolbus said the numeric address may be the same, but he asked if the legal description was submitted different than the legal for this. Mr. Harrell said yes, the original had properties next to it. The new one doesn't have any properties next to it.

Mrs. Wolgamood asked if the other location was across the street. Mr. Harrell said it was to the north of their property on the west side.

Mr. Kolbus said since they have a completely new legal description than what was submitted before, it should be a new permit.

Mr. Hesser said he's sure that no one will object to it, but it has got to be advertised as that parcel. Mr. Kolbus said he doesn't see how that can be done. If it was part of one big legal that was submitted and they were just moving it, then that would be a different situation. This area being discussed today was never part of the file. Mrs. Wolgamood said it's up the road and across the street. Mr. Kolbus indicated that it's a legal technicality.

Mr. Hesser asked if that could be put on the agenda for next month and Mr. Harrell said they are out of Fort Wayne, so they may not be able to make it to the filing deadline tomorrow. Mr. Kolbus said it could be done, but it's up to them.

Mrs. Wolgamood asked when this was originally granted and Mr. Harrell said he thinks it was a couple months ago.

A motion was made and seconded (*Wolgamood/Homan*) that the petition for Indiana & Michigan Power Company be considered a major change and should be re-filed as a new petition. After a unanimous roll call vote was taken, the motion was carried.

21. The meeting was adjourned at 11:38.

Respectfully submitted.

Kate A. Barghahn, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary