

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>TH</sup> DAY OF JULY 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 Vice Chairperson, Robert Homan, with the following board members present: Meg Wolgamood and Tom Lantz. 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, Office Administrator, and Don Shuler, Attorney for the Board.
2. A motion was made and seconded (*Lantz/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17<sup>th</sup> 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 5<sup>th</sup> day of July 2008 in the Goshen News and on the 7<sup>th</sup> day of July 2008 in The Elkhart Truth, be approved as read with the following changes: Pages 21, 25, and 34 each had remonstrators present, so “There were no remonstrators present” needs to be removed.
4. A motion was made and seconded (*Lantz/Wolgamood*) 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 (*Wolgamood/Lantz*) 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 ***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.

Samuel Schmucker, 61262 CR 35, Goshen, was present on behalf of this request. Mr. Schmucker explained he’s been doing this for a hobby.

Mrs. Wolgamood asked if he has any employees and the petitioner said no.

She then asked how long he’s been doing this operation at this location and the petitioner said eight years in this particular building.

She indicated the building permit for this building was taken out for buggy storage. Mr. Schmucker said he began the business shortly after taking out that permit.

Mrs. Wolgamood asked how much of the building he uses for the business and he said two-thirds.

The petition indicates he sells new and used tillers and lawn mowers. Mr. Schmucker said he doesn't sell lawn mowers, but he repairs them. He also repairs tillers, weed eaters, trimmers, and mowers. All of the engines he's doing repair work on are very small.

Mr. Homan said in 1996, the permit indicates that Mr. Schmucker won't occupy the building for a home workshop/business. Mr. Schmucker said he does it as a hobby, but if it's going to be a hassle then he doesn't want to mess with it.

Mrs. Wolgamood asked if the petitioner does this on a full-time basis and he said no, he works outside of his home.

Mr. Lantz pointed out that there have been no complaints on the property.

Mr. Homan asked if there is still signage on the property and Mrs. Wolgamood said it's on the front of the building.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated the home workshop/business was granted for use in a different building.

Mr. Lantz said he doesn't have any outside storage, but Mrs. Wolgamood said he shouldn't have because that is one of his conditions from the previous Special Use.

The trash dumpster was questioned by Mr. Homan and Mr. Schmucker indicated it's used for his home and the business.

Mr. Homan would like more information about hours of operation and the spirit of the home workshop.

Mrs. Wolgamood said they could table it for 30 days and allow the petitioner to come back with sufficient answers to the questionnaire.

Mr. Lantz suggested he should meet with staff to do that.

Mr. Homan noticed that there are some brand name signs on the barn. If the Board allows him to revise the petition, he thinks they should talk about what signage is within the scope of a home workshop/business.

Mr. Harrell asked if the building behind the proposed building has a permit and the petitioner said yes.

Mr. Homan explained that if the petitioner would like to pursue this, then he should find out from the staff what the home workshop/business definition is and make his request fit within those boundaries. He asked the petitioner if he wants the Board to deny it or if he would like to go through the process. The petitioner said it depends on the process, but Mrs. Wolgamood said he can work with the staff on that. If he decides he doesn't want to pursue it, then they can withdraw it. If the petitioner chooses to continue with the petition, then he can meet with the staff regarding the revision of the questionnaire.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for a Special Use for a home workshop/business for small engine repair and sales (Specifications F - #45) be tabled until the August 21, 2008, Board of Zoning Appeals meeting to allow the petitioner to revise his questionnaire and address signage, hours of operation, type of engines being repaired, and what

each building on the property is being used for. A roll call vote was taken and the motion was unanimously carried.

8. The application of **Matt & Vickie Gilbert** for a Special Use for a kennel with outdoor pens and/or runs in an A-1 district (Specifications F - #15.10) on property located on the South side of CR 10, 750 ft. East of CR 31, common address of 16170 CR 10 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 #20082155*.

There were 7 neighboring property owners notified of this request.

Joe Walsh, 50605 Deer Ridge Drive, Granger, was present representing the petitioners. Mr. Walsh indicated that Mr. Gilbert couldn't get off work and his sister, Mrs. Gilbert, is medicated and would not be able to speak publicly. The petitioners have lived at this location for approximately six years. Twenty years ago, Mrs. Gilbert was attacked and sexually assaulted in Elkhart. At that time, she was defenseless and an Elkhart County Police Officer recommended that she buy a dog for protection. She has had a German Shepherd for protection for the last twenty years. Mrs. Gilbert got into the hobby of breeding German Shepherds. Over the last twenty years, she has had two females. At this point in time and when the complaint came about, there were 21 puppies on the property.

Mr. Walsh said the petitioners do not run a puppy mill and they have been put in this position because of a con-artist. When his sister had a litter of puppies two years ago, she was approached by a gentleman who represented himself as a trainer for the DEA and FBI. He suggested that he could help her train and sell the puppies.

He admitted that the dogs have gotten loose in the past. Two months ago, Mrs. Gilbert was walking the dogs down the steps and she slipped on the ice which caused the dogs to get loose. The dogs were chased by the police for two weeks and they were finally caught when they were trapped inside of a fence in Middlebury.

Mr. Walsh submitted a packet of papers about the con-artist who was working with his sister, which was found after he abandoned the puppies *[attached to file as Petitioner Exhibit #1]*. Mrs. Gilbert had a litter of puppies with the con-artist's dog and he didn't deliver the papers. Since the dog was from Germany, they were having a difficult time getting the papers. The papers were finally received on April 24, 2008. Mrs. Gilbert is trying the best that she can to get rid of the dogs and she has gone from 21 puppies down to seven. She is making every effort she can to get rid of the dogs and find them good homes.

Mr. Walsh said that the petitioners don't really need the kennel license because they are allowed one litter every two years. The dogs are gone within six months. He understands that there have been complaints, but he's not sure what to do about it since the petitioners are doing everything they can to get rid of the dogs.

Mrs. Wolgamood asked how many dogs she would like to have and Mr. Walsh explained that the dogs don't have value until they are six months old because they are not trainable at four months. The petitioner has three adult dogs, including one male and two females.

Mrs. Wolgamood said the Board has a letter from the Humane Society of Elkhart County and asked Mr. Walsh if he is aware of that letter. He said no and Mrs. Wolgamood explained that it is from Melissa Reed, Humane Society Officer. They visited the site and stated in the

letter that they are concerned about the conditions of the kennel. The smell of the pine shavings and fecal matter were evident and they spoke to Mrs. Gilbert. There are also a number of other things they are concerned about. Mr. Walsh said Mrs. Gilbert understood that the Humane Society believed she was taking good care of the dogs.

He explained that 21 dogs can be very overwhelming. Mr. Walsh has seen his sister out in seven degree weather cleaning up after the dogs. The Humane Shelter didn't contact her in any way to inform her that they aren't happy with the conditions of the kennel.

The dogs didn't have their rabies shots at the time when the Humane Society was out to the property. Mrs. Gilbert found an agricultural veterinarian that was willing to do it for a reasonable price. He indicated that the dogs were healthy and he didn't see anything wrong with the living conditions.

*\* Mr. Hesser arrived at this time.\**

Nancy Ritchie, 16124 CR 10, Bristol, was present in opposition to this request. She then pointed out her property on the aerial photo. Ms. Ritchie explained that she lives immediately to the east of this property. She arrived home yesterday and one of the German Shepherds was in her yard in spite of repeated warnings from the authorities. She has lived at this location for seven years and the petitioners have had dogs ever since they came to this location.

Ms. Ritchie has seen attack dog training in progress and she is very concerned for her own safety as well as her grandchildren's. She has been out gardening or mowing several times when one of the dogs is suddenly standing near watching her. The house is 100 to 130 ft. from the petitioner's house and she hears dogs barking at all hours. At times, she has had to close the windows in order to get some sleep.

Anyone who visits or comes to service her property comments on the barking dogs. A kennel would worsen the noise level and it would be an inducement to have even more dogs. She is also concerned about her property value if this kennel were to be placed. Ms. Ritchie believes this kennel needs to be in an isolated area. A kennel in the vicinity of CR 23 and CR 16 was purchased in the recent past by two adjacent homeowners.

Mike Leiter, 16078 CR 10, Bristol, was present on behalf of this request. Mr. Leiter said he lives approximately 330 ft. from the Gilbert's property. He has dogs for reasons of protection as well, but he doesn't want the petitioner's dogs on his property. When he is out in his yard, he has to always carry a firearm or be looking over his shoulder.

Mr. Leiter said he trains dogs for duck hunting. In the past, he has felt like he was going to get attacked by Mrs. Gilbert's dogs. He doesn't mind if she has the dogs, but he would rather not have them on his property or hear them. After being on vacation for two weeks, he comes home at 3:30 a.m. and he gets out of his truck to hear barking dogs.

The location where Mrs. Gilbert is keeping her dogs is not what Mr. Leiter would classify as a kennel. A kennel should be where a dog can go inside at night, be housed, nobody hears them bark after around 8:00 p.m. and be released outside around 7:00 a.m. or 8:00 a.m. in the morning.

Mr. Leiter then questioned if Mrs. Gilbert can afford to take care of the dogs properly with her being on disability. He understands that the petitioner wants to make a little bit of money, but he would prefer a kennel not to be 330 ft. from his house where his children live.

Mr. Lantz asked if he has any dogs and the petitioner said he has three. He has a rottweiler that was born in January and he has invested \$1,500 in an invisible fence.

If there are 22 dogs that are German Shepherds, Mr. Leiter asked the Board if there is enough liability insurance in case something were to happen to himself or a neighbor kid.

Mr. Walsh said that Ms. Ritchie stated there are seven residences in the area. By looking at the map, you can only see five that are within walking distance. One of those homes is a farm that is substantially removed from the area.

The most serious concern is the wandering dogs. One of the dogs has been attack trained and he understands they need to control that. If the dogs are aggressive, then Mr. Walsh asked why the Humane Society released them back to the petitioner. Mr. Walsh reassured the Board that the dogs would no longer be attack trained.

Mr. Lantz asked how many adult dogs the petitioner would like to have and he said three adults. One of the dogs is seven years old and they won't be breeding her again.

Mrs. Wolgamood asked the staff what they mean by non-compliance and it was clarified that it's because of the number of dogs over four months old.

Mr. Hesser asked Mr. Walsh if the petitioner could get rid of dogs down to the number of three adults and he said yes. He doesn't want that to stop her from having another litter two years from now.

Mr. Walsh said he doesn't believe Mrs. Gilbert needs the kennel permit, but Mr. Hesser indicated she's currently in non-compliance.

Mrs. Prough said if you read the definition of a kennel, it states, "Four domestic animals over four months old are kept, or in which more than two such animals are kept for breeding, boarding, training, compensation, or offered for sale." If the petitioner wants to keep two dogs to breed, she still needs a kennel permit.

Mr. Walsh said if that's the case, everyone in Elkhart County who is selling a litter of puppies would need a kennel permit. Mrs. Prough said yes, if they are doing it on a regular basis and a complaint is received.

The public hearing was closed at this time.

Mr. Homan said owning the dogs and having them attack the neighbors on adjacent properties is impacting the community. He said the kennels don't look appropriate and the comments from the Humane Society don't look optimistic. Operating a kennel in this location doesn't seem to meet the qualifications. Mr. Homan indicated he will not be able to support this request.

Mr. Lantz said they could eliminate the noise problem by taking them to the Humane Shelter. He would like to get them down to two or three adults.

Mrs. Wolgamood said as this petition stands right now with the information from the Humane Society, she couldn't support it.

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 kennel with outdoor pens and/or runs in an A-1 district (Specifications F - #15.10) be denied with the petitioner given six (6) months to reduce the number of adult dogs to a total of four (4) in compliance with the Elkhart County Zoning Ordinance. A roll call vote was taken and the motion was unanimously carried.

9. The application of ***Sunrise Orchards, Inc.*** for an amendment to an existing Special Use for a retail farm market to sell farm raised produce, to allow gift items to be sold, and to erect a greenhouse to expand retail plant sales on property located on the South side of CR 38, 830 ft. West of Orchard Drive, 2,600 ft. East of CR 21, common address of 19498 CR 38 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 #20082272*.

There were 30 neighboring property owners notified of this request.

Tom Kercher, 19498 CR 38, Goshen, was present on behalf of this request. Mr. Kercher explained that they recently discovered they are not in compliance with their current Special Use. He is here today to request that and make an amendment to include the sale of gift items. The original understanding of the restriction as far as gift items was to keep them from becoming a business like Essen Haus. Mr. Kercher believes they have respected that wish because produce sales accounts for over 90 percent of their retail sales. Over the 86 years they have been in business, they have sold fruit baskets. The customers have asked that they include other items to personalize and individualize the fruit baskets, so they have done that to accommodate their customers. The items in the fruit baskets compliment the locally grown produce in the area. In addition to selling the fruit baskets, they also compliment their produce with spring flowers.

Mr. Hesser asked how he recently became aware of non-compliance and the petitioner said when he heard from Mrs. Prough from Code Enforcement.

Mr. Kercher said they used to have an office in the retail area which was moved from downstairs to upstairs. They had some extra area downstairs after moving the office, so they added an area for the fruit baskets to compliment the produce.

Mr. Hesser asked if he wasn't aware of the restrictions when he started selling the fruit baskets in the late 90's. Mr. Kercher said no, not specifically because it evolved and they started adding things. He's asking that they be allowed to continue what they are currently doing.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she doesn't have a problem with this request.

Mr. Hesser said the fact that it went for ten years with nobody objecting until very recently, he doesn't have a problem with it. He does have a concern that the restriction was violated.

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 an amendment to an existing Special Use for a retail farm market to sell farm raised produce, to allow gift items to be sold, and to erect a greenhouse to expand retail plant sales be approved with all previous conditions to remain in effect. After a unanimous roll call vote, the motion was carried.

10. The application of ***Michael King*** for a Special Use for a home workshop/business for the repair of motorcycles (Specifications F - #45) on property located on the North side of CR 12, 320 ft. West of CR 1, common address of 30059 CR 12 in Cleveland Township, zoned R-1, came on to be heard.

One 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 #20082270*.

There were 11 neighboring property owners notified of this request.

Michael King, 30059 CR 12, Elkhart, was present on behalf of this request. Mr. King explained that he was hoping to get a Special Use permit for two or three years so he can get back on his feet financially. He just went through a divorce and the house is now in his name. He said he can't afford to rent a commercial building and pay his house payment at the same time. Mr. King said he doesn't really want to run a business from his house.

Mr. Hesser asked how long he's been doing this and the petitioner said around 14 years. He used to run this business at a different location on CR 6. He never had any complaints when the business was at that location.

Mr. Hesser asked if this is his full time job and he said yes, this is his only income.

Mrs. Wolgamood asked if this was his only income when he lived on CR 6 and the petitioner said yes, but his wife also worked at that time.

Mr. Homan asked the petitioner if he advertises, but Mr. King said it's only by word of mouth. He doesn't want a sign on the property at all.

Mrs. Wolgamood indicated that the photos submitted by staff show a number of motorcycles sitting outside. She asked if that is common and the petitioner said he has to push them outside sometimes when they are in the way. He can normally keep everything inside.

When the motorcycles are repaired, Mrs. Wolgamood questioned whether he has to run the engines quite frequently. Mr. King said yes, he has to run the engine to make sure it's being fixed right. He tries not to do that inside of the building because of the exhaust fumes, but he can run them inside if he needs to. He indicated that there is a way to muffle the noise of the engine.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood then questioned the zoning of the proposed property. She explained that the staff map indicates this is in an A-1 district, but the application and the staff report show that it's in an R-1 zoning.

Mr. Lantz asked exactly what the complaint was for and Mrs. Wolgamood read it for him.

Mr. Harrell indicated this has been an ongoing situation for the last couple of years. He thinks the wife had the house to begin with and it became quite a battle during the divorce. The complaint could have been very internal.

Mr. King indicated Forest River is directly across the street within 300 ft. and is a very heavy industrial area.

Mrs. Wolgamood asked what type of relationship he has with his immediate neighbors. The petitioner indicated his neighbors to the east are doing something he disapproves of and he doesn't want anything to do with them. He hasn't had any conversation with them.

Mr. Lantz asked how long the business has been at this location and Mr. King said a couple of years.

Mr. Homan explained to the petitioner that one of the characteristics of a home workshop/business is that everything is to be stored inside with low impact on neighboring properties.

Mr. King said he really doesn't want this business at his house, but it's the only option he has right now until he can get back on his feet financially.

Mr. Lantz said he would be inclined to approve it for one year and then review it at that time.

Mr. Harrell then clarified that the zoning is A-1.

Mr. Hesser asked if the plant across the street is manufacturing and Mr. Harrell said yes, it's heavy manufacturing.

Mr. Hesser said he would definitely be in favor of putting a time limit on the request.

Mrs. Wolgamood asked if he has a sign and the petitioner said he does, but it's not currently on display.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that based on the finding that this will be consistent with the spirit, purpose and intent of the Zoning Ordinance, this request for a Special Use for a home workshop/business for the repair of motorcycles (Specifications F - #45) be approved with the following conditions imposed:

1. All operation and all storage of the business is to be located within the building indicated on the site plan.
2. No more than two (2) outside employees.
3. Hours of operation are to be Monday through Friday, 9:00 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 3:00 p.m.
4. Sign limited to four (4) sq. ft. per side and unlighted.
5. The noise must be contained within the building.
6. Approved for a period of one (1) year with a renewal before the Board of Zoning Appeals. If a valid complaint is received by Code Enforcement, the Special Use is to be brought back before the Board for reconsideration.

The motion was carried after a unanimous roll call vote.

11. 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 4 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present on representing Mr. Slabaugh. A packet of papers was then submitted by Mr. Sloat including pictures, a petition in favor of this request, a list of conditions, and the approval letters for previous custom butchering Special Uses *[attached to file as Petitioner Exhibit #1]*. Mr. Sloat indicated that the petitioner has not applied for this because of a complaint. They realized mid-stream when the building had been partially constructed that a Special Use was needed. The petitioner is located on CR 101 on the west side of Nappanee. The area is predominately rural and the petitioner has taken a petition in favor of this request to all of the neighbors within one square mile to be signed.

Mr. Sloat then discussed the photos included in the packet to the Board. He pointed out that the permit which was pulled on July 30<sup>th</sup>, 2007, was originally going to be for personal

storage. Mr. Slabaugh then decided he might want to do some butchering work, but it wasn't his intention when he obtained the building permit. As time went on and the economies changed, he began looking at this type of business so he could work at home and be with his family. He would like to do custom meat processing and he found out from the Health Department that he needs to get a Special Use permit.

They considered having an agri-business instead of a Special Use because it allows for the processing of livestock and poultry. Mr. Sloat thought it might be better as a Special Use so the Board has more control over it. Filing this request as a Special Use allows the Board to set limitations such as hours of operation, number of employees, no outside storage, etc.

Mr. Slabaugh's intent is to get out of the RV work and have a stay at home business. There is a need for this type of operation in the area and the petitioner would like to do about four half to four head per day with two outside employees. Mr. Sloat said the petitioner will follow the proper requirements for the kill box, cooling, freezing, and processing. There will be no retail sales and everything will be done within the building. Any of the excess material will be handled with the proper holding tanks and disposed of to proper processing companies, which has to be picked up at certain times because otherwise it will deteriorate.

When looking at the custom butchering operations in the area, there really aren't very many. Wakarusa Stahly's Produce in Wakarusa, Martin's Custom Butchering on CR 42, and John's Custom Butchering in Nappanee are the only businesses in the area along with a Special Use that had been previously granted in 2006.

A list of the approval letter and conditions for Martin's and Leonard Miller is also included in the packets. Mr. Sloat has also included a list of proposed conditions for this operation. He then reviewed the conditions with the Board and explained that the petitioner would honor the conditions. Also included in the packet is a petition signed in favor of this request by 50 people in the surrounding rural Amish farm community.

Mr. Hesser asked if any changes would need to be made to the building and Mr. Sloat said there would need to be a kill pen because the area inside the building would be used for skinning. There would need to be a separation between the two areas, so they may need an addition on one side.

Mr. Hesser asked if the freezing is done on site and Mr. Sloat said no, that still has to be constructed.

Mr. Homan questioned the holding pen and Mr. Sloat said it will be a fenced-in outdoor pen to hold two or three animals.

On the questionnaire when traffic is addressed, Mr. Homan indicated there will be livestock trailers which can be as big as semi trailers. By looking at the site plan, the location of this building cuts off the turn-around area on the driveway. He asked what the plan is for getting traffic back out onto the county road without having to back onto the road. Mr. Sloat said it will be brought in on a fifth wheel trailer at the largest. There is a circle driveway where they can pull in, back-up, unload, and then drive out onto the county road. There is very little traffic on this road.

Mrs. Wolgamood asked if the building has been constructed across the turn-around and Mr. Sloat said no because this area has to be modified. There is a circle driveway that is filled completely with gravel. He can submit an updated site plan if that is a concern.

Mrs. Wolgamood asked if the proposed kill area will be the north and Mr. Sloat clarified that it will be to the east, located right next to the building.

The condition about retail sales was then questioned by Mrs. Wolgamood. Mr. Sloat said they won't be putting up a meat counter for retail sales. The live animal will be brought in and then they will come back and pick up 400 pounds of frozen meat.

Mr. Homan asked the staff about the Staff Analysis which talks about the building being built for one use and then asked to be used for something else. It also states that the plans were not reviewed by the State Fire Marshall. Mr. Harrell explained that this was built as an accessory building and doesn't have the same standards as a commercial building. The staff feels that this is now a commercial building with people coming in and bringing their product in, which should have gone for state approval. If the Fire Marshall were to catch that, then he would probably close down the operation. He suggested that if the Board approves this, then they should have an architect send the plan down to state to see if anything needs to be changed.

Mr. Homan said the petitioner filed this request as a home workshop/business and not as an agri-business. He noticed that the business in Middlebury was for an agri-business. He understands that the petitioner submitted the application as a Special Use because of all of the controls, but Mr. Homan asked how differently this would be looked at if it were filed as an agri-business. Mr. Harrell said as long as it's used for commercial use, then it's still a commercial building whether or not it's an agri-business or a slaughter house. He explained that the Bristol Fire Department was red tagged for almost one year for a single stall garage because they didn't send it down to state. Mr. Sloat said he understands that concern, but his client isn't familiar with all of these things.

Mr. Hesser said if it's approved as a home workshop, then it doesn't exempt it from the state requirements. Mr. Sloat said no, but they need to do what they need to do in order to make this right.

Mr. Lantz asked if it would be a problem to meet the state standard and Mr. Sloat said he thinks it was built to good standards, but they will have to find out.

Marion Eash, 72646 CR 101, Nappanee, was present in favor of this request. Mr. Eash pointed out his property on the aerial photo and explained that he is here today to speak on behalf of the neighborhood. He has seen this idea grow in the last year and the whole neighborhood is enthused about it. With the current economy the way it is, he has a problem of taking beef to Shipshewana or Stahly's because their orders are backed up. It would be a great benefit to him and the neighborhood to have this in the area. Having someone to process his meat would be a very good situation for him.

The public hearing was closed at this time.

Mr. Hesser asked Mr. Harrell if number ten of Mr. Sloat's conditions would address all of the issues of compliance. Mr. Harrell said that would suffice.

Mr. Hesser said he has a concern with the site plan and believes that a satisfactory one should be submitted and approved by the staff or the Board.

Mrs. Wolgamood said the site plan needs to include the kill area, holding pen, turn-around area, and customer parking. She said there are a number of things that the site plan doesn't even come close to showing.

Mr. Homan indicated that an outside pen on a farm isn't a big deal, but it doesn't fit the home workshop definition. He also believes the site plan is insufficient. The intensity will increase going from eight per week rather than four per day.

Mr. Hesser asked if the inclination is to deny it or to continue it to allow for a revised site plan that addresses the issues.

Mrs. Wolgamood indicated that there was an agri-business that was added to the Ordinance which is listed under #56. The definition of the agri-business is the commercial processing of agricultural products including livestock and poultry. She would be a whole lot more comfortable with the agri-business than the Special Use for a home workshop/business.

Mr. Homan said the intensity of the business is always a concern because they may want to build on to make it bigger.

Mr. Hesser said the Board has control over that with their consistency.

Part of the reason Mr. Sloat went with the Special Use is because it has a maximum of two employees. He knows expansion is a concern of the Board, but the business can't expand with only two employees.

Mrs. Wolgamood said if they went with the agri-business, they could've offered only two employees. Mr. Sloat said if they were to do that, they could've come back in a couple of years and asked for more employees.

One of Mrs. Wolgamood's main concerns is that the petitioner is continuing to do his construction without state approval and proper local approval.

Mr. Homan said the building needs to be brought into state compliance and intensity is a big concern.

For this to be considered as an agri-business, Mr. Hesser asked if it would need to be re-advertised and Mr. Harrell said yes.

Mr. Hesser said he doesn't have a problem with this type of operation at this location, he just wants to make sure it's done the right way. He thinks the Board needs a better site plan.

Mrs. Wolgamood asked if they can include as a condition that the petitioner is to suspend all construction until everything has been resolved. Mr. Shuler said not unless there is a zoning violation with having the building there that should prevent him from using it. The petitioner does need approval from the Board to have this appropriate use.

Mr. Harrell said the petitioner can't finish up the building until they get the state plans back. If he covers anything up that the county inspectors need to inspect, then he will have to tear it off.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that this request for a Special Use for a home workshop/business for a custom butchering operation (Specifications F - #45) be tabled until the August 21, 2008, Board of Zoning Appeals to allow the petitioner to submit a revised site plan addressing the following issues:

1. Location of kill area
2. Location of holding pen
3. Customer parking area
4. Turn-around area

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

12. The application of *Marlin & Dorothy Schrock* for a Special Use for an agricultural use for the keeping of three horses on a tract of land containing less than three acres (Specifications F - #1.00) on property located on the East side of CR 35, 650 ft. North of CR 38, being Lot 2 of Hummingbird Minor Subdivision, common address of 64898 CR 35 in Clinton Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082283*.

There were 8 neighboring property owners notified of this request.

Marlin Schrock, 64898 CR 35, Goshen, was present on behalf of this request. Mr. Schrock said he would like to have a legal use to keep horses on property that is less than three acres. He is asking for three horses just in case one of them gets a cold.

Mr. Hesser asked if he is just less than two acres and the petitioner said yes.

Mr. Hesser said the staff recommendation is for two adult horses. Mr. Schrock said he is asking for three in case one has a cold, they won't have to get rid of an adult horse.

Mr. Hesser asked Mr. Harrell when a horse is considered an adult and he said one year. A horse goes from a yearling to an adult.

Mr. Hesser asked if it would be sufficient to have two adults and one less than one year old.

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/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 an agricultural use for the keeping of three horses on a tract of land containing less than three acres (Specifications F - #1.00) be approved with the number of adult horses limited to two (2). After a unanimous roll call vote was taken, the motion was carried.

13. The application of **Andrew Lambright** for a Special Use for a roadside stand for the sale by the owner of fruits, vegetables, and plant nursery products raised on premises and for a u-pick-it area for the above mentioned crops in an A-1 district (Specifications F - #54) on property located on the South side of CR 22, at intersection with CR 35, common address of 14304 CR 22 in Middlebury Township came on to be heard.

One 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 #20082286*.

Mr. Harrell indicated he received a call from Brad Hooley, owner of the surrounding property, who has no objections to this request.

There were 10 neighboring property owners notified of this request.

Andrew Lambright, 14304 CR 22, Goshen, was present on behalf of this request. Mr. Lambright explained that he hasn't yet planted anything, but he would like to plant blueberries to the rear of the property in the future. Before he proceeds with the planting, he wants to have approval from the Board of Zoning Appeals for a "you pick" area.

Mr. Lambright has one neighbor that has a strawberry patch and one neighbor who sells raspberries. Neither of the neighbors have a Special Use, but he suggested that they rectify that before next season's crops are ready to go. He thinks this would go very well with what the neighbor's have going.

The question of traffic always comes up with Special Uses, but Mr. Lambright indicated he has no idea at this point. The petitioner is asking for four employees other than he and his

wife, which will be very seasonable. The employees will help pull weeds and pick berries if the public doesn't pick enough of them.

There is plenty of parking on the proposed property. Mr. Lambright pointed out his driveway on the aerial photo which circles around in front of his barn.

Mrs. Wolgamood asked if the parking area for the customers would have the availability for them to turn around on the property. The petitioner said yes, they have to drive through his circle drive in order to get to the parking area.

Mrs. Wolgamood asked if the tent for retail sales would be for the shading of the berries and Mr. Lambright said yes and indicated it will be located back by the barn. He has a long driveway, so people will have to drive in and park. Mr. Lambright explained that will eliminate backing out onto the county road.

The site plan indicates there will be apples, grapes, and nursery stock to the north, which is closer to the road. Mrs. Wolgamood asked if people will be parking up there and Mr. Lambright said no, they have to drive back to the property.

The petitioner indicated that he spoke with Susie Neff from the Elkhart County Highway Department and she indicated that he is currently in compliance. He has spoken to the neighbors regarding this request and they have no problem with it.

Mr. Homan asked where the sign would be located. Mr. Lambright indicated he hasn't even thought about it, but if he does put out a sign then it will be seasonal.

Mr. Homan then asked if there is corn planted out by the road and the petitioner said yes. He questioned whether there is sufficient room for the sign and Mr. Lambright said yes because of the angle of the road, the corn is not planted all the way to the driveway. He has a 20 ft. grass strip before the corn starts.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser indicated that there is nothing in the staff report said about hours, a time limit, or number of employees. Mr. Harrell pointed out that the petitioner asked for four employees.

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 roadside stand for the sale by the owner of fruits, vegetables, and plant nursery products raised on premises and for a u-pick-it area for the above mentioned crops in an A-1 district (Specifications F - #54) be approved with the following conditions imposed:

1. Approved as per site plan submitted.
2. No backing onto CR 35.
3. One (1) sign, no larger than four (4) sq. ft. per side and unlighted.
4. Approved for the owner/occupant of the residence on site.
5. Sales are to be limited to the house/barn area as indicated on the site plan.
6. Hours of operation are to be Monday through Saturday, 6:00 a.m. to 4:00 p.m.
7. Number of employees limited to six (6).

14. The application of **Kenneth W. Murr** for a Special Use for a home workshop/business for light automotive repair (Specifications F - #45) on property located on the South side of Oakhills Drive and North side of SR 120, 1,300 ft. West of SR 13, being re-plat of Lot 22 and Lot 23 of

Oak Hills Third, in Oak Hills Fourth, common address of 11530 Oakhills Drive 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 #20082276*.

There were 12 neighboring property owners notified of this request.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9<sup>th</sup> Street, Goshen, was present representing Mr. Murr. Mr. Pharis explained that the property adjacent to Mr. Murr's subdivision came available for sale and he purchased it. In 1996, Brads-Ko Engineering was given the privilege of platting Oak Hills Second Subdivision.

In the first conversations with Mr. Murr, he indicated that he wanted to have lots that permit the owners to have an out building. There are at least two other residences that have out buildings accessible by driveway in this subdivision.

Mr. Murr's neighbor has a business and started storing all of his equipment in the backyard. The neighbors knew that Mr. Murr created the covenants, so they went to him and asked that those neighbors be stopped. He then spoke to the neighbors with the business and he was told that they were going to build a building, which never happened. This caused the other neighbors to get angrier and Mr. Murr filed a complaint with Code Enforcement. In return, that neighbor filed a complaint against the petitioner, which is what has brought them here today.

Mr. Pharis said he can't find anything in the Elkhart County Zoning Ordinance to specify this because it's not a business. The petitioner doesn't want a sign and has no outside storage. It is only a place where he goes to work on his neighbor's, family's, and friend's equipment. Mr. Pharis said he's not saying that the petitioner has never been paid to do some work from time to time, but this is not a business.

Mr. Hesser asked if there is another person that the petitioner lets use the premises, but Mr. Pharis said it would be friends only. Mr. Murr has no employees for this business.

Mr. Pharis indicated that cars aren't coming and going and the petitioner has a full-time job that he must deal with. He's trying to continue to have his avocation of working on cars in his garage.

The only reason the petitioner is here is because of an aggravated neighbor who isn't even here today to talk about it. There are other neighbors here today who are in favor of this request. The petition was filed with a letter from the Oakhills Golf Course stating that they appreciate the way Mr. Murr takes care of his property and the things he's done for them. Mr. Pharis said the one thing the letter doesn't say is that Mr. Murr has never charged them a penny. The petitioner also helps the neighbors by tuning up their mowers, changing the oil, sharpening the mower blade, etc.

Mrs. Wolgamood indicated when she read the inspection reports, she recalled a vehicle or two being parked outside. Mr. Pharis said from time to time he has a car parked there, but he doesn't work on the cars outside.

Mrs. Wolgamood said one of the characteristics of a home workshop/business is that there is to be no outside storage and Mr. Pharis said there will be none.

Peter B. Hersey, 11539 Oak Hills Drive, Middlebury, was present in favor of this request. Mr. Hersey said he lives on the north side of the cul-de-sac. He moved to this home in 2004 from the Boston area and it is a very nice subdivision. They are here in favor of this Special Use

for light automotive repair. Mr. Hersey then submitted a copy of a letter in favor of this request *[attached to file as Petitioner Exhibit #1]*.

The public hearing was closed at this time.

Mr. Hesser said it doesn't sound like the petitioner is operating a full blown garage. He has offered the conditions of no signs, no employees and no outside storage.

Kenneth Murr, 11530 Oakhills Drive, Middlebury, was present on behalf of this request. Mr. Murr indicated to the Board that he never works past 8:00 p.m.

Mr. Homan then questioned the access on SR 120. Mr. Pharis explained that in 1996 when this plat was subdivided, a no access easement was platted along the entire SR 120 right of way. There was always an access point going from Mr. Murr's garage that has always been used to fill the property. In 2003, the petitioner built his garage and obtained an INDOT curb cut permit for access to that garage. Somehow it was determined that the no access easement was there and INDOT rescinded the permit until that was resolved. In 2003, Brads-Ko Engineering & Surveying platted his two lots and eliminated the non-access at his driveway. It was then recorded and resubmitted to INDOT, which caused the curb cut permit to be reinstated. The petitioner has one curb cut permit for SR 120 and the neighbor filing the complaint is using a curb cut permit that is not INDOT approved.

Mr. Homan asked if granting a Special Use for a home workshop/business violates any conditions of the approval from the state. Mr. Pharis indicated no.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) 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 a home workshop/business for light automotive repair (Specifications F - #45) be approved with the following conditions imposed:

1. Limited to the owner/occupant of the residence on site.
2. No signs allowed.
3. No employees are to be permitted.
4. There is to be no outside storage.
5. Hours of operation limited to daylight hours.

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

15. The application of **David P. Gratton** for a Special Use for a mobile home to be occupied by the petitioner while constructing the primary dwelling, and a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on property located on the North side of CR 14, 1,957 ft. East of SR 15, common address of 17771 CR 14 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082194*.

There were 14 neighboring property owners notified of this request.

Mrs. Wolgamood questioned Staff Analysis #1 that states "The reason for this application is due to the relocation of the house site on the original application and neighborhood concerns." She asked if those are neighborhood concerns with the new site plan or the original. Mr. Harrell said the site plan originally had the house up front and the petitioner would now like to move it

back by the pond, which was not on the original site plan. The neighbors to the west are the ones with a concern about this request.

Mr. Hesser asked if the neighbor to the west had a concern about the original request and Mr. Harrell said no, he has a concern with this particular request.

Mrs. Wolgamood asked if the letter for the withdrawal of the Special Use is valid and Mr. Harrell said yes.

Dave Gratton, 17103 SR 4, Goshen, was present on behalf of this request. Mr. Gratton said he recently purchased the property at 17771 CR 14 and he would like to withdraw his request for a Special Use. He does not want to put a temporary mobile home on the property, but he does want to update his Variance that was previously granted. He would like to put a pole barn 405 ft. back from the center line of the road. He had originally asked for 265 ft., but Nipsco informed him that the pole barn would need to be back 405 ft. to equalize the distance of the transformer. He would like to put the house about 1,000 ft. back from the center line of the road, which he pointed out on the aerial photo.

Mr. Gratton said he is aware of the neighbor to the west who has a little bit of a problem with his plan. He took a photo from where his front porch will be to the neighbor to the west's house and he doesn't think it will be an issue. Mr. Gratton then submitted the photo showing the view from his house *[attached to file as Petitioner Exhibit #1]*.

Attorney Galen Kauffman, 112 S. 5<sup>th</sup> Street, Goshen, was present representing Doug and Susan Von Ins who live at 17855 CR 14, Goshen. Mr. Kauffman then pointed out the Von Ins' property on the aerial photo. The house that the petitioner is proposing will be further back than what had been previously stated. The last site plan he saw gave a frontage measurement of 138 ft., but the deed from May of this year lists that frontage as 124.9 ft. His concern is that the Board needs to know exactly what the frontage will be. If the petitioner is willing to play fast and loose with the frontage, then it may be that way with where the house sits and other building requirements.

Mr. Kauffman said his clients have a beautifully manicured lawn with a pond. The area in between the proposed property and his clients' property is completely wooded. If the petitioner were to build a house and the woods stay there, then the Von Ins don't have a concern with this request. The reason his clients bought the property they have now is for privacy because it's very far off of the road. If Mr. Gratton builds a house there and manicures the property, then there will be a clear line of sight from house to house. The only way his clients are willing to have this approved is if there is a requirement placed by the Board for a line of sight barrier of natural vegetation of at least 20 ft.

Jeffrey Richter, 17807 CR 14, Goshen, was present with a concern regarding this request. He pointed out his property on parcel two and indicated his only issue is that there have been some property line issues. Mr. Richter bought his property in 2004 and when Mr. Gratton bought the property, the east line had to move ten ft. When he came to the Elkhart County Building Department, he was informed that he would need to talk with Wightman & Petrie. After contacting them, they said they were going to come out and resurvey everything because there are several lines in question. Overall, he would like to know where the property lines lie.

Mr. Gratton said there shouldn't be an issue and he's not sure how the neighbors can ask him to maintain the barrier when they are the ones who are concerned about it. He will do what he has to do, but he has the option to clear cut that lot.

Mr. Lantz asked the petitioner if he would feel inhibited with a restriction on the property and Mr. Gratton said no. The petitioner said he is back there for his privacy and has no plans of clearing the area.

In the history, Mr. Hesser said there was also a Variance granted at the Hearing Officer meeting regarding the lot width. He asked if that is still an issue and the petitioner said that was his mistake because he was using the unapproved survey with the ten ft. discrepancy in it.

The public hearing was closed at this time.

Mrs. Wolgamood said there have been a number of 3 to 1 depth to width ratio Variances that have come before Hearing Officer and the full Board of Zoning Appeals. They have not given a site plan showing where the house is located. She's not sure if it's absolutely required, but she has questions as to whether or not the Board has jurisdiction over where they place the house on the property.

Mr. Kauffman said his understanding of the prior hearing was a 3 to 1 Variance with the house being located up by the road where the pole barn is now going to be located.

Mr. Harrell indicated that the petitioner's have not asked for a road frontage Variance.

The Variance will be approved as it stands with all of the current conditions.

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 the Findings of the Board, and based upon these Findings, this request for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence be approved. After a unanimous roll call vote was taken, the motion was carried. The Special Use for the mobile home was withdrawn by the petitioner.

16. The application of **Wilbur Miller** for a Special Use for warehousing and storing of a milk truck and trailer in an A-1 district (Specifications F - #44) and a Developmental Variance to allow the total square footage of accessory structures (4,400), to exceed the total square footage in the primary structure (2,775), a difference of 1,625 sq. ft., on property located on the Northwest corner of CR 20 and CR 43, common address of 11035 CR 20 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082289*.

There were 6 neighboring property owners notified of this request.

Mrs. Wolgamood asked if the house is there and Mr. Harrell said no. Mr. Gingerich said they have started stripping the dirt and would like to pick up the permit today.

Jeremy Gingerich, Jeremy's Construction, 51153 CR 133, Bristol, was present representing Mr. Miller. Mr. Gingerich said they are building a new house and the petitioner would also like a pole barn beside the house. The pole barn is going to exceed the total square footage of the house by 1,200 sq. ft.

Mrs. Wolgamood asked Mr. Gingerich if this is his full-time profession and he said yes.

She then asked if the tanker is very big and Mr. Gingerich said there will be a semi truck and a tanker trailer. There will be two pieces of equipment, which will fit in the 40 x 80 pole building. He would like to store them there so they are out of the weather. Mr. Gingerich indicated that the petitioner is in and out every day.

Mr. Lantz asked if the petitioner will have enough room to turn around on the property. Mr. Gingerich said that is the reason they want two driveways, but if not, the driveway will have

to be split in between the house and the pole barn to allow Mr. Miller to back in. The reason for the second driveway was because it would be more comfortable for Mr. Miller to pull up and back up straight into the building, which would be less of a safety issue.

Mr. Hesser asked if there is going to be an area big enough that he will be able to turn the truck around on his property. Mr. Gingerich said no, what they drew on the site plan was two separate driveways. One of them was going to be only for the pole barn so he could back in off of the road. If that is not approved, there will just be on centralized driveway that will "Y" off to the house and the pole barn.

Mrs. Wolgamood asked if he would then be able to pull into the driveway and Mr. Gingerich said he could pull in or back in.

Mr. Hesser indicated that backing off of the road is a problem and it's not something that has looked favorable in the past. He said a circle driveway would be preferred with only one access off of the county road.

Mr. Gingerich asked if he could have two entrances or just one. Mr. Lantz said it doesn't matter, but one would be ideal. Mr. Gingerich indicated that the petitioner prefers to have two.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked the staff if they would prefer a single entrance with a turn around area. Mr. Harrell said the Elkhart County Highway Department would have that initial decision. He would rather have two drives than having them back out onto the county highway.

Mrs. Wolgamood asked if there is a stop sign at the intersection of CR 20 and CR 43 and Mr. Harrell said yes.

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 warehousing and storing of a milk truck and trailer in an A-1 district (Specifications F - #44) and a Developmental Variance to allow the total square footage of accessory structures (4,400), to exceed the total square footage in the primary structure (2,775), a difference of 1,625 sq. ft., be approved with the following conditions imposed:

1. Site plan is to be re-submitted showing turn around on the property prior to issuance of the zoning clearance.
2. Approved for the owner/operator of the milk truck and owner/occupant of the residence on site.
3. Approved for the on site storage of a milk truck only.
4. No backing onto or off of the county road with the milk truck.

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

17. The application of **Dan H. Bowman** for a Special Use renewal for an existing home workshop/business for a custom leather work business (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (6,088) to exceed the total square footage in the primary structure (5,368), a difference of 720 sq. ft., on property located on the West side of CR 43, 1,290 ft. North of CR 10, common address of 54271 CR 43 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 #20082106*.

There were 7 neighboring property owners notified of this request.

Mr. Harrell explained that the petitioner would like to enclose the loading dock.

Mrs. Wolgamood questioned number three of the history and asked if the petitioner submitted a new site plan. Mr. Harrell said it's the site plan from the original set of conditions. Mrs. Wolgamood indicated it is obsolete because it shows several of the buildings as proposed. Mrs. Wilson clarified that it is the old site plan and the changes were made to it, but "proposed" wasn't taken off. Mr. Harrell said that all of the buildings listed as proposed are now in place.

Daniel Bowman, 54329 CR 43, Middlebury, was present on behalf of this request. Mr. Bowman said they are asking for a renewal of their home workshop/business for an indefinite period of time. The addition would be to only enclose the existing open dock. They are asking for a renewal of their home workshop/business. The addition is only to enclose the existing open dock.

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/Lantz*) 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 existing home workshop/business for a custom leather work business (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (6,088) to exceed the total square footage in the primary structure (5,368), a difference of 720 sq. ft. be approved with all original conditions to remain in effect with the exception of #3 and #5 as follows:

1. Approved for owner/occupant of the property.
2. The petitioner to comply with all conditions listed under the Special Use for a home workshop/business (including the number of employees and signage).
3. Hours of operation from 7:00 a.m. to 5:00 p.m. Monday through Friday, 7:00 a.m. to 12:00 p.m. on Saturday, and no Sunday operations.
4. If valid complaints are received by Code Enforcement, the Special Use will be returned to the Board of Zoning Appeals for further consideration.

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

18. The application of *Aaron Sawatsky-Kingsley* for an Appeal to allow for the construction of a second residence on a single zoning lot on property located on the East side of CR 21, 2,420 ft. North of Skyview Drive, common address of 61074 CR 21 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 #20082260*.

There were 9 neighboring property owners notified of this request.

Aaron Sawatsky-Kingsley, 61074 CR 21, Goshen, was present on behalf of this request. Mr. Sawatsky-Kingsley then pointed out his property on the aerial photo. He explained that they are in the very early stages of putting together a plan where he and his wife would allow his

brother and sister-in-law to jointly own the land. Part of having them join in on their property, he's asking that they be allowed to build a second residence to provide for both families.

The reason they are interested in doing this is because a ten acre lot like this is rare being so close to the cities and towns of Elkhart County. Mr. Sawatsky-Kingsley said he would like to preserve the continuity of that acreage as long as they can. They are especially interested in doing some small scale family farming on this property. He feels that this type of farming will become an increasingly important mix of the economies of Elkhart County in the future and he would like to participate in that. Their basic proposal is to build a second residence so they can work together on this property have a successful farming experience. The petitioner said he realizes they are in the very beginning stages of their process and they are as much here to ask for advice about how to proceed as to receive any approval. They have no imminent plans at this point, but they are just trying to figure out what to do.

Mr. Lantz asked if they want to keep joint ownership and Mr. Sawatsky-Kingsley said yes. Mr. Lantz asked if they could divide the property with joint ownership because that would allow them to build a house on each parcel. The petitioner said he has considered that, but they are interested in preserving a larger chunk of land beyond their own lifetimes.

Mrs. Wolgamood indicated the Board has a request in front of them today for two houses on one property. She doesn't think it's up to the Board to tell them better or different ways to deal with the property in question. Due to the configuration of this property, if it were to be split in any manner, then the petitioner would be back before the Board or the Hearing Officer asking for Variances. She indicated the staff is very capable of giving the advice that he may need.

Nathan Kingsley, 614 3<sup>rd</sup> Street West, Montana, was also present on behalf of this request. Mr. Kingsley explained they have been looking for quite some time for a way to move back into the area. He grew up in the Elkhart/Goshen area and he would like to do some small scale farming close to town.

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/Lantz*) 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 unanimously.

19. The application of **Robert K. & Carol M. Duncan** for an Appeal to allow for the construction of an accessory structure prior to the construction of a residence on property located on the East side of CR 25, 2,100 ft. South of CR 46 in Jackson Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082107*.

There were 4 neighboring property owners notified of this request.

Robert Duncan, 451 E. Nelson Drive, Milford, was present on behalf of this request. Mr. Duncan would like to put his barn up before he puts his house up so he has a place to store his tractor and other supplies.

Mr. Hesser asked when he plans on building the house and the petitioner said it depends on when his other house can sell, which will probably be within one year.

Mrs. Wolgamood said there are a lot of empty parcels along this road and asked how many of those parcels have houses on them now. Mr. Duncan said none, but there are a couple of barns on one of the properties. He also pointed out the location of a house on the same side of the road which is currently being constructed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said the concern with these is that if it were approved, the person could build the accessory building and then never get around to building the house.

Mrs. Wolgamood also indicated that there are a lot of storage facilities that the petitioner could utilize.

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 an Appeal to allow for the construction of an accessory structure prior to the construction of a residence be denied. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Hesser – yes.

20. The application of *Elmer Lehman* 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 43, 860 ft. South of SR 120, common address of 53185 CR 43 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 #20082288*.

There were 8 neighboring property owners notified of this request.

Elmer Lehman, 53185 CR 43, Middlebury, was present on behalf of this request. He explained that he would like to separate a three acre lot from the proposed property. He's asking that this be approved so if he has septic problems, then he won't be on a sub-standard lot without a Variance.

Mr. Hesser asked if the lot that will be the full three acres will be the new one and Mr. Lehman said yes. The other parcel would be 2.9631 acres.

Bob Beck, 53329 CR 43, Middlebury, was present in favor of this request. Mr. Beck said he currently lives two houses down and he is interested in buying the property. The petitioner contacted him wanting him to sell the property because Mr. Beck is a real estate agent. Mr. Beck is interested in having water rights, but before they went any further, he wanted to be sure that the proper Variances were filed for. Mr. Beck said he plans to build his future home on this property. He's not sure if he would have proper rights and if there is a fence line there, then he would only be able to use a certain area of the property. If that's the case, then it changes the situation for him because he would list the property up for sale.

Mike Rhude, 10920 SR 120, Middlebury, was present in opposition to this request. Mr. Rhude said he owns 61 acres around the proposed property. He said the petitioner and Mr. Beck have abused his property rights on a regular basis. Mr. Beck has gone onto his property fishing and Mr. Rhude said he has contacted his Attorney about this issue in general. If he doesn't enforce his property rights and someone drowns on that property, then he will be held liable. He has had people shoot at his building from Mr. Lehman's property and over his wife's head while

she was kayaking on the property. He has had pellet damage from shotgun blasts and he had to call the Conservation Office. Mr. Rhude respects his rights and property rights that the petitioner should be able to subdivide the land and sell it, but he asked that if this is granted then some type of permanent barricade should be put up. That will eliminate the people coming onto his property and leaving trash everywhere. He is tired of people abusing his property.

Mr. Lantz said the one issue he may face is that when you put up a fence or barricade, you are responsible for the right half. Mr. Rhude said he would be willing to pay for half of that.

Mr. Lehman said he often times has people come across to his property to go fishing, which he has no problem with. He has no problem with the petitioner wanting to fence the property. He enjoys fishing on the property and has done it for 20 years. No hunting is allowed and he limits the amount of family and friends that come in and go fishing on his property.

Mrs. Wolgamood asked the pole building currently on the property is used for animals and the petitioner said no, it's used for personal storage. Mr. Lehman said he is currently unemployed and getting ready to retire, so he uses it as a hobby.

The public hearing was closed at this time.

Mr. Shuler said the fence issue is more of a civil matter that would have to be dealt with between the neighbors. The Board is particularly talking about the land use and whether it's appropriate to divide this lot.

Mr. Hesser said people trespassing on your property is a concern, but the Board can only vote on whether or not it's appropriate to divide this particular lot. It's so close to being six acres, he's able to split it.

Mrs. Wolgamood indicated the property meets all of the other criteria as well.

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 an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance be approved. A roll call vote was taken and the motion was carried with a unanimous vote.

21. The application of **Larry & Freda Hochstetler** 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 52, 1,134 ft. East of CR 19, common address of 20760 CR 52 in Jackson Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082269*.

There were 7 neighboring property owners notified of this request.

Larry Hostetler, 20760 CR 52, New Paris, was present on behalf of this request. Mr. Hostetler indicated this was his sister's property and she couldn't take care of it anymore. Mr. Hostetler and his wife sold their land and want to build another home on her land, which requires an Appeal. His sister can't take care of the property anymore and they would like to help her with the 13 acres. The proposed location of the new house would be behind the existing house. Mr. Hostetler said his sister's house is not repairable and will need to be torn down once she passes away.

Amos Ramer, 20700 CR 52, New Paris, was present in favor of this request. Mr. Ramer said he believes this will be an asset to the community. The property is already looking better in the few weeks that he has been there.

Mr. Hesser asked the petitioner to address the code violation issues. Mr. Hostetler said all of their furniture is in the semi truck because they sold their home. Everything they didn't sell was placed in the trailer and parked on his sister's property. They bought a cheap camper to live in for the meantime and they use her bathroom.

Mr. Hesser asked if they have given any consideration to building the new house to accommodate his sister as well as his own family. Mr. Hostetler said his sister could live with him.

The public hearing was closed at this time.

Mr. Hesser feels there are more appropriate ways of dealing with this situation.

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 a second residence on a single zoning lot be denied. After a unanimous roll call vote, the motion was carried.

22. The application of **Barbara & Richard Kindel** for a 3 to 1 depth to width ratio Variance and a 50 ft. lot width Variance to allow for an existing residence on property located on the South side of US 20, 446 ft. West of CR 29, common address of 16866 US 20 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082005*.

There were 11 neighboring property owners notified of this request.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9<sup>th</sup> Street, Goshen, was present representing Mr. and Mrs. Kindel. Tom McCarther, Executive Director of Habitat for Humanity was also present for today's meeting. Mr. Pharis explained that one of Mr. and Mrs. Kindel's sons has gone through the Habitat for Humanity process and is now ready to build a home. The petitioners would like to make sure that he has enough property. Mr. Pharis pointed out their existing property on the aerial photo and where the existing residence is located.

The property to the south and west is now used as a horse path riding area. The existing driveway will stay where it is currently located.

Mr. Hesser said the only things that are mentioned in the Staff Report are the three to one depth to width ratio and the 50 ft. lot width Variance. In all of the drawings, it shows the three lots and none of which are three acres. Mr. Pharis indicated that it is a parent to child split, so it doesn't have to be three acres.

When each of the three tracts are transferred to each child, then the stand alone parcel will need the 50 ft. Variance and the three to one depth to width ratio Variance. The staff's initial concern is that they would add three driveways on US 20, but he knew that it was not going to be feasible from the beginning. Mr. Pharis said their plan with a line of sight survey was to locate the one spot that is safe to enter and exit US 20, which he pointed out on the aerial photo. They have created a single point of access to US 20 that is able to allow a school bus, postman and trash service to get off onto US 20.

Mr. Pharis said the plan has been submitted to INDOT and they have reviewed the plan, done the on site inspection, and approved it.

The Kindel's are also self imposing the inability to re-subdivide the balance of the property because they don't have enough frontage to create a road.

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/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 3 to 1 depth to width ratio Variance and a 50 ft. lot width Variance to allow for an existing residence be approved as per site plan submitted. A roll call vote was taken and the motion was unanimously carried.

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

24. There were no audience items.

25. There were no Staff/Board items.

26. The meeting was adjourned at 12:29 P.M.

Respectfully submitted.

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Kate A. Barghahn, Recording Secretary

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Randy Hesser, Chairman

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Tom Lantz, Secretary