

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF JUNE 2008 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Robert Homan, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; Ann Prough, Code Enforcement Officer; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of May be approved as read with the following correction: Paragraph one indicates that Mr. Harrell was present at the meeting, but he was not. After a unanimous roll call vote was taken, the motion was carried.

3. A motion was made and seconded (*Wolgamood/Lantz*) that the legal advertisements, having been published on the 7th day of June 2008 in the Goshen News and on the 9th day of June 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 (*Miller/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 (*Miller/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 **Karen Lehman** for a Special Use for a bed and breakfast homestay in an R-2 district (Specifications F - #4.50) on property located on the Southeast corner of Main Street and Lawrence Street, 100 ft. West of State Street, being Lots 5, 6, & 7 of Middlebury (Original Town), common address of 302 S. Main Street in Middlebury Township, 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 #20082002*.

There were 30 neighboring property owners notified of this request.

Karen Lehman, 203 S. Main Street, Middlebury, was present on behalf of this request. Ms. Lehman submitted a page of pictures of the proposed Bed and Breakfast to the Board *[attached to file as Petitioner Exhibit #1]*. She explained that the property has some historical appeal and it dates back to the 1870's. In Fredericksburg, Texas, Ms. Lehman has owned and operated another Bed and Breakfast with great success. The business would have very little impact on the local area.

Ms. Lehman tends to deal with an upper level clientele and she has furnished the home with several time period pieces. She is very particular with who stays there and children would be discouraged.

Mrs. Wolgamood said the questionnaire indicates that there will be four parking spaces available. She indicated that the parking spaces aren't shown on the site plan and asked the petitioner to point those out. Ms. Lehman said she does have a double driveway and that is where the four vehicles would be parked.

Mrs. Wolgamood asked if there would be parking on Lawrence Street or Main Street and the petitioner said definitely not on Main Street. She doesn't believe it will ever be required to park on the street because there are a limited number of people staying for weekend use. The parking would rarely ever be an issue. Mrs. Wolgamood clarified that one of the requirements for a Special Use is that there is to be off street parking.

Mrs. Wolgamood asked about sign regulations for Middlebury and Ms. Lehman said she does have a sign company who are presently researching that information. She has had sign permits for Elkhart, but she intends to design the sign to fit the requirements.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said he was a little concerned about parking, but he believes there is adequate space with the limited amount of room availability.

Mrs. Wolgamood said condition #2 of the Staff Report prompted her question regarding parking, but the petitioner has indicated it will be in the driveway.

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 a Special Use for a bed and breakfast homestay in an R-2 district (Specifications F - #4.50) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. One (1) sign permitted in accordance with the Middlebury sign ordinance.
3. Approved as per site plan submitted with off-street parking provided.
4. Local fire authorities should be advised of the bed and breakfast on this site.
5. Bed and breakfast to be operated in compliance with the Elkhart County Zoning Ordinance definition of a bed and breakfast homestay.

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

8. The application of **Jody & Linda Corbin** for a Special Use for a kennel for animal rescue with indoor and outdoor pens and runs (Specifications F - #15.00 & #15.10) on property located on the Southeast corner of CR 27 and US 20, common address of 57010 CR 27 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 #20081925*.

There were 8 neighboring property owners notified of this request.

Jody and Linda Corbin, 57010 CR 27, Goshen, were present on behalf of this request. Mr. Corbin explained they are trying to run a small animal rescue. They keep the dogs in the

detached barn on the west side of the property and they have indoor/outdoor facilities. Most of the animals are fixed and they are trying not to breed them.

Mr. Corbin indicated they do have plenty of off street parking. They have access to the county road and also the state highway.

Mrs. Corbin said one of the things they've done to alleviate the barking problem is to fence in the area on the northeast corner of the property. She explained that several of the dogs have been through a house fire. Sometimes when they see the neighbor come outside to light his fire, the dogs are frightened and bark.

Several of the dogs have been through a house fire and they are scared of it, which is why they bark. The puppies are to the south of the property.

Mrs. Corbin said there are so many animals who need homes and they will be putting the dogs on petfinder.com to find them good places to live.

She is only considering taking two other dogs at this point, because they are very near capacity for feeding and housing these animals.

Mrs. Wolgamood asked what the maximum number of dogs is that she would have at any one time and the petitioner said 20. Mrs. Corbin indicated they have a cock-a-poo who is 14 years old. He doesn't have much time left to live, but she would like to give him the most comfortable life she can because his original owner has passed away.

Mr. Corbin said that most of the animals have come from either abusive places or people who just gave them up.

Regarding the waste disposal, Mr. Corbin said they have two teenage boys who shovel the waste areas each day. They bag them up and dispose of them in the proper trash receptacles. They would like to put in a garden area to be tilling the waste into the ground for fertilization.

Mrs. Wolgamood asked how often they have the waste removed from the site and Mr. Corbin said weekly. Mrs. Corbin said she feeds them a higher protein dog food and there is less waste than what there would be with a lower quality dog food.

Mrs. Wolgamood then indicated to the petitioner that there was a petition in opposition submitted prior to the meeting. She gave them a copy of the petition to review. She asked them to review #2 of the petition, which is a concern regarding dogs getting free and roaming the neighborhood. Mr. Corbin said they have tried to limit this by putting up different fencing. The kennel has also been replaced, which is now in much better condition. They would like to put a roof over the top of the kennel. The puppies also have indoor facilities and they will be putting chain link over the doors and windows so they can't escape. Mrs. Corbin said they also plan to put new siding on the building.

As far as harming small children, Mrs. Corbin said her grandchildren play with the dogs. They have never had an issue with the dogs being aggressive towards children in the past.

Mrs. Wolgamood asked the petitioner if they need to be licensed to run this type of operation. Mrs. Corbin said yes, they are in the process of getting a 501C3 from the federal government. When she went to all of the other rescues in the area, none of them mentioned a Special Use permit.

Mr. Hesser asked if they want to set up a non-profit entity and the petitioners said yes. Mrs. Corbin said there are no licensing requirements until you get the 5013C, which would then work with the humane society.

Cameron Weible, 17664 US 20, Goshen, was present in opposition of this request. Mr. Weible indicated he lives directly east of the proposed property. He was the person who submitted the petition in remonstrance.

Mr. Weible said the dogs are chained up from early in the morning until 10:00 p.m. or later. He explained that the dogs bark at all times, not only when he is out in the yard. The neighborhood used to be relatively quiet and now it's filled with dogs barking.

One gentleman who signed the remonstrance petition was very upset that the dogs have trespassed on his property many times. There was also an incident where a lady had small children and she saw them chasing the dog down the road.

The varied nature of a rescue operation is that the dogs will have different types of temperaments. There is no guarantee that if one of the dogs were to get loose, that a child would not be harmed.

The third issue Mr. Weible has is regarding the waste clean up from the animals. He would like to dispute their claim that they are collecting it on a daily basis because the area to the west has a horrendous smell coming from it.

Overall, his property has been affected greatly in a negative way and he asked that the Board deny this petition.

Janice Books, 17541 US 20, Goshen, was present in opposition of this request. Ms. Books said she is against the petition because of the barking dogs. She moved to her current location because it's nice and quiet, but the barking is so bad that she can't even sit outside.

She was outside at 6:30 a.m. on Sunday morning and all she could hear was barking dogs. Ms. Books pointed out her location on the aerial photo, which is northeast of the proposed property. She understands that dogs bark, but doesn't believe the neighbors should have to put up with it.

Mrs. Corbin then came forward to speak on the remonstrators concerns. If there were a horrendous smell, then it would be something other than the dog waste causing it. They have not had a problem with their septic or the dogs which would be causing the smell.

There have been times when the dogs have broken their chains and gotten loose. Most of the dogs that have gotten loose are her personal dogs. The dogs are never up before 8:30 in the morning and don't come in any later than 10:00 p.m. Mrs. Corbin doesn't feel there is constant barking because if there was, she would be out there to see what was going on.

At various times when the dogs are barking, Mr. Corbin said it's usually because of road construction, sirens, or motorcycles. He explained they are trying to move the dogs into a more secure location so they can silence some of that.

Mr. Lantz asked the petitioners if they could keep all of the dogs in the barn and then let them out to relieve themselves. Mr. Corbin said if they did that, the dogs would be going to the bathroom more indoors. The English Springer Spaniels like to have room to run around. The barn space is only 30 x 50 and he doesn't think it would be good for them to be cooped up all day.

Mr. Lantz said the biggest issue they are faced with is the noise. Mr. Corbin said they have moved the puppies to the barn and that has eliminated some of the noise. They are going to try and move all the other dogs, which should eliminate most of the noise. On the east side of the property, it's currently just chain link fencing. The dogs have a lot of freedom to see what's going on outside of the property.

Mrs. Corbin said once they got the barn resided, then they could probably keep more dogs out there. A few of the dogs would like to stay where they are at because they are her son's.

Mr. Lantz said if they could focus their efforts on keeping them inside, then they could find a balance with the neighborhood.

Mr. Hesser asked how far they live from the asphalt plant to the west. Mr. Corbin said they are approximately half a mile away. He questioned whether they get a smell coming from the plant and the petitioner said yes, every once in a while.

Mr. Hesser asked if the traffic on US 20 is noisy and the petitioners said yes. On

The removal of waste was also questioned by Mr. Hesser. Mr. Corbin said at this point, the waste is removed in the regular trash.

Mr. Hesser asked how long the dogs typically stay with them. Mrs. Corbin said one of them is aggressive and won't be able to be adopted out. One of the other dogs is too old to be adopted out. With the exception of those two dogs, there is approximately a two month turn around period.

Mr. Hesser indicated the questionnaire states 16 dogs and today they indicated 20 dogs. Mrs. Corbin said they presently have 16 dogs and 20 would be worst case scenario. They typically have around 16 dogs. Mr. Corbin indicated that nine of the current 16 dogs are up on the website for adoption.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said the asphalt plan generates smell and US 20 is a busy road that generates noise. He is concerned about the number of dogs and the method of waste removal.

Mr. Lantz said he thinks they could put a limit on the number of dogs. They have a good cause, but he would like to see a refinement.

Mrs. Wolgamood said what they are trying to do is admirable, but she's not sure they are in the right location.

Mr. Homan said given the remonstrance and the past Board action, he has trouble granting the petition in this particular location. He thinks they should have a bigger piece of property and be more equipped.

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 a Special Use for a kennel for animal rescue with indoor and outdoor pens and runs (Specifications F - #15.00 & #15.10) be denied with a time limit for abatement of the existing operation being six (6) months. After a unanimous roll call vote was taken, the motion was carried.

9. The application of *Jeff & Cindy Sawyer* for a renewal of an existing Special Use for a home workshop/business for fireplace sales and service (Specifications F - #45) on property located on the North side of CR 28, 950 ft. East of CR 101, common address of 29301 CR 28 in Baugo 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 #20081855*.

There were 11 neighboring property owners notified of this request.

Jeff Sawyer, 29301 CR 28, Elkhart, was present on behalf of this request.

Mrs. Wolgamood said it sounds like they have been doing what they are supposed to do. She asked if there is a permit for the driveway to be widened and Mr. Sawyer said yes, that permit is in the file.

She asked if the sign located on the building has been removed and he said yes. The existing sign is 2 x 2 and unlit.

Mr. Hesser asked the petitioner to address the complaint. Mr. Sawyer said when there is a holiday on a Monday, they get the delivery on the Friday before the holiday. He thought the complaint could've been from an overlapping time where he received a Friday delivery. They only have one semi from one company coming on site along with an occasional UPS truck.

Mr. Sawyer said when they originally applied for the Special Use, they had a sign on the building. When he found out the sign was not permitted, they removed it immediately.

Julie Pierce, 29343 CR 28, Elkhart, was present in favor of this request. Ms. Pierce said she lives to the west of the proposed property. She explained that whoever keeps complaining should have been here today to back up the complaint. She has no complaints with the Sawyers and she has lived next door to them for four years. They have a beautiful house and home with good maintenance. The Sawyers just put in a pool, so there have been a lot of landscaping trucks which could have been what the complainer saw on the property.

Ms. Pierce said she has a 78 year old mother and a 43 year old brother that live with her who have cerebral palsy. They are home all day long and her brother's window faces the Sawyer's house. He enjoys watching the semi's come and go, so if they had semi's there everyday, she would hear about it.

Mr. Sawyer said they are considering possibly being open one more day a week. He asked the Board if that would be a possibility. The extra day would only be for walk-in's, which would consist of one or two cars per day.

Mrs. Wolgamood asked if the hours are posted on the sign and the petitioner said yes. The hours are currently 12:00 p.m. to 5:00 p.m. on Mondays and 12:00 p.m. to 6:00 p.m. on Thursdays.

Mr. Homan asked which additional day he would like added. Mr. Sawyer said instead of having hours on Monday and Thursday, it would be Monday, Wednesday, and Friday from 12:00 p.m. to 5:00 p.m. or 6:00 p.m.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said the only concern he has about changing the hours is that it they weren't specifically stated in the questionnaire and it had previously been approved for a certain number of hours. If that was a concern of anyone, then the neighboring property owners wouldn't have been notified of it.

Mr. Homan preferred not to have the change of hours at this time. Since it's not in today's petition, he would prefer not to include it.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Special Use for a home workshop/business for fireplace sales and service (Specifications F - #45) be approved with all of the original conditions being adhered to with the exception of #2 and #9. The following changes should also be made:

1. Condition #4 should be changed to read the following: The existing 2 x 2 unlighted sign on-site be permitted.
2. Condition #3 should also be revised to read the following: Approved for the owner/occupant of the residence on site.

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

10. The application of **Bruce McCrory (lessor) and Thomas Kroh AT & T Mobility (lessee)** for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the 1,133 ft. South off of CR 2, 730 ft. West of CR 5, common address of 29698 CR 2 in Cleveland 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 #20081996*.

Mr. Harrell then submitted an amended Staff Report *[attached to file as Staff Exhibit #2]*. He explained that the petitioner provided more information for the staff, so they have revised the Staff Report.

There were 18 neighboring property owners notified of this request.

Mrs. Wolgamood questioned #2 of the Staff Analysis which states, "The parcel is rather large in size and the neighbor that will be most affected has no problem with the tower." She asked if the staff has received a letter indicating that. Mr. Harrell said the petitioner contacted that neighbor and had conversation with them.

Present representing AT & T Mobility was Tom Kroh, 11674 Canyon Court, Fishers, Indiana. Mr. Kroh submitted two letters and two service maps to the Board at this time *[attached to file as Petitioner Exhibit #1]*. He pointed out that AT & T does require their site to provide adequate and reliable service in the far northwest corner of Elkhart County.

Mr. Kroh said they are proposing a 190 ft. monopole and a 12 x 20 shelter in a 100 x 100 fence compound. The parcel is a little over 11 acres in size and the monopole will be over 1,100 ft. south of CR 2. The proposed facility will provide convenience and welfare by offering wireless phone coverage in the area and E-911 service.

The tower will be 500 ft. from any residence and 1,000 ft. from any residential zone. The land to the south and west is zoned agricultural as well.

Mr. Kroh said they have tried to follow the Elkhart County policies as closely as they could. The letter that was earlier submitted states that the tower will be engineered to collapse upon itself if that were to happen. The tower has not yet been ordered for this site, but it will be upon today's approval.

As staff mentioned, there is a tower 1.28 miles away from the proposed location. That particular tower is approximately 140 ft. tall and is close to the toll road.

On this parcel, they could have met the 190 ft. setbacks from all property lines, but they would like to move it further east. The proposed location of the tower will be 100 ft. from the east property line. The property to the west of this location is used for agricultural purposes and there are some homes and buildings to the east.

Mr. Hesser asked if the tower is going to be in a different place than what the site plan shows and Mr. Harrell clarified that they were originally proposing to put it on the west side of the property, but they now want to place it on the east side. Mr. Kroh indicated the site plan that was submitted is accurate.

The petitioner indicated they will be meeting the fencing requirements. It will be six ft. high with a foot of barbed wire, so the total height will be seven ft. The fence will be done in a chain link style.

Lastly, Mr. Kroh discussed the coverage maps which were earlier submitted. The black dot on the map shows where the proposed tower will be located. The first page shows the coverage map without the tower and the second coverage map shows the service area with the tower.

Mr. Kroh said they do try to collocate whenever they can and they have submitted an application to Verizon Wireless for a collocation. The collocation will allow coverage for the area south of the airport.

James Crabtree, 29723 CR 2, Granger, was present with some concerns regarding this request. Mr. Crabtree lives on the north side of CR 2 and he is concerned that the tower is going to be located directly in front of his picture window.

If this were to be approved, he asked that the Board require that the tower be located to the rear of the property. He would like to know what material the tower will be built out of so he knows if there will be any reflection in his window.

Mr. Crabtree then pointed out his location on the aerial photo.

Mr. Hesser then clarified where the proposed location of the tower will be.

Mr. Kroh said the tower will be to the rear of the property and they are meeting the 190 ft. setback from the rear of the property. The tower will be 100 ft. from the east property line, but they can move it a little closer if the Board prefers.

The structure will be built using galvanized steel, so there will be very minimal glare.

Mr. Hesser said the staff usually includes in their staff recommendation that the tower is to be in compliance with the tower policy. He questioned why that wasn't included as a condition and Mr. Kolbus said part of the policy that the petition has amended is not needed. Mr. Harrell said the petitioner moved the tower 100 ft. from the east property line and he would need to meet the 190 ft. setback to be in compliance with the tower policy.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the amended 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. A letter to be placed in the file depicting the collapsibility of the tower.
2. A letter stating that there will be no radio, TV, etc. interference from this tower.
3. Collocation must be available.
4. The tower to be removed and site to be returned to grade when tower is no longer in use.

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

11. The application of **Lamar Hochstetler** for a Special Use for warehousing and storing of a tractor and semi trailer in an A-1 district (Specifications F - #44) on property located on the Northeast corner of CR 48 and CR 127, 500 ft. West of CR 29, common address of 16953 CR 48 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 #20081986.

There were 8 neighboring property owners notified of this request.

Lamar Hochstetler, 16953 CR 48, Syracuse, was present on behalf of this request. Mr. Hochstetler explained he would like to park his truck at home.

Mrs. Wolgamood asked if the truck is parked outside all the time and the petitioner said yes because he doesn't have a building big enough to fit it in.

She then asked if it will be parked between the garage and CR 48. Mr. Hochstetler said that is correct and indicated it would be behind the garage.

Mr. Miller asked if there is usually a trailer attached and the petitioner said yes.

Mr. Homan asked if he has room to drive in and turn around, which would eliminate backing onto the county road. Mr. Hochstetler said he drives in towards the corner of CR 127 and CR 48, then he backs up in front of the garage and drives back out.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan pointed out that the Board usually doesn't grant these type of requests unless the semi's are going to be parked inside of a building. In this case, the semi will be out of sight and out of mind because it's covered by trees.

Mr. Lantz indicated this is a nice location to live and it is hidden by trees. He said the petitioner has a nice house, shop, and pond. There is little traffic in the area apart from people heading to work early in the morning. He doesn't think this will affect anything because the petitioner has plenty of room to pull in and drive out. Mr. Lantz also pointed out that one of the staff photos show how thick the trees are.

Mrs. Wolgamood indicated that south across CR 48 is entirely wooded and it appears that the southwest corner is heavily wooded. She asked if there is a drainage ditch and Mr. Lantz said yes and indicated that there are no issues of anything draining into the ditch.

Mrs. Wolgamood asked if there is noise from the truck if he lets it warm up during the winter. Mr. Lantz said no and it wouldn't be any noisier than any of the tractors in the area. Mr. Miller also indicated that there have been no complaints.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 tractor and semi trailer in an A-1 district (Specifications F - #44) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. Approved for parking of one (1) semi tractor and one (1) trailer on site.
3. No backing onto CR 48 or CR 127.

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

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

12. The application of **Jerry & Eva Myers** for a Special Use for a beauty shop in an existing mobile home in an A-1 district (Specifications F - #46) on property located on the North side of CR 40, 385 ft. West of CR 37, common address of 13099 CR 40 in Clinton Township, 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 #20082000*.

There were 9 neighboring property owners notified of this request.

Jerry and Eva Myers, 13477 CR 40, were present on behalf of this request. Mrs. Myers explained that she is requesting a Special Use for a beauty shop. She is on the farm all day, so she uses the mobile home for farm purposes also.

Mr. Homan asked what the history of the mobile home is. Ms. Myers said the beauty shop has been at this location for approximately 35 years, but she didn't realize she needed a permit.

Mr. Homan asked where their residence is located and Mr. Myers said they are on the northwest corner of the farm, which is approximately 2,000 yards from the beauty shop. The beauty shop has bathroom and office facilities for the farm. Mrs. Myers indicated she works part-time in the beauty shop and also runs a dairy.

Mr. Hesser asked if her property adjoins the mobile home lot and the petitioners said yes.

Mr. Homan asked if they own the lot adjacent to the mobile home lot. Mrs. Myers said they don't own the long chicken house or the land behind it because her brother owns that property. Mr. Myers indicated they own the rest of the property.

The mobile home has been at this location since 1976 and Mrs. Myers said she keeps it up. She realizes that it's old, but it is livable. A well has been put in for the dairy cows and she would like to use the mobile home for at least a couple more years.

In the 35 years that the petitioner has used this beauty shop, she has a clientele of at least 40 customers. She has never had any complaints and everyone thinks she does a wonderful job.

Mr. Homan indicated one of the requirements for the placement of a mobile home is that it can't be within 300 ft. of a residential structure. Mrs. Myers said her father's house used to be there, but she now owns that home.

Mr. Homan asked what the structure is to the right of the chicken barns and Mr. Myers indicated those are the cow barns.

There were no remonstrators present.

The public hearing was closed at this time.

The public hearing was then re-opened to allow remonstrators to speak in favor of this request.

Richard and Fannie Miller, 30 Greenway Drive, Elkhart, were present in favor of this request. Mrs. Miller indicated she was in support of this request. She has been a customer of the petitioner for 40+ years. Mr. Miller also indicated he is in support of this request.

The public hearing was closed at this time.

Mr. Hesser said he doesn't see any indication that this business has disrupted the neighbors and he doesn't think they were intentionally not in compliance.

A couple concerns Mr. Hesser has is that if something were to happen to the mobile home, he doesn't think it should be replaced.

Mrs. Wolgamood said she did indicate that she was only looking at working a few more years. She suggested granting it to Mrs. Myers as long as she is the owner and the operator.

Mr. Hesser asked if they can limit it to an individual and Mr. Kolbus said they can use it for lifetime situations. He said the Board could grant it for the owner/occupant and when she is no longer the operator, it could be rescinded.

Mr. Homan said he wouldn't want to grant this forever, but he would be in favor of putting a three year time limit on it with a review before the Board to see if anything has changed.

Mr. Kolbus suggested asking the petitioner how long she anticipates having the business.

Mr. Homan asked Mrs. Myers how long she plans on using the building and Mrs. Myers estimated two to three more years and then she can make a decision at that time as to what she wants to do.

Mr. Homan asked if she plans to sell any acreage and the petitioners said no. Mr. Myers said if they were to sell anything off in the future, they would still keep their home and possibly a little more. The rest of the farmland would be sold as one piece.

Mr. Lantz said after this many years and no complaints, he prefers not to put a time limit on it.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that this request for a Special Use for a beauty shop in an existing mobile home in an A-1 district (Specifications F - #46) be approved with the following conditions imposed:

1. No expansion of the structure.
2. No replacement of the building if it is removed.
3. The Special Use be for a limited time of three (3) years.
4. Hours of operation are to be Tuesday, Wednesday, Thursday, Friday, and Saturday, 8:00 a.m. to 12:00 p.m.
5. Approved for the owner/operator of the mobile home on site.

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

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

13. The application of **Marvin Miller** for a Special Use for a home workshop/business for retail sales of livestock feed and farm supplies in an A-1 district (Specifications F - #45) on property located on the South side of CR 48, 1/2 mile East of CR 133, common address of 13836 CR 48 in Benton 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 #20082006*.

There were 4 neighboring property owners notified of this request.

Terris Ayres, 1595 E 400 S, Bringham, Indiana, was present representing Marvin Miller. Mr. Ayres said he has been working with the Miller's and he currently owns the cattle and the facility. He provides feed and supplies for his farm facility to take care of his animals.

Three months ago, they were asked by area farmers if they could also supply them with feed and supplies. He explained that the Miller's would like to go further with their business operation.

Mr. Homan said the site plan shows the house and the transition nursery barn. He asked where the feed business will happen. Mr. Ayres said it would be in the proposed store, which is shown on the site plan.

The proposed store is fairly small and Mr. Homan asked how the operation will happen considering home workshop/businesses can't have outside storage. Mr. Ayres said a lot of the

feed will be going from the feed mill directly to the customer. Some of the product will be stored on site if the customer needs four or five bags of feed, versus someone who needs four or five tons of feed. Mr. Miller also warehouses product for the cattle in the agricultural buildings.

Mr. Kolbus then indicated that a condition of the Special Use is that there is to be no outside storage.

Mr. Homan asked how the feed and supplies are delivered and how frequently. Mr. Ayres said they currently have four different vendors for the cattle. There is a UPS on site at least every other day. A semi usually delivers once to twice a week for feed products, but not for cattle shipment because the cattle are shipped on a weekly basis. The goal is that when they get some business, then some of the orders can be consolidated with reduced truck traffic.

Mr. Homan said there are some specific staff recommendations and asked if the petitioner was aware of those. Mr. Homan then read the conditions to Mr. Ayres.

The petitioner then indicated that there is more than adequate room for the delivery trucks to turn around on the property.

Mrs. Wolgamood said on #2 of the questionnaire, the petitioner indicated he wanted to sell farm supplies including livestock feed, OTC medications, and other farm and household items. She asked what the "other farm and household items" would be and the petitioner said fly spray, rat bait, rakes, shovels, and gloves.

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 (*Homan/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for retail sales of livestock feed and farm supplies in an A-1 district (Specifications F - #45) be approved with the following conditions imposed:

1. Business to be operated by the owner/occupant of the residence on site.
2. No outside storage.
3. All conditions of a home workshop/business to be adhered to.
4. Days and hours of operation to be Monday through Friday, 8:00 a.m. to 4:00 p.m. and Saturday, 8:00 a.m. to noon.
5. Approved as per site plan submitted.
6. No employees who do not occupy the residence on site.
7. No backing onto CR 48.

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

14. The application of ***Elkhart County Park & Recreation Department*** for a Special Use for a public park (linear park) (Specifications F - #29) on property located on the East side of CR 127, Northeast to CR 33 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 #20081998*.

There were 26 neighboring property owners notified of this request.

Dan Seltenright, 211 W. Lincoln Avenue, Goshen, was present representing the Elkhart County Park & Recreation Board. Mr. Seltenright explained that this segment of the Pumpkinvine Trail is a continuation of the segment that was granted in May. This particular segment starts at CR 127 and extends eastward to CR 33, which will be about 2.8 miles.

The previous ownership by the Friends of the Pumpkinvine, Inc. and it has been donated to the Elkhart County Park and Recreation Board. Mr. Seltenright also indicated that the Department of Natural Resources has provided them with \$900,000 to construct trail on this section of the Pumpkinvine.

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 (*Homan/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 public park (linear park) (Specifications F - #29) be approved. A roll call vote was taken and the motion was carried unanimously.

15. The application of *Leonard Emery* for a renewal of an existing Special Use for warehousing and storing of one semi trailer and one semi tractor for a trucking business (Specifications F - #44) on property located on the South side of CR 40, 800 ft. West of CR 27 in Elkhart Township, zoned A-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 #20081788.

There were 15 neighboring property owners notified of this request.

Leonard Emery, 66628 DeKalb Lane, Goshen, was present on behalf of this request. Mr. Emery explained that he operates a trucking business of his own with one semi. When the semi is brought home, 60 to 70 percent of it is inside. The barn is not quite big enough to fit the entire semi inside of it. The semi is occasionally unhooked and parked outside for a day or two. The barn is also used for other storage.

Mr. Hesser said this was originally approved for two semis, but the questionnaire indicates he's only asking for one. Mr. Emery said they asked for two on the original request in case they wanted to expand. He explained that his brother was in the trucking business too, but they have only decided to go with one semi.

Mr. Homan asked if he lives adjacent to this property and the petitioner said no, it is just the barn by itself.

Mr. Hesser asked if he knows of any complaints from the neighbors and the petitioner said no. The neighbors use the barn at times to park their vehicles in when they have parties.

Mr. Homan indicated the land looks like a fairly small parcel and asked how he drives into the barn. Mr. Emery said he drives in from the south side. It takes the whole property to turn the truck around, but it's basically a circle driveway.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked the Board if they should limit the request to one semi since that's all he needed and the Board 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 the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Special

Use for warehousing and storing of one semi trailer and one semi tractor for a trucking business (Specifications F - #44) be approved with the following conditions imposed:

1. The existing privacy fence between the subject property and the property to the east to be maintained.
2. If verified complaints are received by Code Enforcement, the Special Use will be referred back to the Board of Zoning Appeals for reconsideration.
3. The Special Use is limited to one (1) semi being stored on site.

A roll call vote was taken and the motion

16. The application of ***Devon Schrock (land contract purchaser) and Tri County Land Trust (land contract holder)*** for an amendment to an existing Special Use for a kennel with outdoor pens and/or runs in an A-1 district to allow sixty (60) dogs (Specifications F - #15.10) on property located on the East side of CR 33, 2,100 ft. North of CR 22, common address of 58340 CR 33 in Middlebury Township, 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 #20081846*.

There were 11 neighboring property owners notified of this request.

Devon Schrock, 58340 CR 33, Middlebury, was present on behalf of this request. Mr. Schrock explained that he applied for a kennel one year ago to raise and sell puppies. The puppies provide chores for his children and it helps to teach them responsibilities. He applied for an amendment for 60 dogs, which was restricted for one year to 20 adult dogs. He is here today to renew the Special Use and to ask for 60 dogs so he can successfully make it financially.

Mrs. Wolgamood asked if in his original petition he asked for 60 dogs. Mr. Schrock said that's what he had in mind, but he's not sure if that is exactly what he requested at that time. She indicated the minutes state that the total number without puppies was 30 dogs.

Kevin Rhodes, 15231 CR 22, Goshen, was present in opposition to this request. Mr. Rhodes said he was willing to give the petitioner a try, but if he would have known the noise level that they have now, then he probably would have been present at the first meeting. The dogs are small, but they bark in the morning, afternoon, and evening. When the windows are closed in the house, you can still hear them outside. He is concerned that going from 20 to 60 dogs will be three times as much noise. He then pointed out his property on the aerial photo, which is across the field from the proposed property.

Mr. Rhodes said he had asked Mr. Schrock if he could move the kennel to the other side of the barn. The petitioner told him he thought about that, but the neighbor to the north suggested that he move it to the south side of the barn where it is located at now.

Mr. Hesser asked if his objection is more to do with the expansion and Mr. Rhodes said yes. He has 20 dogs now and he doesn't think the petitioner could get rid of those, but he is opposed to adding 40 more dogs to the 20. The kennel is currently beside the barn and the dogs are on the north side between the kennel and the barn. The openings facing Mr. Rhode's property aren't even occupied yet. He is concerned that the noise will be intensified on his side.

Mr. Harrell then indicated that the original request was for 20 females and 10 males, which would equal 40 litters per year.

Dennis Myers, 15141 CR 22, Goshen, was present in opposition to this request. Mr. Myers said he is in opposition to the expansion of this request. He was not present at the

previous meeting, but he would have been there if he knew about the intensity of the noise level in the morning, day, and evening. He can accept the current 20 dogs, but he objects to the expansion of up to 60 dogs. The main complaint Mr. Myers has is regarding noise.

Mrs. Wolgamood then asked him to point out his property on the aerial photo, which is directly east of the proposed property.

Also present in opposition to this request was Mel Reed, Elkhart County Humane Society Representative, 54687 CR 19, Bristol. Ms. Reed said she and her Executive Director have been out to this property three times to check out the situation. There was a lot of barking and for a shelter to say that the noise is extreme, then she verified that it is really a lot of noise.

She also has a concern about the dogs being able to sit, stand, and lay down comfortably without being in their own fecal matter. At this time, the dogs are on the wire of the cages and after they walk on those for a certain amount of time, then they will have blisters. Personally, the Humane Society doesn't feel that the area is big enough to accommodate more dogs.

Mr. Lantz asked if they were to rework the building that the dogs are in, could they accommodate the noise. Ms. Reed said she doesn't think so. Nine times out of ten, dogs will bark because they are bored and want someone to do something with them. If they don't have the ability to have someone out there to entertain them, they will bark constantly.

Mr. Homan asked if she feels the existing building is big enough for 20 dogs and Ms. Reed said no, not in their opinion.

Mr. Schrock said he's sorry to hear that he's causing a disruptive neighborhood. When he proposed to do this, he and his wife expected that they would have to adapt to the noise, but they haven't because they are used to it. He said there might be a bark or two off and on during the day, but they are small breed dogs that don't create a far reaching bark.

When the petitioner went around to the neighbors to find out how it's affecting them, the neighbor to the east didn't even realize the kennel was there. He doesn't think the noise is very disruptive. When he goes to do chores, the dogs will bark for a little bit, but then they will quiet down.

Mr. Schrock indicated that he put carpeting in the pens for the dogs so they can lie on the carpet. He is currently working on a USDA license and when he built the kennel, he went by their code of standards.

Mr. Harrell asked the petitioner what breed the dogs are. Mr. Schrock said he has Chihuahuas, Shih-Tzu's, Yorkshire Terriers, Miniature Pinschers, Maltese, and Pekingese.

Mr. Harrell then asked how many litters of puppies they have each year and the petitioner said four. Mr. Harrell indicated that would be 160 litters of puppies each year. Mr. Schrock usually has the puppies weaned at eight weeks of age.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lantz suggested giving the petitioner another year with the current amount of dogs to allow the petition to address the noise issues. He would like to renew it for a year with no expansion. Mr. Hesser indicated he would second that because the remonstrators seemed much more concerned with additional dogs being added than the existing.

Mr. Homan said when the Board has done a one year approval, it's usually because they aren't sure if they want to grant the petition at all. He believes this is a situation where the Board has tried granting it to see how it goes and the neighbors aren't happy. The Human Society Officer has also indicated that the facilities aren't adequate. He suggested that the petitioner try

to change the facilities and the layout of the property. Mr. Homan would be inclined not to renew the Special Use to see if it gets better in a year.

Mrs. Wolgamood said she is inclined to revoke the permit itself and give the petitioner 90 days to remove all of the dogs.

Mr. Miller said he doesn't want to put anyone out of business but there is a professional in the business stating that there isn't enough facility for all of the dogs. He agreed with Mr. Homan and doesn't think it's working out.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Hesser*) that this request for an amendment to an existing Special Use for a kennel with outdoor pens and/or runs in an A-1 district to allow sixty (60) dogs (Specifications F - #15.10) be denied with all of the conditions from the original Special Use (#20072087) being imposed upon, including a renewal before the Board of Zoning Appeals in one (1) year. A roll call vote was taken and the motion did not carry with the following results: Homan – no; Wolgamood – no; Lantz – yes; Miller – no; Hesser – yes.

A motion was then made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a kennel with outdoor pens and/or runs in an A-1 district to allow sixty (60) dogs (Specifications F - #15.10) be denied with discontinuation of the business operation within ninety (90) days. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – yes; Hesser – no.

17. The application of **Jeffrey Miller** for a Special Use for a private off road track in an A-1 district (Specifications F - #59) on property located on the North side of CR 4, 2,000 ft. East of CR 1 in Cleveland Township, 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 #20081994*.

There were 23 neighboring property owners notified of this request.

Courtney Williams, Attorney, 300 Riverwalk Drive, Elkhart, was presenting representing Jeffrey Miller. Ms. Williams indicated she was out to the property yesterday. She then submitted a letter in favor of the request *[attached to file as Petitioner Exhibit #1]* and a packet of photos for the Board *[attached to file as Petitioner Exhibit #2]*.

Ms. Williams said she would like to take the opportunity to respond to the concerns of staff with the respect to Mr. Miller's request. The purpose of the Zoning Ordinance in regards to riding off road vehicles such as ATV's, is to allow the riders to put in a means of operating those vehicles on a track. She believes people get the wrong idea when they see motocross races on television on a track that is 20 ft. wide with huge hills. The track that is envisioned in this situation is one that would be the size of a lane of traffic. She asked Mr. Miller how they go about putting these tracks in and he explained that they drive around the area of the property to see what the contours of the land allow. Overtime, that develops the track and it's a natural course of the terrain that is worn down. She said the track is not something that is developed using bulldozers or any other equipment. If they find an area where they think a higher level would be amusing for them, then they would bring some dirt over.

The proposed location is not a facility where there are stands or lights and Mr. Miller is not part of any club or organization. The petitioner does this activity with his son and his close family members as a hobby. At the property, there is currently the remains of an illegal track that has been used by trespassers in the past. She then pointed out the area of that track on the aerial photo. Ms. Williams indicated that Mr. Miller has not been using that area and some unknown individuals have been breaking into the property through the access drive and riding without Mr. Miller's permission. The petitioner has posted a no trespassing sign and he intends to block the access by gate or fence so this won't happen again.

The area that meets the requisite 1,000 ft. from any residential use is in the northeast corner of the property where it is surrounding on both sides by a substantial tree line. The tree line to the east of the property is approximately 600 ft. and it is also bounded to the north. There is also a farm or a residence on the other side of CR 4. Mr. Miller understands that he needs to remain in the northeast corner of the property because it's the only area that meets the requirements.

Another concern was that this property wouldn't be used for anything but a dirt track. Mr. Miller bought the property intending to develop it as a full residence with a possible pole barn. He doesn't have any designs as to what to do with the open field that is covered with substantial grasses, which covers the dust in the area.

Mr. Miller bought the property with the understanding that he would be able to ride his ATV's on it and he did not realize that a Special Use permit was required to put in a track. If he didn't want to put in a track and only wanted to ride his ATV's, that would be fine. Riding around on unimproved land may be a hazard, so the track allows him to monitor he and his son's riding.

One of the main concerns is noise pollution. Ms. Williams said she was out to the property yesterday with a decibel reader to take measurements. The loudest thing in the area was a toll road. Ms. Williams indicated they tested three types of vehicles that would be used in the area. She said the vehicles are all unimproved and there has been no after market exhaust that would expand the decibel readings. The four wheel ATV was 80 decibels at idle and at 500 ft. it was around 47.5 decibels. Standing on the property with no motors running while listening to the toll road, the base line of the decibel reader was between 40 and 52, depending on when the wind blew. When measuring the ATV at 1,000 feet, it was 49.2 decibels. Ms. Williams said these are minimal numbers and the petitioner has taken the opportunity to get a chart which indicates that a diesel truck is 100 decibels from 30 ft. away, a power mower from three ft. away is about 100 decibels, which would be louder than the first ATV.

Mr. Miller's son has a motorcycle that is ridden under the supervision of his father. The idle decibel reading of the motorcycle was 75 and at 500 ft., it was at 47.5 decibels. At 1,000 feet, the decibel reading was 46.3 and the base line was between 40 and 52.

Another concern regarding this request was the dust. When you start wearing away to the ground, dust can be kicked up from vehicles. She said normally, wind blows from the west to the east and the tree line would catch any wind.

In the petition, Mr. Miller requested that he be allowed to ride from 9 a.m. to 9 p.m. Ms. Williams feels that a restriction to dusk be appropriate as that changes based on the time. For safety concerns, when the dusk comes, the riding should stop.

Another concern is the safety with unattended persons riding in the area. She explained that Mr. Miller is always out at the property to allow access when it is needed to get back to the property. Normally, there are not anymore than five riders at one time.

Increased traffic was also a concern in regards to this request. Ms. Williams said that traffic will increase anyway when the petitioner builds his house on the property. At that point, he will be routinely going to the property for his own habitation. Mr. Miller's current residence is for sale, so he does have the intent to build a house on the proposed property. Given the market at the present time, he's not sure when he will be able to build.

Ms. Williams said this is a substantial piece of property in an area that is partly improved and the petitioner is making use of the unimproved property. This type of use will not do anything to affect the natural habitat around him. She believes that the spirit, purpose, and intent of the Zoning Ordinance is to allow people to use property that lends itself to certain uses.

On the east side of the property, the track would be more than 1,000 ft. away from any other residence. On the west side of the property, the land dips down and you can't see the area when you stand on the property line.

Mr. Miller intends to take down the existing track so it's not an attractive nuisance to people that come into the area. Ms. Williams indicated the petitioner does have insurance on the property and is taking precautions as a responsible property owner who intends to use this property for living, riding, and enjoying what the county has to offer.

Lastly, she said there is a tract within a mile or two away which is currently being used by an individual.

Mrs. Wolgamood asked how many CC's the engines are. Jeffrey Miller, owner of property, 14440 Worthington Drive, Granger, indicated that the engines are 150 CC.

She then asked if they ever revved up the engines when testing the decibels. Mr. Miller said he has the standards for the industry and you are to hold the ATV or motorcycle at half throttle, so it's going to be half the RPM. They measured the decibel level at idle and then at 4,000 RPM. The standard in the industry for ATV's is to be 96 decibels or lower with stock exhaust, so they are below the 96 decibels because they do have the stock exhaust. Mr. Miller indicated he used an OSHA approved decibel meter.

Mr. Lantz asked if the track was being used when Mr. Miller bought the property. Mr. Miller said Judy Hoefle was the realtor who sold it to him and he explained to her that he would like to purchase the land to build a house and pole barn. He would like to build on 10 acres and then be able to ride on 30 acres. Mr. Miller indicated Ms. Hoefle pointed out that there was an existing track on the property. He was not aware that he needed a Special Use permit because in Michigan, he could ride wherever he wanted.

Mrs. Wolgamood asked if the Ron Williams Special Use is the track within 1 mile of the proposed property and Mr. Miller said that is correct. Mr. Williams suggested that Mr. Miller use decibel readings and other sources at the hearing today because that's what he did when he came before the Board for his petition

Mr. Miller said the riding would only be for family and friends. He doesn't participate in any clubs activities or benefits. He would limit it to five riders at one time, but it's usually only two to three at one time.

Mrs. Wolgamood asked what the CC is on the four wheel ATV and Mr. Miller said 650 CC.

Judy Hoefle, 53218 1, Granger, was present in favor of this request. Ms. Hoefle said she lives in the area and she said the toll road noise is a lot. She said you can't see the track with it being where it is now. She has no issues with this being for personal use. There is a lot of noise from the toll road and she can't imagine this being an issue. Ms. Hoefle then pointed out her location on the aerial photo.

John Laidlaw, 29279 CR 4, Elkhart, was present in opposition to this request. Mr. Laidlaw indicated he was here last fall in remonstrance to this request. The petition was withdrawn and they were unable to give the Board all of the remonstrance to this petition. Submitted to the Board at this time were three petitions in opposition to this request *[attached to file as Remonstrator Exhibit #1]*.

Baziel Vrient, 30109 Quail Drive, Granger, was present in opposition to this request. Mr. Vrient said he is concerned about the management of the site when no one is present. Even if the property were fenced, people could still get through and have access to the site. There will be continual use until someone lives on the property. He believes there will be more and more people there that cannot be controlled.

Secondly, Mr. Vrient asked if this fits in with the Comprehensive Land Use Act adopted by Elkhart County. One of the policies states "Existing residential communities should be supportive and protected from conflicting land use." The second point states "The primary role of agricultural zoned designation is to protect agricultural operations and conflicting land uses. Agricultural zoning districts should be used for agricultural and related businesses, activities, and appropriate agro tourism."

Lastly, he read "Rural community in vista should be protected by establishing tighter standards for permitting of Special Uses and by promoting stringent standards established under the Use Variance section of Indiana and Elkhart County codes." He stood before a committee approximately two years ago where it was noted that the management of Special Use permits is very difficult. Once given, they are very hard to take away because they are granted for a term. He asked if this meets what is happening in the northwest corner of Elkhart County. There are approximately seven subdivisions in that area and it is continually growing. He asked if this will deter from the growth of that area down the road. If one is granted now, then more people will buy pieces of land wanting this type of use.

Present in opposition to this request was Craig Fawcett, 29822 CR 1, Elkhart. Mr. Fawcett said he has lived in the area for approximately 30 years and he doesn't know that noise is going to be a big issue, but it's a difficult situation to control. He and his family live in the subdivision to the north and the entire subdivision is impacted. He went to every house in the subdivision and there was not one person who didn't sign against this request. He didn't keep any of the petitions because the request was withdrawn.

The track may have changed locations, but there is a history of abuse on this property. A track for recreational use is one thing, but a semi-commercial track is a lot different. He indicated that there are a lot of people in the neighborhood who would not be in favor of this request.

Audrey Hostetler, 52058 Dover Chase Drive, Elkhart, was present in opposition to this request. Mrs. Hostetler indicated she and her husband live in a corner lot that abuts against the cornfield. There are several concerns she has with this request and the first issue is the noise. There have been dirt bikes and four wheelers along the side of the cornfield before last summer and fall. Even with all of the doors and windows shut, she could hear the buzzing and screeching

sound of dirt bikes and four wheelers, which was extremely annoying. It was like having construction going on outside, except it won't end and will be there permanently. She can't even relax in her own home because you can hear it from every room. Mrs. Hostetler said she doesn't have children yet, but they are planning on having some and she can't imagine trying to put an infant to sleep with that noise.

Danny Hostetler, 52058 Dover Chase Drive, Elkhart, was also present in opposition to this request. Mr. Hostetler explained that the Attorney noted that they would have to go out to the proposed property to test the dirt to see if it was suitable for riding bikes there. He questioned if they have done that in this corner.

Also present in opposition to this request was Brian McKee, 29835 Tealwood Drive, Granger. Mr. McKee pointed out his property on the aerial photo, which is a lot in the subdivision to the northwest of the proposed property. He would like to address the smell of up to five ATV's running at once. He believes that the noise and dust will be an issue, but most certainly the smell. He agrees with the Hostetler's because anytime there is anyone riding in the area, it has been in the northwest corner. Mr. McKee said it is more of a quality of life issue and there are reasons for zoning, which is why they are present today. He feels bad for Mr. Miller because he didn't know he needed a Special Use permit, but he suggested that his realtor should have advised him of that.

Tim Hinton, 29550 CR 1, Granger, was present in opposition of this request. Mr. Hinton said he owns the woods that abut the proposed property to the north. He said it's nearly 1,300 ft. wide because there are two parcels there. Mr. Hinton said he feels for Mr. Miller because he can't imagine buying a piece of property like that and not be able to do what he felt he wanted to do.

Unfortunately, there has been a lot of use back there illegally and the police have constantly been called to the property. Since Mr. Miller has owned the property, there have been people out there trespassing too. Mr. Hinton said he lives about one quarter of a mile from Mr. Miller's property line. Mr. Hinton believes the petitioner should speak for himself. He owns the entire woods area and he said the wind doesn't blow only east and west. Lastly, he indicated that the land is not entirely flat.

Ms. Williams said they can't do anything about what happened in the past as far as trespassers are concerned. They have no doubt that there were people riding up against the area where the Hostetler's live. She can represent to the Board that since the filing of this petition, Mr. Miller has not ridden his ATV back in that area. Rather than have an abandoned track in the area that is an attractive nuisance, Mr. Miller is proposing that the use of this land now come under the authority of this Board subject to its conditions and rules. It would be subject to Mr. Miller's exercising control over the only access to the property by means of a road that would allow people to bring vehicles onto the property by fence or gate. She explained that Mr. Miller understands the liability issues associated with this request and his duties as a responsible land owner.

There is a history of abuse on this property and he would like to move forward and use this land as the Ordinance allows him to do. They understand the concerns of the neighbors and Mr. Miller is going to address them the way this Board and the Zoning Ordinance has decided they need to be addressed, which is by placing areas such as this 1,000 ft. away from any residential uses. This would not be an unmonitored use and the petitioner would be out there or another responsible individual.

Ms. Williams said the petitioner will increase value to the area by putting up a nice residence and pole barn. They are well below the sound levels and the noise is not a concern. If the Board wants to acquire that there be a visual inspection once the track is established to confirm measurements, then Mr. Miller would welcome such an inspection.

Mr. Hesser asked what the size of the parcel is and Mr. Miller indicated that it's just under 40 acres.

Mr. Hesser asked if they addressed the issue of the neighbors who stated there was riding along the western part of the property. Mr. Miller said they have ridden out there a couple of times and that was before they understood that they weren't allowed to ride. He then pointed out the previous riding area on the aerial photo. Since they were informed of the complaint, they have not ridden on the property since then.

Mr. Miller said the neighbors can have his phone number to call him so if any trespassers are riding in the area, then they can get in contact with him. He will try to do reasonable things to control that. He can put a fence all the way around the area, but people can still illegally trespass on the property. He is willing to work with the neighbors to eliminate the trespassing. Mr. Miller's goal is to increase the value of the land and not decrease the value. The petitioner said as the residential areas keep expanding, they are pushing into the agricultural areas. He said there has to be some respect for things that you used to do on agriculturally zoned land. They have been able to prove that noise won't be an issue riding in this area.

Mr. Hesser asked if the complaints that were received in April were the petitioner riding on the property or trespassers. Mr. Miller said that was him, but he hasn't ridden on the property since Mrs. Prough had informed him of the complaint.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser questioned whether or not this use would be legal if there were a house on the property. Mr. Harrell said no because anytime you make a circle in the dirt, it's referred to as a track.

Mr. Kolbus said the definition talks about the track being for amusement practice or personal recreation in some type of organized manner.

Mr. Harrell said this type of use is supposed to be 1,000 ft. from any residence, but that makes it hard to find any property in Elkhart County that meets the requirements.

Mrs. Wolgamood said this is a highly residential area with lots of new subdivisions going in. She recalls the Special Use that was approved for Ron Williams and she had an issue with that. The Special Use was very limited and there was hardly any remonstrance, if any at all. She's not sure she could support what the petitioner is requesting.

Mr. Lantz said trespassing is an issue.

Mrs. Wolgamood indicated she lives within a mile of the Indiana toll road and there are lots of woods between, but she hears it a lot.

Mr. Miller said the discussion today is about the right of quiet and enjoyment of our properties. He feels the petitioner has met the guidelines.

Mr. Lantz said a fence could be put up to eliminate trespassers.

There were three petitioners submitted in remonstrance and Mrs. Wolgamood indicated they were signed in remonstrance of the previous Special Use which was withdrawn.

Mr. Homan said he would feel a lot better if the petitioner lived on site. He indicated this request is unique because they meet the 1,000 ft. requirement and most people don't have that much land.

Mr. Hesser asked if they could require a fence as one of the conditions and Mr. Kolbus said yes. If there was a residence there, they could limit it to family members and a limited number of friends at one time.

Mr. Kolbus said they could have a condition stating there is to be five riders at any one time. That condition could be limited to the owner/occupant and immediate family members.

Mr. Hesser indicated he may look at this request differently if the petitioner lived on site, but they don't. He said the Board can only make a motion on what has been presented to them.

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 a Special Use for a private off road track in an A-1 district (Specifications F - #59) be denied. A roll call vote was taken and the motion was unanimously carried.

18. The application of *Maxim Ivanov (purchaser) and Scott Miller (seller)* for a Special Use for warehousing and storing for mini storage units in an A-1 district (Specifications F - #44), for a 50 ft. Variance for the construction of mini storage units 70 ft. from the centerline of the right-of-way (Ordinance requires 120 ft.), and for a 108 sq. ft. Variance to allow for a 4 x 8 ft. double sided illuminated sign (Ordinance allows 20 sq. ft.) on property located on the East side of US 33, 1,000 ft. South of CR 42, common address of 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 #20081997*.

There were 22 neighboring property owners notified of this request.

Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat indicated that Mr. and Mrs. Ivanov are present, the current owner the property, and the realtor. He then submitted a packet to the Board including pictures and a list of conditions *[attached to file as Petitioner Exhibit #1]*. Mr. Sloat explained that Mr. Ivanov has a pending purchase agreement subject to the approval of this Special Use request.

Mr. Sloat pointed out the location of the proposed property, which is near the Goshen Airport and Fairfield Farms Subdivision. The property is located in an A-1 zone and it is surrounded by a highly residential area. Within this area, there are approximately 300 building sites. Fairfield Farms Subdivision was recorded in 2000 and the developer purchased another 15 acres. The developer then sold the 15 acres and split it into three different tracts. One of the three tracts currently has a residence on it. The tract on the west end is the proposed location for this request. The person who bought this land from the developer now has it for sale. His intention when he bought the property was to build a home and put up a pole barn, but another property came up for sale that suited his situation better.

This property isn't well suited for residential use or agricultural. This is not a good place for a mobile home and signs or Special Uses are the only options left. One thing they feel would be appropriate and complimentary to the large concentration of homes in this area is mini warehouse and storage. There is approximately 314 ft. of frontage on US 33.

The declaration of Fairfield Farms Subdivision prohibits the storage of any RV's, trailers, or motorcycles. Mr. Sloat said he took the opportunity to drive through the subdivision and he didn't see any storage buildings. Therefore, they believe this area is suited for and in need of a mini warehouse storage facility due to the highly residential use. The closest mini storage facility to this location is Goshen near the Menards store on US 33.

Mr. Sloat said they tried to think of things that may be a problem for the neighbors if this facility were to be placed such as noise, traffic, line of sight view, water problems, etc. All of those issues may not have been addressed when the application was filed, but they are now. The property itself has natural screening on three sides including the west, north, and south. It is so dense that you can't see the home on the west side of the property.

The site plan was then explained to the Board by Mr. Sloat. He explained that this project would happen in phases and there wouldn't be anymore than 500 units. The entrance off of US 33 would be worked out with the proper agencies and authorities in regards to the curb cut onto the highway. He pointed out the area on the aerial photo that would be used at the access point. They would be using some type of material for the drive that wouldn't produce dust. There would be a kiosk for the customers that will be accessing their storage unit electronically. The facility will be entirely fenced and there would be a 24 ft. sliding gate for access to the property.

Mr. Sloat explained that the storage units are completely electronic. You put in your card and the machine takes a fingerprint from the customer. The camera would then take a picture of the customer and then the money would be deposited. The machine will then give the customer a password which will give them access to their storage unit. There will be no attendant on site and the property would be monitored using security cameras that can be watched through a computer.

The one area that is exposed is the east side property line. This line was created when the large parcel was split into the three separate five acre parcels. Since that was split, there have been homes constructed on the east parcel and the middle parcel. Mr. Sloat said they are proposing to plant some fast growing evergreen arborvitae trees and they would put them in a staggered double row. In a few short years, there would be total closure because they grow approximately three ft. per year. The tree buffer would protect the homes from having to look at the back side of a storage unit and the noise created by US 33.

The storage units would be approximately eight ft. high with overhead doors and ten ft. ceilings. There would be four rows of buildings and the entire property will be secured with a chain link fence. A decorative fence would be put up on the US 33 side with stone pillars such as Fairfield Farms Subdivision has. Since the lot doesn't lie perpendicular to the highway, the petitioner is asking for a 50 ft. front yard Variance for the buildings. They would also want to put in a 4 x 8 ft. lighted sign that would be landscaped and compatible with the neighborhood.

Mr. Sloat said the current owner had problems with the water and the aerial photo shows that there is a retention pond along the west property line that is around an acre and a half. All of the water that comes into the area is collected in that pond. The water problems in the area have been resolved.

One of the things the staff had a concern about was the hours of operation. The electronic nature of the facility could allow it to be open 24/7, but you can set the hours you want. The hours they are proposing are 6 a.m. to 9:00 p.m. Accessing the storage facilities would be prohibited any other times.

Overall, the property would be gated, locked, and secured with interior lighting that wouldn't be directed towards any of the residences. Since this property has been squeezed down to limited uses, then they believe this would be an appropriate use for the site.

Mr. Homan asked where the sign location would be and Mr. Sloat said the sign would be approved by staff before they did it. They would like to put it somewhere so it's visible from the road, but not intrusive to the neighbors.

Albert McDonald, 67306 US 33, Goshen, was present in opposition to this request. Mr. McDonald believes that this petition proposes an injustice to the neighbors in the neighborhood. The petition is interfering with the homeowners' comfort and enjoyment of living in their homes in the country. The financial value of the homes may be reduced if this commercial enterprise is allowed to be built. The petitioner said he has not been in contact with any of the adjacent neighbors and that is part of the general interest of becoming a good neighbor. Mr. McDonald then pointed out that there is a nearby storage facility that was broken into and they lost \$2,000. The location of his property was then pointed out on the aerial photo.

Deb Baker, 67170 Chadwick Court, Goshen, was present in opposition to this request. A petition in opposition to this request was then submitted to the Board containing 27 valid signatures *[attached to file as Remonstrator Exhibit #1]*. Ms. Baker pointed out that there is a storage facility that is 1.6 miles north of this site on US 33, which is called Cardinal Storage. She explained they currently have 83 units and 43 of those are vacant. Ms. Baker was informed that Cardinal Storage has never had full capacity. She doesn't see the need for additional storage units and she is concerned about the criminal intent. The area is already high traffic area without having added traffic to it. She said the reason Mr. Sloat didn't see storage buildings in the neighborhood is because they don't have things they need to store.

Connie Short, 67144 Chadwick Court, Goshen, was also present in opposition to this request. Ms. Short explained that this storage facility would basically be in her backyard. She is also present on behalf of Schrock Homes who owns the subdivision and used to own the proposed site. In 2002, Schrock Homes sold that land to be divided into three parcels for one residence on each parcel. They had to spend thousands of dollars to make retention ponds so a residence could go on the property without being flooded out. The property could still flood at this point, but putting one residence on the property versus an entire complex is a completely different issue in regards to water. Secondly, this area is all residential and she believes it should have a house on it. The driveway will come out behind her house, so every time someone is waiting to pull out onto US 33, their lights will be shining in her and her neighbors' back windows. The high intensity motion sensor lights would also be an issue as well as high intensity traffic. This proposed site is also a potential flood area and she doesn't think people will want to put their personal property there if it will be flooded.

Mr. Hesser questioned whether the neighborhood is full or not and Ms. Short said it's about halfway full. The cul-de-sac she lives on is completely full and they are starting to build more houses further down US 33.

Also present in opposition to this request was Ned Miller, 16168 CR 42, Goshen. Mr. Miller said his property is directly east of the proposed site. He then read the statement, "Having contacted the affected property owners along CR 42 and CR 41, I feel it would be a great service to the area which is now predominantly a residential area to put a commercial enterprise right in their backyards." Some of the concerns that were stated are the safety factors along US 33 and Mr. Miller indicated they already have accidents at the intersection of CR 42 and US 33. The

entrance to this storage facility wouldn't be far from that intersection. There is a curve there at the intersection and if a sign were to be put up, then it could be a safety factor. There is no other commercial property in the area and on the questionnaire, it states that all of the run-off would be directed to the existing retention pond. He indicated that retention pond is full and overflowing. A good share of that property is already underwater. If the petitioner is proposing to have all of his run-off from a hard surface go into that retention pond, then there will be bigger problems than they have already. Other concerns included privacy problems, property values would go down, dusk to dawn lighting, disregard to neighbors on the north, south, and east borders. There was no provision for a barrier of any kind for a earth and mound on those sides.

Mr. Hesser said he knows there are businesses north of this property, but he asked if there are any businesses in the triangular intersection. Mr. Miller said no.

Mr. Miller then questioned why some of the nearby addressed didn't get notified and Mr. Hesser said the notices are sent as a courtesy. The notices are sent to everyone within 300 feet, but it's not a legal requirement. Mr. Kolbus explained that the staff relies on what they get from the Auditor.

Mary Coy, 67224 US 33, Goshen, was present in opposition to this request. Ms. Coy indicated she lives on the property directly south. There are trees along the edge of the fence line and they are on his property. She is concerned that if the trees are tore out, then it will be completely exposed to her. The six foot fence is a concern and she wonders if they could make it taller to avoid theft. Ms. Coy explained she is a widow and she's concerned that people will try to steal from her and the surrounding neighbors.

Noise is also a concern because the facility would be busier on weekends and holidays. There would be several car and truck doors banging. Even with the trees up, she can still hear noise. She is concerned about the hours because she doesn't want people there in the middle of the night when she is trying to sleep. Ms. Coy is also concerned about the sign and having it block her view. She's not happy about having a commercial business in this area and doesn't believe it's a good plan.

David Hostetler, 16234 CR 42, Goshen, was present in opposition to this request. Mr. Hostetler then submitted photos showing the flooding on the proposed property *[attached to file as Remonstrator Exhibit #2]*. He has lived in this area for 23 years and he has seen the entire field underwater. He's not sure where the rest of the water is going to go apart from into his backyard. It was stated that this is not good for agriculture, but he has seen crops on the property every year except for right now. Anything built in the back half of the property will definitely be underwater and part of the front property. Having a curb cut so close to the corner of CR 42 and US 33 would cause even more accidents.

Mrs. Wolgamood then asked Mr. Hostetler when the pictures were taken and he said they were taken this past winter when we had a lot of rain/melting.

Dan Ostrander, 67042 US 33, Goshen, was also present in opposition to this request. Mr. Ostrander pointed out his property on the aerial photo, which is northwest of the proposed site. The land runs uphill to the east and then runs downhill to his property. The retention pond floods, which makes Mr. Ostrander's property flood as well. He currently has a little bit a land that soaks up the water, but with the facility being put in, he will take the whole run of the water. Mr. Ostrander said the trees that Board the back part of his property is only for six months out of the year.

There were no remonstrators present.

Mr. Sloat indicated that the current owner of the property is present today and his wife works for Brads-Ko, who have done all of the drainage work in the area.

Mr. Hesser said if this is a business, they have a lot more control of how they deal with the drainage issues then if it were left as a residence.

Mr. Sloat said there would be no trees removed. The trees are deciduous and they only have leaves part of the year. The trees would protrude out further into the road than the sign would.

As far as traffic, this would be conceived as commercial because it's not a residence, but it's a permitted use in an A-1 zone. As far as traffic, Mr. Sloat said people usually visit their site one or two times per month. There would be around two to three people there per day. There wouldn't be anymore traffic coming in and out this site than a residence with three teenagers would have.

Mr. Sloat said he understands the neighbor's concerns, but when it is done, it will be low impact to the area.

The public hearing was closed at this time.

Mr. Lantz said water is an issue because it will affect the surrounding areas if this land is built on. He suggested building the storage facility more towards the Benton area.

Mrs. Wolgamood said there wasn't much addressed regarding the request for the Variances.

Mr. Hesser indicated that Mr. Sloat addressed the Variances in his initial presentation, but he doesn't feel this is the appropriate Special Use for this site.

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 warehousing and storing for mini storage units in an A-1 district (Specifications F - #44), for a 50 ft. Variance for the construction of mini storage units 70 ft. from the centerline of the right-of-way (Ordinance requires 120 ft.), and for a 108 sq. ft. Variance to allow for a 4 x 8 ft. double sided illuminated sign (Ordinance allows 20 sq. ft.) be denied. After a motion was made with a unanimous roll call vote, the motion was carried.

19. The application of **Jonathan Martin** for a Special Use for a home workshop/business for a body repair shop (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures (3,830) to exceed the total square footage in the primary structure (1,700), a difference of 2,130 sq. ft. on property located on the North side of SR 119, 2,200 ft. East of CR 7, common address of 26619 SR 119 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 #20081999*.

There were 3 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing Jonathan Martin. Mr. Sloat then submitted a packet of information including pictures and a list of conditions *[attached to file as Petitioner Exhibit #1]*. He also submitted a petition in favor of this request *[attached to file as Petitioner Exhibit #2]*.

Mr. Sloat explained that Mr. Martin lives on SR 119 between CR 7 and CR 42. The petitioner was raised on the dairy farm and milks cows with his brothers at this site. He bought the property down the road and it was trashy when he bought it. The reason the petitioner wanted to buy the property was because he works on cars. The petitioner has no intention of having any employees apart from possibly someone part-time to help him out.

Mr. Martin then put up the pole building with the intention of working on cars. The business would be low impact and it won't look any different than any other building. Mr. Sloat indicated there would be no sign on the building.

An entire list of conditions have been submitted that the petitioner has agreed to abide by. Mr. Sloat mimicked the conditions from a similar business on CR 13 that was approved by the Board of Zoning Appeals. He indicated they do a lot of auto body repair work at this location.

Mr. Martin has gone around to the community to have a petition signed in favor of this request. Mr. Sloat indicated that most of those people were present in the audience.

The cars that are brought in by a friend or customer will be parked inside, but the vehicle wouldn't be brought over to the property until Mr. Martin was ready to work on it. This will not be a high intensity business. There is no way it would be able to grow when the petitioner won't have permission for any employees.

Mr. Sloat is suggesting approving the petition for a period of three years, but they could also have him come back in one year. He believes it meets the spirit, purpose, and intent of the Zoning Ordinance because Special Uses for home workshop/business are permitted in A-1 area. Mr. Martin will have the appropriate air quality control fans. He is below the threshold of the EPA requirements for everything that IDEM is involved in. This would not cause any injury to the appropriate use of the neighboring property owners. This is a service to the community the neighbors don't have a problem with it.

Mr. Sloat indicated that Mr. Martin sent an apology letter to Mrs. Prough stating that he took the wrong route and was ill-advised.

Mrs. Wolgamood said she has been trying to read every one of the conditions, but she hasn't seen anything addressed regarding no outside storage. Mr. Sloat said it could be put in there, but he didn't include it because the Elkhart County Zoning Ordinance already states that.

Mr. Kolbus said one of the conditions talks about parking two vehicles outside. Mr. Sloat said those are Mr. Martin's personal vehicles. The vehicles he will be working on won't be sitting outside.

Mr. Hesser questioned which of the two site plans is correct. Mrs. Wolgamood clarified that the second site plan was the one that was submitted with the building permit back in 2007.

Mrs. Wolgamood questioned #9 of the conditions included in Mr. Sloat's packet. She asked how many possible employees they are looking at that would be members of the family who live there. Mr. Sloat said the petitioner is single and has no kids, so there would be none at this point.

Mr. Homan said he would like to hear from the petitioner and asked how the cars come to his property.

Jonathan Martin, 26619 SR 119, Wakarusa, indicated the vehicles are brought in by the owners. He has been doing the operation in the shop on the farm where he grew up. The type of work he does is body repairs.

Mr. Homan asked if he ever buys or intends to buy vehicles from an auction. Mr. Martin said he has in the past and bought the vehicles from a local dealer. He has discontinued that practice and he doesn't intend to make a practice of that.

Mr. Homan asked if he does farming as his primary source of revenue or working on vehicles. The petitioner said it's about 50/50 at this point, but he would devote more of his time to doing automotive body repair.

Mrs. Wolgamood said the site plan shows two curb cuts. One of them goes to the residence and the second one goes to the old barn. She asked if that's the driveway he would be using and Mr. Sloat said yes. If they were to put in a new curb cut, they would put it further west.

Leroy Martin, 26533 SR 119, Wakarusa, was present in favor of this request. Mr. Leroy Martin said he surrounds the proposed property on two sides to the north and east. He has lived in the neighborhood for over 20 years. His wife grew up with Mr. Jonathan Martin's older brothers and sisters and his children grew up with the younger children in the family. He would enjoy having many more of Mr. Jonathan Martin's family in community because they are great. The property has improved since the petitioner has bought it and that has helped with Mr. Leroy Martin's property value. He used to have to pick up trash in his field, but he doesn't have to do that anymore.

Mr. Leroy Martin said there are a lot of people who envy their community. Within a couple miles of his house, he can buy groceries, get his tractor repaired, buy fabric, get engine repairs, get a sewing machine repaired, buy produce, and buy books. He feels their community is special with all of the little businesses that add economic value to their community. He is very much in support of this request.

Glen Weaver, 66857 CR 7, Goshen, was also present in favor of this request. Mr. Weaver said he is one of the friends that has had some vehicles fixed by the petitioner. Mr. Martin does a good job and he certainly appreciates him as a neighbor. Mr. Weaver said he is in support of this request.

Present in favor to this request was Jacob Ramer, 67071 CR 7, Wakarusa. Mr. Ramer said he lives south of Mr. Weaver, which he pointed out on the aerial photo. Mr. Ramer would like to see Mr. Martin have this Special Use granted. One thing that is different for him is that he uses a horse and buggy, which would never require him to use the repair business. The petitioner has cleaned up the property a lot and he feels granting this request is in the best interest of the community.

Mr. Hesser asked about signage and Mr. Sloat said there will be no signs.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said there were a number of permits that were never applied for and asked if that has been brought up today. Mr. Sloat said he told Mr. Martin that they have to get the Special Use permit. There are a number of developmental issues with regards to the Building Department and the Health Department. Mr. Sloat said they would fully address those permits. If they can't get Special Use approval, then there is no point in spending time and effort getting those permits addressed.

Mr. Kolbus said the staff indicated that the Building Department has put any permits on hold until this issue has been resolved.

Mrs. Wolgamood feels that Mr. Sloat made a good point when he said they should start fresh. If the request were denied, the petitioner could still use this building for agricultural purposes.

There will be no signs and no semis coming and going. Mrs. Wolgamood said she read over all of the conditions and she wouldn't have an issue with this request. Everything will be stored inside and it looks like an agricultural building.

Mr. Homan said when the Board looks at home workshops, they look at how intense the property use would be. He said there is a certain reality of rural life that what you need is within reach. He said this is about as inconspicuous as a home workshop can be.

Mr. Hesser feels that if they have a condition stating no outside employees, then that will limit how much they can do. He would also like to include that there is to be no expansion without Board approval.

Mr. Harrell indicated that the building permit was pulled by his builder, Ron Martin, so he shares part of the responsibility for this too. He built the building as an agricultural building knowing that it may be used for something else. He said that Mr. Martin isn't totally at fault in this situation.

Mr. Hesser suggested having a review in one year to be sure that all of the other issues have been complied with.

Mrs. Wolgamood indicated that in the letter from Mr. Martin that was addressed to Mrs. Prough, Mr. Martin stated that his contractor was instructed by him to take out the permit for an agricultural building.

Mr. Lantz said he doesn't have a problem with this request and he thinks it's a good use.

Mr. Homan asked Mr. Martin if he has a tow truck or any trailers used to transport vehicles and the petitioner said no.

Mr. Homan said he would like to try this for a year to see how things go. He asked if the Board is leaning towards being in favor of this request or if they would rather table it and take a closer look at it.

It was then questioned by Mr. Hesser if there is a procedure where the Board can go with the conditions recommended by Mr. Sloat subject to staff approval. If the staff has any objections to any of the conditions, then they can bring them back before the Board.

Mr. Kolbus indicated that Mrs. Wolgamood has some modifications she would like to make to the conditions.

Mrs. Wolgamood said if she were to make the motion, she would approve the request with conditions #1 - #13, imposed by Mr. Sloat, along with #14 stating, "No outside storage related to the business, including but not limited to outside parking or storing of vehicles on site for service by the business." The only other thing she would question is #9 and she would change that to read, "No outside employees." Mrs. Wolgamood also suggested adding "personal vehicles" onto the end of condition #5.

Mr. Kolbus said if the Board puts a one year limit on the request, then it could be reviewed in a year. They could also put a condition to bring the request back next month for further review if the staff has a problem with it and grant it today.

Mr. Hesser said he would be inclined to incorporate the suggestions made with the condition that if the staff has an uncertainty, then the request can be brought back to the Board.

Mrs. Wolgamood felt that the staff would do that regardless, but she has no problem adding that as a condition.

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 body repair shop (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures (3,830) to exceed the total square footage in the primary structure (1,700), a difference of 2,130 sq. ft., be approved with the conditions submitted by the petitioner (as amended by the Board) imposed as follows:

1. Uses of the real estate shall be limited to the following: (1) primary use of the premises as a personal residence of the owner occupants and operators of the home workshop/business and (2) the ancillary and accessory uses of the auto body repair shop in a building constructed on the Petitioner's real estate. Unless otherwise subsequently agreed by action of the Elkhart County Board of Zoning Appeals after public hearing conducted in accordance with the rules of the Board and after giving of public notice as provided in said rules, said auto body repair business shall be conducted only by the owner occupant of the real estate and no more than one part-time employee who is not a resident of the real estate.
2. Hours of operation of the auto body repair business shall be not more than *:00 a.m. to 6:00 p.m. (prevailing local time), Monday through Saturday. There shall be no Sunday business operations conducted on the real estate.
3. There shall be no exterior signs.
4. Ingress and egress to and from the real estate shall be by means of an existing driveway to and from SR 119.
5. All operations of said auto body repair workshop/business shall be conducted inside the accessory building located on the real estate. Parking areas and driveways shall be gravel surfaced and shall be of sufficient size to accommodate parking for at least two (2) personal vehicles.
6. No offensive noise, vibration, smoke, dust, odors, heat or glare shall be emitted from said auto body repair business which would constitute a private nuisance to any neighbor.
7. There shall be no outside loud speakers or sound systems used in connection with said workshop/business.
8. There shall be no outside illumination or lighting of said workshop/business or the accessory buildings other than by normal rural night guard and security lighting provided by the local electric public utility.
9. The auto body repair workshop/business shall have no outside employees.
10. No additional accessory buildings or additions to the existing accessory building shall be constructed on the real estate for use in the auto repair workshop/business without the prior written approval of the Elkhart County Board of Zoning Appeals after public hearing conducted in accordance with the rules of the Board and after the giving of notice as provided in said rules.
11. The new accessory building shall be modified as necessary to comply with applicable state and county building codes.
12. Surface water shall be retained and detained on the site in the manner approved by appropriate governmental authorities. The site shall be served by a private sanitary sewer system approved by appropriate state and county department authorities.
13. Permit granted for one (1) year with renewal before the BZA Board.

14. No outside storage related to the business, including but not limited to no outside parking or storage of vehicles on site for service by the business.
 15. No expansion of the business without approval from the Board of Zoning Appeals.
 16. If the staff has any concerns with any of the conditions, then the request will be brought back to next month's Board of Zoning Appeals meeting for further review as a staff item.
- A roll call vote was taken and the motion was unanimously carried.

20. The application of **Gary D. Eby** for an Appeal to allow for an addition to an existing accessory structure on property without a primary structure on property located on the South side of John Street, 213 ft. East of CR 45, common address of 23830 John Street in Concord Township, zoned R-2, 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 #20081963*.

There were 6 neighboring property owners notified of this request.

Gary Eby, 59203 Park Shore Drive, Elkhart, was present on behalf of this request. Mr. Eby explained that he owns the building and he wants to build onto the side of it. He then submitted a packet of pictures to the Board *[attached to file as Petitioner Exhibit #1]*.

Mr. Eby has a Monaco motor home that he would like to store in it. He would like to extend the building four feet out. He doesn't feel he would be hurting the neighborhood and he has spoke to the neighbor across the street, who had no opposition to the request. The neighbor next door didn't have a problem with the request either. He pointed out the location of where the addition would be on the aerial photo.

Mr. Eby also indicated that the mobile home is currently sitting in the driveway at this location. The building expansion won't be for his business, it will only be for personal storage of the mobile home.

Mr. Hesser asked if there are other businesses in the area and the petitioner said no.

Mr. Hesser asked if there are any other properties in the area that are used for non-residential purposes and Mr. Eby said he wasn't sure.

Mr. Hesser asked the petitioner where he currently lives and he said Green Valley Subdivision. He can't store the mobile home at his residence.

Mr. Homan asked the petitioner if he bought the property with the building on it and he said yes. He would repaint the building to match the new siding on the addition.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan asked Mr. Harrell to explain how non-conforming uses have been looked at by the county and how it applies with the Elkhart County Zoning Ordinance. Mr. Harrell said the definition of a non-conforming use is that you can maintain it and repair it, but you cannot expand it.

Mr. Harrell indicated there is one other Special Use in this area and it's for a church, which will be demolished shortly.

Mrs. Wolgamood then read the first paragraph in the letter received by the petitioner from Mr. Harrell in 1994. She clarified that in 1994 when Mr. Eby purchased the property, he knew that he couldn't have outside storage. That was determined that it was an expansion of a non-conforming use.

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 the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for an addition to an existing accessory structure on property without a primary structure be denied. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – no; Miller – yes; Hesser – yes.

21. The application of **Lynn Showalter** for an Appeal to allow for the construction of an addition to an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance on property located on the South side of CR 24, 1,900 ft. West of CR 13, common address of 24334 CR 24 in Concord Township, zoned A-1, came on to be heard.

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

Mr. Piehl presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081939*.

There were 4 neighboring property owners notified of this request.

Lynn Showalter, 24334 CR 24, Elkhart, was present on behalf of this request. Ms. Showalter explained that she would like to have an 18 x 18 addition of a three season room. She then pointed out the location of the proposed addition on the aerial photo. The addition will be added onto the rear of the house and there will be two exits from that area. One of the exits would go out to the pool area and the other one will go out to the side of the property.

Mr. Hesser asked if she was the owner when the property was subdivided in 1988 and Ms. Showalter said no.

Mr. Homan asked if the reason the petition is before the Board today is because it wasn't properly subdivided and Mr. Kolbus 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 (*Homan/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 an addition to 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 unanimously.

22. The application of **Deanna King** for an Appeal to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance and for a 3 to 1 depth to width ratio Variance for said residence on property located on the North side of CR 28, 900 ft. West of CR 15 in Concord Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081881*.

There were 4 neighboring property owners notified of this request.

Deanna King, 23147 CR 28, Elkhart, was present on behalf of this request. Ms. King said she owns two acres with a house on it and then the two acre vacant lot next door to it. She would like to sell her house with the current two acres and then build on the two acre lot next to her. The two parcels are under separate deeds.

Mr. Miller asked if she has had any soil work done to see if she can get a septic permit and Ms. Showalter said yes, the Health Department has done a soil boring test which came back fine.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 residence on property not subdivided in accordance with the Subdivision Control Ordinance and for a 3 to 1 depth to width ratio Variance for said residence be approved. After a unanimous roll call vote was taken, the motion was carried.

23. The application of ***DMB Custom Carpentry, Inc., David Bates*** for an Appeal to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance, and for a 4 ft. lot width Variance (Ordinance requires 80 ft.), and a 2,000 sq. ft. lot area Variance (Ordinance requires 15,000 sq. ft.) to allow for said residence on property located on the South side of CR 22, 190 ft. East of Azelea Court, common address of in Concord Township, zoned R-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081987*.

There were 5 neighboring property owners notified of this request.

David Bates, owner of DMB Custom Carpentry, 61706 CR 3, Elkhart, was present on behalf of this request. Mr. Bates clarified that he's asking for a 4 ft. lot width Variance and a 498 sq. ft. area Variance, not 2,000 as stated in the report. According the legal description, the lot size is .332 acres, which is equivalent to 14,502 sq. ft.

One concern of the staff was a minimum lot size and soil conditions. Mr. Bates had the soil borings done last week and according to the results, there was no water within 5 ft. of the surface. The seasonable high water table showed 30 inches at one time. The plans are to build a split level home that will be a maximum of 36 inches below the existing grade, which would be above the water table. He worked with Tim Gibson from the Health Department and he has approved an aggregate bed septic design for a three bedroom home with enough room on the lot to accommodate the septic system. A reserve area is not required because it was platted before 1991.

In addition, the house is 40 ft. wide, which allows 12.6 ft. to the west property line and 24 ft. to the east property line, which is more than the minimum requirements. Another concern by the staff is the effect it would have on the neighboring properties that conform to current standards. A 1,260 sq. ft. three bedroom, single family home, built by a professional builder with the reputation for building quality homes would surely be a positive addition to neighboring properties. It would especially be a positive addition to the less desirable modular to the west. Mr. Bates would like to think that a new home would be preferred to an overgrown trash ridden lot that has been used for teenagers to do drugs and drink.

In reference to the staff recommending that the property could be sold to adjacent property owners, he said the property has been on the market with Remax for over 60 days and no interest has been shown by neighbors to purchase the parcel at a reasonable price. A low

offer was made, but it wasn't even considerable. The neighboring properties were subdivided in 1978 and it left this parcel with a 76 ft. lot width and a square footage of 14,502.

Mr. Hesser asked the petitioner if he owns any of the surrounding properties and he said no.

If the water issue is addressed, Mr. Hesser asked if the staff has a problem with the four ft. Variance. Mr. Harrell said Mr. Burrow was the person who had the original contact with this lot and he stated that it is located in a high water table. If the septic system has passed, then he doesn't think the staff has a concern with the request.

Mr. Miller said the septic system size is based on the size of the lot, so that will drive the house either left or right as far as square footage because there is only so much room.

Mr. Bates indicated that Ray Pharis is the person who did the survey. He said he would like to have the bedroom 250 sq. ft. each for three of them.

Donna Rabe, 24841 CR 22, Elkhart, was present in opposition to this request. Ms. Rabe then submitted a petition in opposition to this request *[attached to file as Remonstrator Exhibit #1]*. She then read the petition to the Board.

Larry Rabe, 24841 CR 22, Elkhart, pointed out a culvert going across the street. He said the low point of the property is in the front. Mr. Rabe explained over the weekend, he dug a three ft. hole for a fence post. When he took the last part of the dirt out of the hole, water started running into the hole and when he came back, there were six inches of water in the hole. Where the Concord School is being built, they are pumping the neighborhood dry. Several of the neighbors are worried about their wells going dry because there are four or five large pumps sucking water out of the ground. Mr. Rabe is also concerned that the petitioner could get the Variance granted and then sell the property, which would allow the next owner to build whatever they want on it.

Jerry Vaughn, 59060 Azalea Court, Elkhart, was also present in opposition to this request. Mr. Vaughn pointed out his property on the aerial photo. The lots behind he and his neighbors were divided to keep this area landlocked. There are apartments starting down the road. There are water problems through the area and his sump pump runs year round.

Back in 1978 when the Cinelli's built their first house there, they had water coming out of their basement windows. He can't imagine Concord trying to fight an apartment fire right next door to this because there will be a fence next to it. The row of trees are right up against the neighboring apartment house and someone could easily light those and the entire block would be wiped out. Mr. Vaughn said he is totally against this request.

Also present in opposition to this request was Susan Cinelli, 59046 Azalea Court, Elkhart. Ms. Cinelli pointed out her property on the aerial photo and explained she is concerned that the house will not conform to the surroundings. She was the first person in the area that had to file a lawsuit against the builder, and the builder lost.

Jeff Baxter, 59016 Azalea Court, Elkhart, was present in opposition to this request. Mr. Baxter borders the adjacent property with an eight foot fence due to a swimming pool. In the petitioner's presentation, he said his setback on the west side would be 12.5 ft. and Mr. Baxter said if he builds a tri-level, then the backfill will be right up against his fence. A drain tile had to be put in and he gets water on his property all the time. He is completely against the proposal.

There were no remonstrators present.

Mr. Bates said he spoke to the person who owns the duplex next door and the property was vacant. They were pumping the sump pump water onto his lot and since then, it has been

corrected, which was part of the water problem. As far as the square footage and the size being less than the neighboring property owners, Mr. Bates said the main level and the upper level are 1,260 sq. ft. If they do the lower level, which will still only be approximately 24 to 36 inches below the existing grade, it's going to add another 600-700 sq. ft. to the house. The house is still bigger than the square footage of a lot of the neighboring properties.

When Mr. Rabe was talking about the square footage concern, that was the total area he owned, not including the offset on the Cinelli's property.

Mr. Bates said he has a good reputation and has built nice houses, so he would like to keep peace with the neighbors. The property is currently up for sale and Mr. Bates said he could sell the property with the stipulation of not allowing a modular or he doesn't have a problem with building on it himself. He would like to conform to the neighboring properties and make sure that the lot is buildable.

The petitioner clarified that he's not going to have a basement, so he won't be as far in the ground as the neighboring properties. He always waterproofs his walls and takes every precaution possible to assure that there won't be problems. The Health Department borings were recently done and Mr. Gibson didn't find any standing water within five ft.

Mrs. Cinelli had mentioned a concern about non-conforming, but Mr. Bates said he is going to conform with all of the buildings.

Mr. Bates feels that the property presently has no value. He said the neighbors can come in and look at the building plans, but he feels a nice home in this area with a new school going in would be a benefit.

Mr. Hesser said the petition requests a 24 ft. width Variance and the Staff Report says four ft. The distance would be 76 ft. wide and it would require 80 ft.

Mrs. Prough explained that when the application originally came in, they thought it was zoned A-1, which would require 100 ft. The four ft. is correct and the 90 ft. is wrong.

The petitioner said Mr. Baxter who lives next door has a fence that is encroaching onto his property. He's going to have a survey done by Blake Doriot, but he knows the fence is on his property.

Mrs. Wolgamood asked how long he has owned the property and Mr. Bates said the deed was recorded on April 1, 2008.

The public hearing was closed at this time.

Mr. Miller said given the fact that the petitioner has taken care of his responsibilities through the Health Department and would probably be able to get a curb cut from the Highway Department, he doesn't see an issue with this request.

Mr. Hesser said most of the issues are dealing with the water table, drainage, and sewage. If those issues are addressed, then there isn't as big of a concern with the request. He doesn't feel the Variances are a very big concern. Mr. Kolbus said the request could be limited to "as per site plan submitted."

Mr. Homan said he feels that the neighbors have a legitimate complaint considering they don't want to see a modular on this property. He believes there are some great modular homes being built, but it's not a good idea to mix them up, especially on a lot that is questionable.

Mrs. Wolgamood asked if the petitioner if he has obtained a permit from the Health Department and the petitioner said no because Tim Gibson suggested that he wait until he went through the meeting because there is a \$145 fee. He indicated that Tim Gibson gave him a verbal approval for the septic and said it will fit with no problem.

She then asked Mr. Bates if he has applied for the permit and he said yes.

Mr. Miller asked the Board if they would feel more comfortable with the language of water drainage and Mr. Hesser said yes because drainage and sewage all have to be addressed.

Mr. Homan said one of the reasons the Ordinance requires a minimum lot size is to handle run off water because it will have nowhere to go.

Mrs. Wolgamood said in the past, there has always been drainage problems brought forth in this location and property to the south as well. She indicated that the site plan has a notation on it that says, "This house is just a sample. If I were to build on the lot, at this point, I'm wanting to sell the land as a buildable lot."

Mrs. Wolgamood said if the Appeal were denied and the 4 ft. lot width Variance were approved, then the petitioner could take the request through the subdivision regulations for a one lot minor subdivision and Technical Committee.

Mr. Miller said he would be interested in knowing if the duplexes have one system per unit because that has a higher impact than a single family residence.

Mr. Hesser asked what kind of assurance the Board can get that the drainage issues will be dealt with. Mr. Miller said if the petitioner decided to request a one lot minor subdivision, then the issues would be addressed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 an Appeal to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance be denied. The motion further reflects that the request for a 4 ft. lot width Variance (Ordinance requires 80 ft.) and a 2,000 sq. ft. lot area Variance (Ordinance requires 15,000 sq. ft.) to allow for said residence be approved. A roll call vote was taken and the motion was carried with the following results: Homan – no; Wolgamood – no; Lantz – yes; Miller – yes; Hesser – yes.

24. The application of ***Daniel R. Mullet*** for a Special Use for a home workshop/business for metal cutting, wood routing and tool sharpening business (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (4,064) to exceed the total square footage of the primary structure (2,310), a difference of 1,754 sq. ft. on property located on the West side of CR 15, 1/4 mile South of CR 36, common address of 64297 CR 15 in Harrison Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081295*.

There were 8 neighboring property owners notified of this request.

Present representing Mr. Mullet was Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee. Mr. Sloat then submitted a letter from the Elkhart County Highway Department and a copy of a building permit card [*attached to file as Petitioner Exhibit #1*].

Mr. Kolbus said it would be appropriate at this time to see who is here regarding this petition. If it's just the petitioner, then he pointed out that a motion was made at the last meeting, but it was never seconded due to the concern that Mr. Hesser had about the re-notifications.

There were no remonstrators present.

Mr. Kolbus said he feels comfortable allowing the Board to go forward with their discussion and decision, unless they want further input from the petitioner.

Mr. Hesser asked Mr. Sloat if he needs to add any information and Mr. Sloat said no.

Mr. Hesser asked what the motion was from last month and Mr. Homan said it was for the approval of the home workshop and the Developmental Variance.

One of the concerns Mr. Hesser has with the home workshops is knowing what point it becomes a business. In this situation, the petitioner is expanding by fair amount and it's becoming more of a business. If neighbors were to have that objection, he would be pretty sympathetic to hearing them. The surrounding area is pretty rural and the neighbors aren't present with any concerns. There was a gentleman here a few months back with some concerns, but those have been addressed. Considering the lack of complaints and the rural sparsely populated nature of the area, Mr. Hesser has no problem with it. Mr. Miller agreed.

Mrs. Wolgamood said she doesn't have an issue with the use, but she does have an issue with the Developmental Variance.

Mr. Homan indicated the square footage of the building, including the proposed addition that the business would be conducted in, is 3,200 sq. ft. There are other structures on the property as well.

Mrs. Wolgamood said the barn wouldn't be included in the accessory structures since it's used for agricultural purposes.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 home workshop/business for metal cutting, wood routing and tool sharpening business (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (4,064) to exceed the total square footage of the primary structure (2,310), a difference of 1,754 sq. ft. be approved with the conditions submitted by the petitioner imposed as follows:

1. No outside storage of anything related to the business.
2. The duration of the Special Use shall be for three (3) years with renewal by staff if no valid complaints.
3. Exterior lighting shall be restricted to security dust-to-dawn lighting.
4. No exterior loud speakers allowed on the premises.
5. The Special Use shall be confined to the area of shop building identified on the site plan.
6. One (1) sign, four (4) square feet per side and unlighted.
7. No retail sales.
8. The number of employees limited to two (2) who are not residents of the property.
9. The residence on site to be occupied by the owner/operators of the business, Daniel Mullet, his wife, and their children.
10. Addition to structure to be limited to 32 x 48 feet, and constructed in compliance with state and county building codes.
11. No further expansion of the buildings without Board of Zoning Appeals approval.
12. All state and local inspections and permits to be completed and obtained.
13. Days and hours of operation Monday through Friday, 8:00 a.m. to 5:00 p.m.
14. The second driveway must be brought into compliance with the Elkhart County Highway Standards.

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

25. The application of *Steve Adams* for a Use Variance for an amusement center in a M-1/R-1 district on property located on the West side of CR 105, 1,700 ft. South of Mishawaka Road, common address of 58095 CR 105 in Concord Township, zoned M-1/R-1, came on to be heard.

A detailed site plan was then submitted to the Board by the staff [attached to file as Staff Exhibit #1].

Mr. Kolbus explained that at the previous meeting, the Board requested a detailed site plan to be filed by June 9th, 2008, which has been received.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081721*. Mr. Harrell said the staff has reviewed the detailed site plan and they are amending their recommendation to approval as per site plan submitted.

There were 19 neighboring property owners notified of this request.

Steve Adams, 59200 CR 9 S, Elkhart, was present on behalf of this request.

Mrs. Wolgamood asked the petitioner to address the concerns listed by the remonstrator. She asked for what length of time will the small animals be housed on site and Mr. Adams said it will be seasonal. He was going to keep about four cows that would stay there year round. The chickens and goats would only be seasonable.

Mrs. Wolgamood pointed out that they specifically mentioned roosters and the petitioner said they won't have any roosters or loud animals.

The second concern asks how the animal waste manure will be handled and how often. Mr. Adams said the chicken pen will be cleaned out as needed and then it will be spread out towards the far west side of the property.

Mrs. Wolgamood asked if there will be a port-a-potty and the petitioner said yes, along with hand washers in each of them. That would go behind the building so it's not right out front.

The area lighting was questioned and Mr. Adams said there will be a motion light, but no other lighting. The light will be located on the building, which is shown on the revised site plan.

Mr. Hesser asked if the maize part would be lighted at all and the petitioner said no. The maize would only be operated during the day.

Mrs. Wolgamood asked the staff if the 4 x 8 double faced sign can be permitted in an R-1 zoning classifications. Mr. Harrell indicated he would need to check with Mr. Burrow.

Mr. Homan asked where the five criteria for the Use Variance would be listed.

Mr. Hesser asked if the sales building would be located in the R-1 zoning and Mr. Adams said it would be in the M-1 area.

Mr. Kolbus clarified that if this were a Special Use request, it would be limited to a 4 x 4 sign. Since this is a Use Variance, the Board determines in the imposing conditions how big of a sign is allowed.

Mr. Homan asked what is peculiar about this property that makes it rise to a Use Variance. Mr. Hesser pointed out that the mixed zoning makes the property unique. Mrs. Wolgamood pointed out that you can't travel across an R-1 area to get to the M-1 zoning to utilize it for manufacturing.

Lastly, Mr. Adams indicated that there is fencing around the property.

Paul Selman, 27417 Charles Street, Elkhart, was present in favor of this request. Mr. Selman said he is favorable of this request now that he knows more of the details. He spoke with the Elkhart County Highway Department and they told him they can't do anything about it because they have no plans. Secondly, he asked if there is going to be a well on the property to provide for the animals and people.

Mr. Adams said there will be no irrigation as far as the animals. He said they will run water from the house since he lives next door. There is a well available for him to get water from.

Mr. Homan asked if the Use Variance could be granted for a year and then they could see how it goes. Mr. Kolbus said they could put a time condition on the Use Variance, but not the Developmental Variance. Mr. Homan feels it should be looked at, but he's not sure that one year will be enough. Mr. Kolbus suggested trying it for a couple years to see how things go.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Kolbus indicated the one open issue is the size of the sign.

Mr. Kolbus said the 2 x 2 comes from the home workshop/business, and the 4 x 5 is the default on a Special Use. Mrs. Prough clarified that the maximum is 20 sq. ft total, including both sides.

Mr. Homan asked if the sign would be temporarily and the petitioner said yes, it will be up from August through the end of October.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that based on the criteria that there is a need for this Use Variance because of the combination of the M-1/R-1 zoning classifications and not being able to access the M-1 zoning to use that for manufacturing use across the R-1 zone, and in accordance with the amended staff recommendation, this request for a Use Variance for an amusement center in a M-1/R-1 district be approved with the following conditions imposed:

1. Approved for a period of two (2) years with a review before the Board of Zoning Appeals at that time.
2. The operation is to be conducted as per site plan submitted, with the exception of the sign.
3. The sign is to be a 4 x 5 ft. double faced and unlighted for a period from August 1st through November 15th.
4. The sign setback is to comply with the Elkhart County Zoning Ordinance.

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

Mr. Hesser then asked if the petitioner could have his review before the Board in the month of April 2010. Doing so will allow petitioner to know whether or not the request will be renewed, which is prior to the planting season.

26. The application of ***Jorge Pizana*** for an amendment to an existing Special Use for a private baseball diamond (Specifications F – #4) for an accessory building for storage on property located on the North side of CR 146, 1,034 ft. East of SR 13, common address of in Benton Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081506*.

There were 4 neighboring property owners notified of this request.

Mrs. Prough said she has been working with Mr. Pizana and monitoring his progress of the conditions for the original Special Use permit. She then submitted photos of the progress the petitioner has made *[attached to file as Staff Exhibit #1]*.

As far as the original conditions of the permit, condition #4 was that the petitioner obtains a curb cut permit for the driveway. He has obtained a permit and installed the culvert. The

petitioner has not installed the hard surface, so it is not yet in full compliance, but the permit has been obtained.

As far as bringing the property into compliance with the original site plan, he has installed a six foot vinyl, chain link fence, along the northeast and south property lines. The original site plan just showed a "home run" fence, but he plans to install it around the entire perimeter.

Mrs. Prough indicated that he has not installed the parking area at this time, but he has constructed bleachers/dugout on the north and east side. He has planted trees and purchased three port-a-johns, which he has located at the northeast corner of the property, which can be seen on the photos. The petitioner is working towards compliance, but he's not quite there yet.

The petitioner is present to answer concerns, but Mrs. Prough said he would like the Board to act on the request to have the building on site for maintenance purposes. It's difficult for him to maintain the property and make the improvements without that building.

Mr. Kolbus asked what the staff's feelings are about that. Mrs. Prough said she and Mr. Harrell discussed it and they don't have a problem with the petitioner doing that as long as he continues to bring the property into compliance.

Lastly, Mrs. Prough said the baseball diamond is not even in use. It hasn't been constructed yet due to all of the improvements being made.

Mrs. Wolgamood said she feels the petitioner is working very diligently to bring the property into compliance.

A motion was then made and seconded (*Hesser/Wolgamood*) to re-open the public hearing. After a unanimous roll call vote, the motion was carried.

Mrs. Wolgamood asked Mr. Pizana how long it will take to complete everything and he said he does a little bit at a time. He has to work his regular job, but he will try to have it finished by the end of the season.

Mrs. Wolgamood asked if he wants to start the storage building right away and he said yes. She thinks it sounds like he's making every attempt to bring the property into compliance.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Prough indicated that the petitioner built another dugout bleacher which is 8 x 25 ft. If that were approved, then Mr. Pizana can pull building permits for those structures as well. She then submitted a copy of an updated site plan [*attached to file as Staff Exhibit #2*].

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that based on the petitioner's cooperation in working towards compliance, this request for an amendment to an existing Special Use for a private baseball diamond (Specifications F – #4) for an accessory building for storage be approved with the following conditions imposed:

1. Approved with all of the conditions imposed on the original Special Use (#20072762) to be adhered to.
2. Approved as per amended site plan dated March 24, 2008 (Staff Exhibit #2).

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

27. 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.

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 #20082005*.

There were 11 neighboring property owners notified of this request.

Mrs. Wolgamood explained that this petition came before the Hearing Officer yesterday and she made a recommendation for denial. Mr. and Mrs. Kindel contacted Mr. Pharis and at the end of yesterday's meeting, he asked to come before the Hearing Officer for an audience item. Mr. Pharis explained that when his office filed the original request, the original request was to go before the full Board of Zoning Appeals. A mistake was made and all of the notifications went out for yesterday's meeting, but Mr. Pharis had down the meeting day for today. Mr. and Mrs. Kindel received the notification with yesterday's meeting date on it thinking that he would be at the meeting. Mrs. Wolgamood said she withdrew her denial and transferred it to the full Board as was originally requested.

Mr. Hesser asked if anyone showed up at the hearing and Mrs. Wolgamood said no.

Barry Pharis, 1009 S. 9th Street, Goshen, was present representing Richard and Barbara Kindel and Habitat for Humanity. Mr. Pharis then presented a poster board site plan and a copy of it was submitted after the public hearing to the Board *[attached to file as Petitioner Exhibit #1]*. Mr. and Mrs. Kindel have a beautiful home on this property where they raise their children. On the parcel to the west, it has been converted into a stable riding area. The area to the north of US 20 has been approved for a mega church. The surrounding area is primarily wooded and residential.

Nearly 30 years ago, Mr. and Mrs. Kindel sold the farmette around the time they built their home. A representative from Habitat for Humanity contacted Mr. Pharis and explained that one of their children had completed the program that is required by their company to have a home built. Mr. and Mrs. Kindel would like to transfer property to the Habitat for Humanity which would go to their child. The petitioner spoke with Mr. Pharis and one of the questions was what they would do with the other children. Mr. Pharis said he suggested that if they are going to give to one child, then he might want to take care of everything now. This was the only area that had direct access to US 20, so they created three equal tracts of land.

Mr. Pharis said he was trying to look at some benefits for the future and planning for the future. There is going to come a time where Mr. and Mrs. Kindel are going to want to retire. He thought that by doing this, there could be a situation in the future where all of the three children could own the beautiful wooded area. If none of them wanted to own all of that acreage and the home, it could be sold for Mr. and Mrs. Kindel as a retirement home.

As they started looking at the three tracts, it became obvious that the three separate driveways weren't going to be safe. Therefore, they submitted a proposal to INDOT with the decision to have one single driveway at the safest point. The mailboxes are sitting out of the right-of-way of US 20. He explained that there would be one driveway with three different access points. Mr. Pharis indicated that INDOT seems to be favorable of this idea.

There were no remonstrators present .

Mr. Hesser said the public hearing will remain open.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that 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 tabled until the July

19, 2008, Board of Zoning Appeals meeting to give the petitioner the opportunity to meet with the staff to review the revised plan. A roll call vote was taken and the motion was unanimously carried.

28. At this time, Mr. Miller indicated that he will not be present at next month's meeting. Mr. Kolbus also indicated that he may not be here at next month's meeting either, but if he's not, another Attorney will be present to fill in for him.

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

30. There were no audience items.

31. There were no Staff/Board items.

32. The meeting was adjourned at 3:57 P.M.

Respectfully submitted.

Kate A. Barghahn, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary