

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF NOVEMBER 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: Robert Homan, Meg Wolgamood, 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; Mick Slater, Code Enforcement Officer; Kathy Wilson, Officer Administrator and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Homan/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of October be approved as read. The motion was carried with the following roll call results: Homan – yes; Wolgamood – abstain; Miller – yes; and Hesser – yes.
3. A motion was made and seconded (*Miller/Wolgamood*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record. After a roll call vote was taken, the motion was unanimously carried.
4. A motion was made and seconded (*Homan/Miller*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was unanimously carried.
5. There were no postponements of business items.
6. The application of ***Dunlap United Methodist Church*** for a Use Variance for a portable sign in an R-2 zone on property located on the Southeast corner of US 33 and CR 13, common address of 23674 US 33 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 #20083185*.
There were 40 neighboring property owners notified of this request.
Don Mitchell, Trustee Chair for Dunlap United Methodist Church, 23140 Orchard Ridge Drive, Elkhart, was present on behalf of this request. They are asking for a Use Variance to place a portable sign at the church for advertising fundraisers. The church is located in an R-2 district and the Zoning Ordinance indicates they need the Use Variance to have the portable sign there.
Mr. Miller asked if this would be a permanent structure and Mr. Mitchell said no, it would be removed once the event is over.
Mr. Hesser questioned whether the church owns the sign or if they rent it. The petitioner indicated they rent the sign.
Mr. Miller asked if there is a time frame when the sign will typically be out and Mr. Mitchell said very rarely at two weeks at a time. The Zoning Ordinance indicates a maximum of 60 days per calendar year.

Mrs. Wolgamood asked if there are other signs in the immediate area and Mr. Mitchell said there are tons of portable signs throughout the US 33 area. The sign is used to advertise fundraisers, not for profit purposes.

Mr. Harrell explained that there were several complaints turned in regarding portable signs on US 33. Mrs. Wolgamood asked if those properties have been notified that they need a Use Variance for their portable signs and Mr. Harrell said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan asked if the Zoning Ordinance allows for 60 days of use without a Use Variance and Mr. Harrell said they are required to get a sign permit.

Mrs. Wolgamood said when the Ordinance talks about temporary signs in Specifications H, temporary signs/portable signs shall not be permitted in any "A" or "R" district. There are regulations that allow them to be placed for a certain amount of days in other zoning districts.

Mrs. Wolgamood said the reason she asked about other portable signs in the area is because there is quite a bit of residential zoning on one side. The other side of US 33 has a B-3 zoning classification, but she feels they will be setting a pretty big precedent if this request is approved.

Mr. Kolbus said if the Board decides to approve the request, a condition should be placed stating that they must meet all other temporary sign requirements of the Zoning Ordinance.

Mr. Hesser said he understands Mrs. Wolgamood's concern, but he doesn't have an objection to this request. The property has a Special Use and has been in the area for a while.

Mr. Miller said there are a lot of portable signs on this particular street and it appears to be more commercial than residential. He doesn't have an issue with the request either.

Mr. Hesser said his concern with the Staff Report is how they would define "special event", but he feels the 60 day regulation would take care of that.

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 the Findings of the Board, and based upon these Findings, this request for a Use Variance for a portable sign in an R-2 zone be approved with the following conditions imposed:

1. The temporary sign is to be used for special events only provided the sign complies with all setback requirements.
2. All sign requirements as specified in the Elkhart County Zoning Ordinance under Specifications H, Section eight (8), number two (2), letters A through H (excluding letter D), to be adhered to (see attached).

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

7. The application of *Martin's Supermarkets* for a Use Variance to allow for a commercial retention pond in an R-2 zone on property located on the South side of Parkview Avenue, 565 ft. West of SR 19, common address of 26506 Parkview Avenue in Osolo Township, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083253*.

There were 26 neighboring property owners notified of this request.

Dick Pauline, 121 W. Franklin Street, Elkhart, was present representing Martin's Supermarkets. Mr. Pauline indicated that representatives from Martin's and Wightman Petrie were also present in the audience. The property is located just west of SR 19, which was then pointed out on the aerial photo. The property is rectangular shaped and they are involved in the southerly 219 ft. of the parcel. Martin's is requesting that this request be granted so they can use it as an area to store stormwater from Martin's development. The parcel is currently used as a single family residence with some out buildings. The pond will be appropriately fenced as suggested by the staff and it will allow better development of the Martin's property.

Mr. Pauline indicated they have met with the staff from the city and county. The property has gone through a DPUD process and they have filed an application to annex the property into the city. They cannot currently annex the retention pond property because of the upcoming census. The property will be annexed into the city by the end of the year. Mr. Pauline said they agree with the staff's recommendation.

The approval will not be injurious to public health, safety, morals, or general welfare of the community because the retention area is currently unused and undeveloped property. The property will be fenced for safety and control by Martin's who have an on-site presence immediately to the east. There won't be any significant noise, odors, or lighting. Mr. Pauline indicated the proposed use will not have a substantial or adverse affect on the use and value of adjacent properties because there is substantial commercial development along SR 19. He feels this has done nothing but improve the values of the surrounding properties. The retention pond will allow improved aesthetics on the adjacent property.

Mr. Hesser asked if the main part of the store is in the city and Mr. Pauline indicated yes and pointed it out on the aerial photo. Martin's Supermarket will occupy everything from the east of the proposed parcel all the way over to Cassopolis Street.

Mr. Hesser also asked how far back the Martin's property goes. An aerial photo of the property and the surrounding properties was then submitted to the Board *[attached to file as Petitioner Exhibit #1]*.

The Board questioned if Martin's has gotten approval from the city and Mr. Pauline said yes.

Mr. Homan asked if the wooden fence will incorporate the retention area and the location of the fence was pointed out on the aerial photo. Mr. Pauline indicated it would most likely be a chain link fence.

Mrs. Wolgamood asked if the person who currently owns the lot will be retaining the north half of it and Mr. Pauline said yes. Martin's has only purchased the southern piece of the parcel.

Mr. Miller asked if the retention pond has been designed with the proper slopes and the petitioner said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she feels they have covered all of their bases with the city and the county.

Mr. Miller said he doesn't have any problems with this request. He feels that Martin's is a good business in the community and very responsible.

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 Use Variance to allow

for a commercial retention pond in an R-2 zone be approved in accordance with the site plan submitted with the area to be fenced with five (5) ft. tall fencing. After a unanimous roll call vote was taken, the motion was carried.

8. The application of ***D.N. Construction*** for a Special Use for an existing mobile home and for a Use Variance for an existing machine shop on property located on the Southeast corner of SR 19 and CR 42, 1,300 ft. South of Nelson Parkway, common address of 67070 SR 19 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 #20083108*.

There were 7 neighboring property owners notified of this request.

Norman E. Yoder, D.N. Construction, 65287 CR 3, Wakarusa, was present on behalf of this request. Mr. Yoder explained he is requesting a Special Use for a mobile home and a Use Variance for the existing machine shop on the property.

Mr. Hesser asked if this was previously approved as a mobile home, then why does it need to be heard again. Mr. Harrell indicated the owner has changed.

In regards to the Use Variance, Mr. Hesser asked why it became inactive in 2004. Mr. Harrell said he believes the father used to run the machine shop and now the son runs it.

The petitioner indicated that the father died and the son is still using it. When the son is done with it, then it won't be a machine shop anymore. The property will go back to the mobile home residence.

Mr. Harrell said this request was originally approved for a home workshop/business, but there is now a different occupant in the mobile home.

Mrs. Wolgamood asked what the gentleman's name is who is now running the machine shop and Mr. Yoder said Phil Everingham.

Mr. Hesser asked if Mr. Everingham lives on the property and Mr. Yoder said no.

Mrs. Wolgamood asked how long the current occupants of the mobile home have been there and the petitioner said a little over a year.

She also asked if he owns the model home and runs his business there. Mr. Yoder said yes, they bought the entire property. The property immediately to the east is also owned by the petitioner, which was pointed out on the aerial photo.

Mrs. Wolgamood questioned the property to the south and Mr. Yoder indicated it is a residence. She asked if the mobile home is within 300 ft. of that residence and Mr. Yoder indicated he doesn't think so, but that mobile home has been there for years.

Mr. Yoder said he understands that when Mr. Everingham is done with the machine shop, then the building will be turned into a storage building and the machine shop would no longer be operated.

Mr. Homan feels they would be violating the 300 ft. issue. Mr. Harrell said if the mobile home is there before the house, then the mobile home has precedence over the house.

Mrs. Wolgamood asked if the house was constructed after the mobile home was placed and Mr. Harrell said he believes it was.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if the Special Use request is approved, then will it allow a subsequent mobile home to be placed on the property in the future or would the request need to be approved again. Mr. Kolbus indicated mobile homes are normally approved for three years with a one year renewal. If the Board didn't put a time limit on it, then the petitioner could replace the mobile home.

Mr. Homan feels the three year approval is good because it allows the Board to have some assurance that if the property became less cared for, then they can take some action.

Mr. Hesser asked if the Use Variance can have a time limit placed on it and Mr. Kolbus said yes. Mr. Hesser indicated he doesn't have an issue with the request and Mr. Miller agreed.

Mr. Homan asked if the Use Variance can be specific to a person and Mr. Kolbus said no. Mr. Kolbus said they can be owner specific, but not person specific.

Mr. Homan asked how long it would be a machine shop and Mrs. Wolgamood indicated as long as Mr. Everingham is in the business.

Mr. Harrell indicated the mobile homes are renewed administratively every three years. He said he would rather not have the two requests tied together.

Mrs. Wolgamood asked what the fee is for a Use Variance and Mrs. Wilson said she believes it's \$150.

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 an existing mobile home be approved with the following conditions imposed:

1. Approved as per site plan submitted.
2. Conditions "A":
 - a. The mobile home shall be adequately stabilized, skirted and have tie-downs installed.
 - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
 - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools and vehicles, except licensed motor vehicles.
 - d. At all times, the premises shall be kept free of abandoned junk vehicles or parts thereof as described by Indiana State Law.
3. Approved for a period of three (3) years with a one (1) year review to verify compliance with Conditions "A".

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

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for an existing machine shop be approved with the following conditions imposed:

1. Approved as per site plan submitted.
2. Approved provided there is no outside storage of any materials related to the business.
3. Approved for a period of ten (10) years with a renewal by the Board at that time.

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

9. The application of **Patricia L. Patrick and Barbara J. Walter** for a Special Use for an agricultural use (keeping of 36 chickens, 3 pigs, and 3 geese) on a tract of land containing three acres or less (Specifications F - #1) on property located on the South side of CR 4, 375 ft. West of Iris Court, 3,000 ft. West of CR 7, common address of 27750 CR 4 in Osolo 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 #20083227*.

There were 12 neighboring property owners notified of this request.

Patricia Patrick, 27750 CR 4, Elkhart, was present on behalf of this request. Ms. Patrick indicated she owns the acre outlined on the aerial photo. She currently has 36 chickens and three little pigs. She checked before she got the animals and found out that she is zoned A-1, but she was not aware of the three acre rule. She has checked with all of the neighbors apart from the one who complained and the complaintee's neighbor, and no one has an objection to her raising the chickens and pigs. There is no dust and there is minimal odor from the animals. In the summer when the pigs have their mud puddle, she puts lime in it so there is no odor. The noise from the roosters does get a little irritating at times and she has arranged for three of them to be slaughtered.

Mr. Hesser asked how many roosters she will have after that and the petitioner said only one. She indicated that he is the quietest one.

Ms. Patrick said she brought something that she feels would be interesting for the Board to hear regarding the backyard chicken movement. With all of the big companies raising chickens in confinement and feeding them antibiotics and hormones, the eggs are not healthy. Her chickens are free range and they are fed grass and grains. They run around the yard and they are happy chickens.

The chickens are heritage chickens and the pigs are an endangered breed called Mule Foot Pigs. There are only 256 of these pigs in the United States. She is retired and her mother lives next door, so they feel this would be a wonderful way to help preserve the breed and supplement their diet with healthy pork. She feels that pork is raised in a confined atmosphere and it's not healthy.

According to the professional pig breeders, you can pasture a pig on one tenth of an acre. The three of them have about half an acre, which is a little over a tenth of an acre for a pig.

Ms. Patrick explained that the neighbor next door to this property, which is Angel Central Academy, wrote a letter in favor of this request. The letter from Angel Central Academy was then submitted to the Board by the petitioner *[attached to file as Petitioner Exhibit #1]*. Angel Central Academy has offered to lease some land to the petitioner to allow her to keep the chickens and pigs on her property.

Lastly, Ms. Patrick indicated they use the manure to fertilize their gardens and they have a composting situation to keep it dry. The manure only stinks if it gets wet.

Mr. Homan asked where the location of her mother's house is and Ms. Patrick pointed out the location on the aerial photo.

Mr. Hesser asked the petitioner if she has geese and the petitioner said yes, she has three. They are an endangered breed of geese called Pomeranian Grey Saddlebacks.

Mr. Homan asked if there has been a problem with the chickens getting out and Ms. Patrick said no. She lets them out into the backyard, but she puts up fence panels so they can't get out of the yard.

Rosemary Willis, 27712 CR W, Elkhart, was present in favor of this request. Ms. Willis explained that she is in the process of raising her seven year old grandson and he will never see animals like this unless he's taken to a zoo. She believes children need to be familiar with animals they don't normally get to see. The children in her neighborhood will be raised with these animals and know how to treat them. Ms. Willis said her grandson loves to watch the chickens, pigs, and geese.

Kathy Courier, 52063 Iris Court, Elkhart, was present in opposition to this request. A petition in opposition was submitted to the Board at this time containing ten signatures *[attached to file as Remonstrator Exhibit #1]*. Ms. Courier said Angel Academy doesn't have to live with the situation all the time. She purchased her home because it was a quiet residential neighborhood. Since the summer, they are no longer able to enjoy the peaceful environment because of the constant crowing day and night by the roosters. She can hear it inside of her home with the windows and doors closed.

Not only does she no longer have the peaceful setting that she was accustomed to, but she has been assured by Remax and Century 21 that her property value will decrease if this request is granted. The percentage will depend on the odor from raw animal feces, animal buildings within sight of her property and the annoying crowing from the roosters. Before applying for this request, the property had bad upkeep for years and the neighbors believed the property to be abandoned.

The feed and the animals will be a draw for mice, rats, raccoons and coyotes to the area. She is asking the Board to take into the consideration the effects this will have on the rest of the neighborhood. She then submitted a packet of photos of the proposed property for the Board to review, which were all taken from her backyard apart from one photo *[attached to file as Remonstrator Exhibit #2]*. Ms. Courier then pointed out her property on the aerial photo.

Also present in opposition to this request was Bonnie Sponseller, 52095 Iris Court, Elkhart. Ms. Sponseller said the roosters have woken her up during the night and she has trouble sleeping. She used to live on a farm and she knows how the pigs smell, so she doesn't think they are too nice.

Mr. Homan asked where she lived in proximity to the property in question and Mr. Kolbus indicated she is immediately south of Ms. Courier according to the map.

In response to the remonstrators concerns, Ms. Patrick indicated the roosters are going. She also indicated that there is no smell from the chickens. The chicken house is kept clean with dry litter, which only smells if it gets wet. The pigs don't smell because there is lime put in their mud hole. They have such a large area to pasture on that when the manure is spread out over the whole area, it goes back down into the ground for fertilization. Ms. Patrick also said there is no dust. She turns the sprinkler on in the summertime for the chickens and the pigs, which eliminates the dust. The roosters don't crow at night, they crow early in the morning. She said they start in around 4:30 a.m. or 5:00 a.m., but she is getting rid of all except for one. She indicated she could get rid of all of them if need be.

Mr. Hesser asked if she has given any consideration to some type of modification to the number of animals. The petitioner said she's not sure why it would be intense to have a small flock of chickens because they are kept in cities. She has an article of where they took a survey

in 20 cities and only four didn't allow chickens within the city. Of those four cities, they could have one or two hens.

Mr. Homan indicated this is Elkhart County and there is a Zoning Ordinance which has to be abided by.

Mr. Hesser said he feels this is awfully intense for only having one acre of land.

Mr. Homan pointed out that the Angel Academy is zoned R-4, which wouldn't allow agricultural animals. The petitioner asked if the zoning would be covered under A-1 if she leased it and the Board indicated no.

Mrs. Wolgamood asked how long she has had the animals there and Ms. Patrick said the pigs have been there since July of this year and she has had the chickens since early May of this year.

The storage of the feed was questioned by Mrs. Wolgamood and the petitioner indicated it is stored in the chicken house in metal barrels.

The public hearing was closed at this time.

Mr. Homan said this is well below the three acre minimum and he feels there are too many animals on the property.

He asked the Board if there should be a time limit regarding when the animals are to be removed. Mr. Homan suggested three months and Mrs. Wolgamood agreed.

Mr. Kolbus said if the request is denied, then she would need to revert back to four animals as permitted by the Zoning Ordinance.

Mrs. Wolgamood asked if the four animals could include large animals such as cows, but Mr. Homan said they would need to be small animals. Mrs. Prough then clarified that the four animals would have to be domesticated animals.

Mr. Hesser said he would be open for a compromise, but he feels the number of animals the petitioner is requesting is too intense. If the request were substantially changed, then it could be brought back to next month's meeting for re-consideration.

Mr. Kolbus said the Board could table the request and allow the petitioner to think about what the Board's comments were. Next month, the public hearing could be re-opened and the petitioner could address whether or not she would accept something less than what was requested.

Mr. Homan then explained to the petitioner that the number of animals she's requesting is too many. Ms. Patrick indicated she would be willing to compromise and said she would like to keep her three pigs.

Mr. Homan asked if the request can legally be changed at today's meeting and Mr. Kolbus said she can do anything less than what was requested.

Mr. Hesser asked if there is another compromise the petitioner would suggest and Ms. Patrick said if she can't keep her three pigs, then she would like to keep 12 hens.

Mr. Miller feels that 12 hens would be less impact than three pigs in the overall context and use of the property.

Mr. Hesser said he wouldn't object to the petitioner having 12 hens as long as the Board placed a time limit on the approval for review.

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 an agricultural use (keeping of 36 chickens, 3 pigs, and 3 geese) on a tract of land containing three acres or less (Specifications F - #1) be approved with the following conditions imposed:

1. The Special Use is limited to twelve (12) hens.
2. The remaining animals are to be removed within ninety (90) days.

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

The motion was then amended by Mr. Homan and seconded by Mr. Hesser to include an additional condition stating, "Approved for one (1) year with a renewal by the Board of Zoning Appeals at that time." A unanimous roll call vote was taken and the motion was carried.

10. The application of *Jim Dreier* for a Special Use for a wireless internet/TV tower (Specifications F - #31.50) on property located on the East side of CR 33, 2,285 ft. South of CR 36, common address of 64430 CR 33 in Clinton Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083210*.

There were 12 neighboring property owners notified of this request.

Jim Dreier, 64430 CR 33, Goshen, was present on behalf of this request. Mr. Dreier indicated he is asking for a Special Use for a wireless internet/TV tower. He is trying to obtain a high speed internet provider and improve his television reception for personal use. He has been working with Maplenet to provide a tower for this service and this is his only viable option at this point in his location.

Mrs. Wolgamood said the site plan doesn't show how close the tower will be to the south property line. Mr. Dreier said it will be between his garage and the property line. There is a right of way that is next to the property where a farmer goes back to his field. He believes the right of way is approximately 30 ft.

Mr. Homan then questioned the proposed location and Mr. Dreier said it will sit right behind the garage. The tower will be hidden behind some pine trees so it won't be offensive to the neighbors.

Mrs. Wolgamood asked if the tower will be to the east or south of the garage and the petitioner said to the south.

The height requirement for the tower was questioned by Mr. Hesser and Mr. Harrell said they have researched the collapsibility of towers. In the past 20 years, there has only been one tower that has collapsed in our area. They try to get the towers in outside areas where there aren't any residential structures, but it's a policy and not an ordinance.

Mr. Hesser asked Mr. Harrell if he is satisfied with this location and he said yes. All of the surrounding area is agricultural and the tower will set back where it can't be seen.

Mr. Harrell asked if the tower would be monopole and the petitioner said yes.

Mr. Nemeth said he measured the height of the tower on the GIS and it is far enough away from the southern structure that if it were to collapse, then it wouldn't fall on any structure apart from the homeowner's residence. He indicated they call these structures "towers", but he feels they are more like personal antennas. The petitioner had also previously submitted a letter regarding why he couldn't co-locate on someone else's tower.

Mr. Hesser asked if this request is subject to the tower policy and Mr. Kolbus said yes, but it's being used more as a personal antenna.

Mr. Harrell indicated that the petitioner has offered for the neighbors to co-locate because they can't get the service either.

Mrs. Wolgamood then asked how far away the tower will be from the south property line and Mr. Dreier said the concrete pad will be about three ft. from the property line.

Mr. Homan asked if there is any reason why he couldn't locate the tower further back from the south property line and the petitioner said aesthetics was the main reason. He wanted to be able to hide it with some pine trees.

Reginald Stickel, 64490 CR 33, Goshen, was present in favor of this request. Mr. Stickel said he owns seven acres to the south of the proposed property. He explained they live in a very un-served area and cannot get cable or wireless internet. He is here in support of this request.

Mr. Homan asked if he owns the strip to the south and Mr. Stickel said no, that property is owned by Herb Yoder. He lives in the house just south of that on seven acres of land.

Mrs. Wolgamood asked if he would like to co-locate with the petitioner and Mr. Stickel said yes, he would be interested.

The public hearing was closed at this time.

Mr. Hesser said he feels if the request is approved, then there should be a condition stating that the petitioner has agreed to permit the co-location and use by others as represented in the questionnaire. He would also like there to be a condition stating that the petitioner is to comply with the tower policy.

Mr. Nemeth indicated the applicant has submitted letters addressing the color and he feels this application was one of the most complete applications he has seen from the petitioner's representative.

Mr. Harrell indicated the petitioner is in a "dead spot" on the map.

Mr. Hesser asked if they could include a condition stating that the petitioner should comply with the tower policy and Mrs. Wolgamood said she doesn't feel they need to reference the tower policy.

According to Mrs. Wolgamood, her biggest concern is the setback because it's on the property line. Mr. Harrell said there is no setback for flat concrete, but the structure should be at least five feet back from the property line. He indicated the petitioner wouldn't be able to meet the setback on the tower policy.

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 a Special Use for a wireless internet/TV tower (Specifications F - #31.50) be approved with the following conditions imposed:

1. Approved as per site plan submitted and as represented in the petition.
2. The tower is to be available for co-location for area residents.
3. All standard setbacks are to be adhered to.

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

11. The application of **Terry L. Smith** for a Special Use for a home workshop/business for building small trailers (Specifications F - #41) on property located on the East side of CR 35, 1,150 ft. South of SR 120 in York 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 #20083221*.

There were 9 neighboring property owners notified of this request.

The petitioner wasn't present at the meeting and the staff had no notification regarding his absence.

Mr. Kolbus said the Board's options are to table the request, allow the remonstrators to testify, or encourage the remonstrators to come back next month when the petitioner is present. He indicated the Board has the right to act on the request today, but he said the general policy is to continue it for one month.

Mr. Homan feels the petitioner should have at least called.

Mr. Hesser said the hearing will probably be continued to next month and offered the remonstrators a chance to voice their concerns.

Dorothy Rose, 53398 CR 35, Middlebury, was present in opposition to this request. Ms. Rose indicated she was the person who submitted the petition in opposition. She is against the request because of the noise factor with the air tools and welding. The noises are terrible and she wonders about the wear and tear on the roads from the deliveries of the supplies. A couple of other concerns are the affects this would have on the property values and ground pollution. There are cleaning supplies containing various oils that would be used in this type of operation. Ms. Rose also indicated she would like to know where the sales lot would be. The petitioner has already built one of the trailers and put it for sale out in his front yard.

Mr. Kolbus asked if there are manufacturing activities taking place on the property and Ms. Rose said yes. She thinks two trailers have been built, but she knows at least one has been built for sure. The location of her property was then pointed out on the aerial photo.

Sarah Neff, 53280 CR 35, Middlebury, was present in opposition to this request. Ms. Neff said lives next door to the petitioner's property on the south side. She is opposed to this request because they have dealt with a lot of noise and disruptions. She feels this would make it much more unbearable through the winter and the summer. There is a lot of dust, dirt, and the petitioner has taken out a lot of trees. She said the noise barrier is not there any longer.

Mrs. Wolgamood asked Ms. Neff if the building they are proposing to do the operation in is the one closest to her property and Ms. Neff said yes.

Also present in opposition to this request was Carol Stevens, 53316 CR 35, Middlebury. Ms. Stevens said she is opposed to the manufacturing of trailers in the neighborhood.

Mr. Hesser asked if notices will be sent out to the remonstrators if this request is tabled until next month. Mr. Kolbus said the Board can require the staff to send them notices notifying them of the hearing or indicate to the remonstrators that they should call in to find out when the hearing will be. He feels that it's more appropriate to have the staff re-notify them.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that this request for a Special Use for a home workshop/business for building small trailers (Specifications F - #41) be tabled with the following conditions imposed:

1. Tabled until the December 18, 2008, Board of Zoning Appeals meeting with the remonstrators who spoke in opposition at today's meeting to be re-notified of the hearing time.
2. If the petitioner is not present at that time, then the request is to be denied.

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

12. The application of **Sam W. Miller** for a Special Use for an agri-business for farm machinery sales and repairs on property located on the South side of CR 28, 370 ft. West of CR 133, common address of 14704 CR 28 in Middlebury Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083201*.

There were 16 neighboring property owners notified of this request.

Sam W. Miller, 14704 CR 28, Goshen, was present on behalf of this request. Mr. Miller said they will be repairing small farm equipment. He said there is no longer a construction business as stated in the staff report because he wants to get out of the mud, rain, and snow.

One year ago, Mr. Miller built two brother barns on this property. He indicated he needs a little bit of a side income. Mr. Miller then submitted a site plan to the Board showing the location of where the storage will be *[attached to file as Petitioner Exhibit #1]*.

The hours of operation were questioned by Mr. Hesser because they aren't specified in the Staff Report. Mr. Harrell said the Board could set them as specified in the questionnaire by the petitioner.

Mr. Hesser said his only concern was semi's, but the petitioner indicated he didn't think there would be any. If there were to be any semi's, the petitioner has sufficient room for them to turn around.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she feels that the site plan which was submitted at today's meeting would be sufficient because it shows the area for storage and indicates the screening.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agri-business for farm machinery sales and repairs be approved with the following conditions imposed:

1. Approved as per site plan submitted on November 20, 2008 (attached to the file as Petitioner Exhibit #1).
1. Any outside storage of farm machinery waiting to be repaired is limited to the area of the Special Use and screened by trees or a fence.
2. No outside storage of scrap metals, machinery parts or welding supplies.
3. Days and hours of operation and other details of the business are as represented in the petition.

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

13. The application of **Paul Chupp** for a Special Use to allow for a wind generator including an 80 ft. tower with 10 ft. blades (Specifications F - #31.50) on property located on the South side of CR 146, 2,500 ft. East of St. Joseph County Line Road, common address of 30560 CR 146 in Locke 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 #20083230*.

There were 7 neighboring property owners notified of this request.

Brandon Borkholder, 7584 W 950 N, Nappanee, was present representing the petitioner. Mr. Borkholder explained he's the person who will be installing the tower if it is approved. The tower will be 80 ft. tall and the wind turbine will be sitting on top of the tower. The blades are 9 ft., so the total height of the tower will be 84.5 ft. The tower will be used to charge Mr. Chupp's battery, which is used to run his household appliances.

Mrs. Wolgamood questioned if the property in the northeast corner is the area where the tower would be located and the petitioner said yes. The petitioner's father owns all of the land and the proposed small piece of property was sold to Mr. Chupp.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Hesser*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for a wind generator including an 80 ft. tower with 10 ft. blades (Specifications F - #31.50) be approved with the following conditions imposed:

1. An electrical disconnect must be provided at the tower, and be installed according to the manufacturer's representations.
2. The building permits and inspections must be obtained.

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

14. The application of **Lyle E. Harshberger** for a Special Use for a home workshop/business for bicycle sales and repair (Specifications F - #45) on property located on the North side of CR 54, 1,800 ft. West of CR 11, common address of 25363 CR 54 in Union 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 #20083135*.

There were 10 neighboring property owners notified of this request.

Lyle Harshberger, 25363 CR 54, Nappanee, was present on behalf of this request. Mr. Harshberger explained that he applied for the Special Use to allow him to run his business and have a sign.

Mrs. Wolgamood asked him how long he has had the bike shop there and Mr. Harshberger said for about 15 years as a hobby.

Mrs. Wolgamood questioned the sign and the petitioner indicated he has never had one there before. He's never really needed a sign, but the Nappanee Chamber of Commerce told him that they can direct people out there easier if he has a sign.

She then asked Mr. Harshberger if he has any outside storage of bicycles or anything of that nature and he said no.

Mr. Homan questioned the hours of operation and the petitioner indicated when he's home, he's open. In the summertime, sometimes he works later than ten.

In the evening, Mr. Hesser asked if it's just him working or if it's customers coming and going. Mr. Harshberger said sometimes his customers come late, but they are all on bicycles. He indicated that eighty percent of his customers are Amish. His customers come during daylight hours the majority of the time.

There were no remonstrators present.

Mrs. Wolgamood questioned where a semi would turn around after they enter the property. Mr. Harshberger said he only has a semi come about once a year, which usually stops out by the road.

The public hearing was closed at this time.

Mrs. Wolgamood suggested having public hours until 7:00 p.m. He can work past 7:00 p.m. on his own, but she doesn't feel the customers should come later than that.

Mrs. Wolgamood said she would like to add a condition stating that a turn around must be provided on site.

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 Special Use for a home workshop/business for bicycle sales and repair (Specifications F - #45) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. One (1) sign permitted four (4) sq. ft. per side and unlighted.
3. All activities to take place within the enclosed building designated as the "bike shop" on the site plan.
4. Two (2) employees who do not occupy the residence on site.
5. Hours of operation are to be Monday through Saturday, 8:00 a.m. to 7:00 p.m.
6. No vehicles are to back onto or off of the property from CR 54 and a turn around must be provided on site.
7. No parking is permitted on the roadway.

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

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

15. The application of **Concord Community Schools** for an amendment to existing Special Uses for a school (Specifications F - #38) to include additional property to be used for an employee Health Clinic on property located on the West side of CR 13, 275 ft. North of CR 24, common address of 59427 CR 13 in Concord Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083187*.

Mrs. Wolgamood said in #2 under history, it states, "The (client) parking area shall be from the Junior High School side and the driveway from Myers Avenue (north) shall be limited access (for employees only)." It states under #3, "If a valid complaint is received regarding the staff entrance off of Myers Avenue, the Special Use will be returned to the Board to address that situation." Mr. Harrell said those should be stricken.

There were 20 neighboring property owners notified of this request.

Brian Clevenger, Engineer, Foresight Consulting, 3810 New Vision Drive, Fort Wayne, was present representing Concord Community Schools. Mr. Clevenger explained he was here a

couple of months ago and worked on the revisions to the existing Junior High School. At that time, the extent of the improvements required the relocation of the clinic. There was not a new location for the clinic when he was before the Board last time, but now they have found one. Due to some construction scheduling issues, they are coming before the Board now to get approval to move the clinic. Mr. Clevenger pointed out the current location of the clinic on the aerial photo. He also pointed out where the new location will be located, which is an existing residence.

As it stands right now, the conceptual plan for the clinic includes an entrance off of Minuteman Way into a parking area just north of the existing residence. Due to construction scheduling issues, the existing clinic will need to be moved prior to those improvements being installed. They would like to have a temporary gravel parking area, which they have talked to the Elkhart County Highway Department about. They have included some additional stone for turning movements to allow people to get off of the road in a safe manner. They will still use the existing driveway in the current relocation.

Mr. Clevenger said in their questionnaire, they have listed different hours of operation than what the staff recommendation states. The questionnaire indicates a total of 20 hours per week and he also listed some days, which may shift.

Mrs. Wolgamood asked if the new Minuteman Way is constructed and Mr. Clevenger said yes. She also asked if the old Minuteman Way that came out to CR 24 has been vacated and Mr. Clevenger said it's currently just dirt.

Mrs. Wolgamood asked what they mean by "temporary" for the gravel area. Mr. Clevenger said the permit the school will obtain from the Highway Department will last until next summer. The intent is to move the permanent improvements along sometime next year. This wouldn't be a multi-year situation, but they can't be constructing now because the weather has to get nice again.

Mr. Kolbus asked if the Board put a condition on the request stating that the permanent improvements must be installed within one year, then would that be workable. Mr. Clevenger said yes.

Mr. Homan asked if the current building is a residential structure and Mr. Clevenger indicated yes.

Mrs. Wolgamood asked if the existing clinic has to be demolished to allow for the construction of the additions to the school. Mr. Clevenger said it's in a location where there are proposed parking improvements and other permanent improvements.

Valerie Graber, 49394 CR 13, Elkhart, was present in opposition to this request. Ms. Graber indicated her property is located directly across from the proposed clinic. She purchased her house five years ago because it was in a nice country setting and close to everything. That setting has largely been destroyed by Concord Community Schools and their Minuteman Way re-alignment project. Two photos of the view from her property were then submitted to the Board showing how much her view has changed over the years *[attached to file as Petitioner Exhibit #1]*. She explained that many of the trees in her area have been removed. She is objecting to the health facility because she feels that her property value has been destroyed. A business type environment like this health facility would further damage her property value.

Since the projects have begun, Ms. Graber has experienced increased traffic, congestion, lights, and noise. She is also concerned that this will be located on a curb where there have been some serious auto accidents including a fatality. Ms. Graber doesn't feel this is a necessity. If

they aren't going to be tearing down the existing building, then she asked why they can't use that since it had just been renovated within the last two years.

Mr. Clevenger said the school understands that a lot has changed due to the improvements. The clinic itself will be a very residential feel because it's not a high intensity use. The business will be very low impact and there won't be very many customers per day.

As far as safety is concerned, to utilize the existing drive is a temporary situation. The proposed improvements should alleviate any traffic issues associated with the clinic because they will be connecting their drive to Minuteman Way.

The public hearing was closed at this time.

Mrs. Wolgamood said she is not aware of any complaints from the location of the current clinic, which is across the street from a number of residences.

She asked if the clinic is appointment only and Mr. Clevenger said yes.

Mr. Homan said he feels the neighborhood reality will stay the same.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for an amendment to existing Special Uses for a school (Specifications F - #38) to include additional property to be used for an employee Health Clinic be approved as per site plan submitted with the following conditions imposed:

1. The temporary entrance as shown on the site plan is to be terminated on November 20, 2009 and the provisions are to be made as represented.
2. Hours of operation not to exceed twenty (20) hours per week.

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

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

16. The application of ***New Creation Fellowship*** for an amendment to an existing Special Use for a church to allow for the expansion of the daycare on property located on the South side of CR 10, 975 ft. West of CR 1, common address of 30190 CR 10 in Cleveland 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 #20083102*.

There were 7 neighboring property owners notified of this request.

Jim Christophel, Cardinal Builders, 510 Parkwood Court, Goshen, was present representing New Creation Fellowship. The church would like to enlarge their daycare because they currently have a waiting list. They are in need for more classrooms and restrooms, which is the reason for the addition. He feels the church has a great location because it's on CR 10 and close to CR 6, so there is a lot of traffic in the area. Mr. Christophel then submitted a map showing the exact location where the addition will be located *[attached to file as Petitioner Exhibit #1]*. The addition will be behind the existing building and it will only be visible from the road on the north side.

Mr. Miller asked if the ingress/egress patterns will change and the petitioner said no.

Mr. Miller questioned the septic system and Mr. Christophel said the property is tied to the City of Elkhart's water and sewer. There is currently a septic system on site that is not in use anymore.

The Board asked if the stormwater retention would be affected and the petitioner said no.

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 amendment to an existing Special Use for a church to allow for the expansion of the daycare be approved as per site plan submitted with all state and local permits and inspections to be obtained, along with Health Department approval. A roll call vote was taken and the motion was unanimously carried.

17. The application of **Cheryl Mattern** for an amendment to an existing Special Use for a home workshop/business for dog grooming to include boarding (Specifications F - #45) on property located on the South side of CR 50, 2,100 ft. West of CR 13, common address of 24616 CR 50 in Union Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083200*.

There were 5 neighboring property owners notified of this request.

Present on behalf of this request was Cheryl Mattern, 24616 CR 50, Nappanee. Ms. Mattern explained that she would like to do some dog boarding. She has a 20 x 24 building and part of that is her grooming shop. She could make a nice boarding facility to keep pets in the other half of the garage. She has room for three 6 x 6 cages and three 4 x 6 cages, but she will also have some smaller cages for smaller dogs. Ms. Mattern said the most she would be able to keep in her facility are ten to twelve dogs. She would take the dogs out two to three times a day to let them relieve themselves because she doesn't want them in dirty facilities. The petitioner explained she would suggest that her customers bring the pet's shot records because that is important. She is unsure about the hours for the facility, but she would need to be open more days than what was set in her original conditions.

Mr. Miller asked what she feels would be adequate for her hours of operation and the petitioner said she would like the dogs to be picked up by 8:00 p.m. On Sundays, she would have to be open because that's when people get back from vacations.

Mr. Miller also questioned if the amount of traffic to the establishment will change from what it is now. Ms. Mattern said no because most of the people who have asked about boarding are current customers. She would probably have around six people coming and going each day.

It was questioned by Mr. Hesser if the boarding would be mostly on weekends or for weeks at a time. Ms. Mattern said it could be a week if someone wants to go on spring break.

Mr. Hesser asked how many dogs would be boarded and she indicated she would have room for around ten, but it depends on the size of the dogs.

Ms. Mattern explained she has no close neighbors, but she has talked to them and informed them of what she was thinking. Nobody has disagreed with what she wants to do.

Mr. Hesser questioned the size of the boarding facility. She references a 30 x 36 ft. building, but he indicated there isn't a building that size. Ms. Mattern said the boarding will be in her current grooming facility which is about 20 x 24. He indicated that's not how it appears on the site plan. Mr. Hesser said the site plan indicates there would only be 24 x 10 on the south portion of the building for boarding. The petitioner indicated it would be the same size as a two car garage because the building is a three stall garage with one section for grooming.

The size of the current sign was questioned by Mr. Miller and Ms. Mattern said she isn't sure. There is a neighbor down the road who has one that is the same size. Mr. Miller indicated that the Zoning Ordinance allows for a sign that is four sq. ft. per side and unlit.

Mr. Homan questioned the location of the boarding facility and Ms. Mattern pointed it out on the aerial photo.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she feels they need to add that the petitioner will be taking the animals for daily walks.

She also asked the petitioner how they will dispose of the waste and Ms. Mattern said she will dispose of it in the field to the south, which she owns. The field was then pointed out on the aerial photo.

Mr. Miller asked if there is anything in the ordinance that would prohibit disposing of the waste in the field. Mrs. Wolgamood said that would be a Health Department issue and Mr. Kolbus said the Board doesn't look at how they will dispose of the waste. He indicated the Board could put a condition on the request related to that.

With the limited number of animals, Mr. Hesser doesn't feel that will be an issue.

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) and based on the findings that this request will be consistent with the spirit, purpose and intent of the Zoning Ordinance because boarding of animals is permitted in A-1 zones with a Special Use granted by the Board of Zoning Appeals; will not cause substantial and permanent injury to the appropriate use of neighboring properties as all animals must be boarded inside except for the opportunity to walk and exercise the dogs during the day; and will substantially serve the public convenience and welfare by providing a needed service for area pet owners, this request for an amendment to an existing Special Use for a home workshop/business for dog grooming to include boarding (Specifications F - #45) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. One (1) double-faced sign permitted no larger than four (4) sq. ft. per side and unlighted.
3. Days and hours of operation to be seven (7) days a week from 6 a.m. to 8 p.m.
4. The maximum number of dogs to be boarded is ten (10).
5. A corrected site plan is to be submitted for the file within thirty (30) days showing the correct size of the boarding facility.

With a unanimous roll call vote, the motion was carried.

18. The application of *Schrock Real Estate LLC* for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the North side of

Beck Drive, 1,164 ft. East of Chelsea Lane in Jefferson Township, zoned M-2, 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 #20083161.

There were 17 neighboring property owners notified of this request.

Steve Woody, 12990 SR 23, Granger, was present representing Emergency Radio Service. Mr. Woody explained that they are purchasing a lot from Schrock Real Estate to put up the proposed communication tower. The tower will be a 195 ft. self support tower with no lighting. Motorola has come out with a new UHF system that is called Mototurbo, which is taking two way radios to the next step. They needed another antenna platform to locate this on to better serve the county and the community. It will give a much wider area and triples the size of what a normal UHF platform will do. The tower will be much more clear, reliable and secure from a public safety standpoint. Mr. Woody explained that Schrock Real Estate is willing to sell them some land and the tower is permitted in this area.

The petitioner said they will design the tower to hold additional carriers to comply with the Zoning Ordinance. They will make this available to other companies and would also donate to the city a couple of antenna spots for their use.

Mr. Hesser asked if they would be in compliance with the tower policy. Mr. Harrell said it's in a manufacturing zone and they probably won't be within the collapsibility of the tower if it would fall. The tower policy says it has to be located back one tower length, but sometimes that has to be looked at differently if they are in manufacturing zones.

Mr. Homan said he believes this is all undeveloped land and Mr. Harrell indicated that is correct. This is the extension of Beck Drive which goes through to CR 19.

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

1. A report on the collapsibility of the tower along with a report on any radio/TV interference to be submitted for the file.
2. Approved as per site plan submitted.
3. Building permits and inspections shall be obtained for any structure over 120 sq. ft. in area.

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

19. The application of **Kevin R. Martin** for a Special Use for an agri-business to allow for processing wood fiber waste material into livestock and poultry bedding (Specifications F - #56) on property located on the Southeast side of SR 119 and CR 36, 225 ft. East of CR 17, common address of 21918 SR 119 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as Case #20083215.

There were 17 neighboring property owners notified of this request.

Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee, was present representing the petitioner. A packet of information was then submitted to the Board including pictures, a site plan, a petition in support of this request, and a list of proposed conditions *[attached to file as Staff Exhibit #1]*. Mr. Sloat then went through the pictures in the packet and explained them to the Board.

Mr. Sloat indicated that there are a lot of dairy farmers present at today's meeting due to the need for bedding. They are in support of this because they get their bedding from the petitioner. Animals need bedding because it provides warmth, comfort and cleanliness. If you have dirty cows, then there is more of a possibility for contaminated milk. Elkhart is one of the biggest dairy counties in the state and it takes a lot of bedding to keep cattle clean.

As this has emerged over the years, there has been a substitute put in place for bedding which is sawdust. As the RV industry was growing and expanding, there was a lot of sawdust produced that they didn't know what to do with. About 20 to 25 years ago, Mr. Martin's father got involved with some of the RV companies with extra sawdust. The companies would gladly give him the waste so they could get rid of it. His father then put up a building to store the sawdust in because he could use it on his own farm. Other farmers then found out that he had the sawdust and they wanted to buy it from him, so he had a network of people who he supplied sawdust to.

As things evolved, fuel costs increased and people started installing wood burners to burn wood pellets for fuel. The high quality sawdust from molding material became a high demand for the pellet makers. At that time, people wanted to buy the sawdust from the RV companies when they had been giving it away. The next idea was for farmers to make their own sawdust, which Mr. Martin started doing.

Mr. Martin lives on a dairy farm with his family. He is supplementing his income and providing a service to neighboring farmers with this wood grinding operation. The roll off trucks come on site with the waste material including pallets, cut offs, reels, plywood, etc., and he puts the material in a tub grinder to make bedding. Mr. Sloat indicated that all of the work is done inside of the building. Mr. Martin is getting ten to twelve loads of this material in every day from the RV companies. Due to the RV industry continuing to decline, it's becoming more and more of a difficult issue to get enough material to make the bedding.

Mr. Sloat indicated that the petitioner had turned down 30 or 40 requests for material last week and he currently has requests for 50 loads of material that he can't fill. He said the product is just not there.

Mr. Hesser asked how he deals with the staples and nails that are on the pallets. Mr. Sloat said they go in the material, but if there is aluminum, fiber glass, insulation, or plastic, then that gets in the wood bins, then he sorts that out. Any material that is taken out is placed in a dumpster which is then taken to the landfill.

Mr. Hesser asked if there are any IDEM regulations on the type of materials being grinded up. Mr. Sloat said IDEM has been out on many occasions in the last several months and they have gone through his operation. IDEM has absolutely no problem with his operation in regards to air quality control, but they are looking at the issue of manufactured wood. Mr. Sloat said this hinges on whether Mr. Martin needs an industrial waste disposal permit or not. They are currently trying to decide that, but they haven't let him know yet. If they decide that he does need an industrial waste permit, which he would have to go through the process of applying for and paying for, then that will satisfy the inclusion of all materials being grinded.

Mr. Hesser questioned the disposal and Mr. Sloat said the material goes back on the land, but IDEM has addressed that.

Mr. Sloat said the day after he filed his petition, there was a fire on this property. He said it wasn't a big fire and it wasn't caused by the grinding operation. They had been doing some welding on the tub grinder and some of the discharge got into the stack of material. The fire flared up an hour or two later and they were able to put it out before the fire trucks got there. The petitioner is proposing to put in a 1,000 to 1,500 gallon water tank in an enclosed separate heated building with a high capacity pump. If there would be any fire, then the petitioner could put it out immediately. Mr. Sloat explained that they only grind in the daytime when they have material and their only chance for a fire is when someone is there. There won't be a chance for a fire when they aren't there because there wouldn't be any sparks.

Mr. Hesser said at other places similar to this, they have smoldered for quite a while. Mr. Sloat said some of the other places don't use an open conveyor system. In this particular operation, it will all be open, so the sparks from welding won't linger.

The Board questioned where the supplies are stored and Mr. Sloat said everything is stored inside of the building. The piles are loaded in the truck and taken to the farm for delivery. He said the piles aren't kept there overnight.

In the Staff Report regarding the complaint, there was a statement that he has been operating since 1988 or 1989. Mr. Hesser asked during what time period they didn't grind wood. Mrs. Wolgamood clarified that it was a statement that was made to Mrs. Prough by the petitioner.

Kevin Martin, 21918 SR 119, Goshen, indicated he had a grinder that was ran for a number of years, but then they were able to get enough product from the factories and VIM. They sold the grinder, so they didn't do any grinding for a total of 12 years. He indicated they still used the building as sawdust storage and a delivery building.

Mr. Homan asked if the equipment is diesel operated and Mr. Martin said yes. He also questioned the ventilation of the exhaust and the petitioner said they keep it close enough to the end of the building so the exhaust goes outside.

Mrs. Wolgamood asked if the grinder is outside all of the time and Mr. Martin said it's just underneath the roof. She asked if he ever moves the grinder and the petitioner said it's movable, but they haven't moved it in a while.

Mr. Homan asked Mr. Martin if he feels dust has been a problem and he indicated no. Tim Norris from IDEM has walked all the way around the property and he said it doesn't appear that dust is a problem.

Regarding the IDEM inspection, Mr. Homan asked if he has gotten an official response from the state yet. The petitioner said they had a meeting on the 30th and they decided that he would need a solid waste permit. He hasn't applied for that yet because he wanted to make sure that his request today was approved first.

Mr. Homan asked why he needed the solid waste permit and Mr. Martin said it's only because of the manufactured wood. If he used all manufactured wood, then he wouldn't need it.

It was also questioned by Mr. Homan if they issued any type of chemical analysis regarding the grinding, but the petitioner said no. They took a few pieces with them when they were on site, but he hasn't heard anything about that.

Mr. Sloat then explained that grinding wood is good for a lot of reasons. He said it keeps it out of the landfill, provides revenue for a lot of people, provides jobs for people, provides

bedding for area farmers, and is applied back into the ground as organic matter. They feel this is a good location to have this business. He explained that there has been a petition signed in favor of this request.

The petitioner would like to put his building further back in the field so it's away from his farm buildings, but he won't do that unless he knows this request is approved.

Mr. Sloat indicated that the staff said in the recommendation that they would like a certified site plan, but he feels they have submitted a rather detailed site plan. He doesn't think it's necessary because everything is shown on the detailed site plan.

Mrs. Wolgamood asked if someone lives in the mobile home and Mr. Sloat said yes, but it's not affiliated with the business.

The location of the house was questioned by Mr. Hesser and Mr. Sloat pointed out the location on the aerial photo.

Mrs. Wolgamood also asked if the other two buildings labeled as barns are affiliated with the business and Mr. Sloat said no. He explained that Mr. Martin wants to keep the material inside because if it gets wet, then the material loses half of its value.

Mr. Homan asked if outside contractors bring in the wood and Mr. Sloat said yes. He then asked if the petitioner can turn loads away if there isn't enough room or is he obligated to take it. Mr. Martin said if he's overloaded, then they can take the load somewhere else. IDEM does not allow him to have any outside storage.

Mrs. Wolgamood asked how often the dumpster is emptied and the petitioner said once every two months.

Arthur Zimmerman, 67631 CR 13, Nappanee, was present in favor of this request. Mr. Zimmerman indicated he uses the petitioner's product as bedding for his cows and calves. He uses the bedding when it's damp outside and then it's mixed with the manure. The manure is then hauled away, which is used as a fertilizer in the spring.

Mr. Homan said there are some species of wood that are sensitive to some animals. He asked Mr. Zimmerman if he's noticed any implication problems with this product versus what he has used in the past, but Mr. Zimmerman said no.

Mr. Hesser asked the staff if they are comfortable with stating "no large stockpiles" in condition number two. Mr. Harrell said yes and indicated they don't want another VIM operation or dust leaving the area. He reviewed some photos this week where dust definitely leaves the area. If he closes all of the openings on the sides of the buildings, then that would cut down the dust problem immensely. Mr. Kolbus suggested taking out the word "large".

On condition number five, Mr. Kolbus indicated that stating "a dumpster" should be sufficient because that's what the petitioner indicated on his site plan.

Mr. Hesser questioned the certified site plan and Mr. Harrell said they need to know exactly where everything is going to be. If there is going to be any enforcement on the property, then they need that information. In the past, they have designated the areas using posts so they know that if someone starts dumping outside of the area, then Code Enforcement doesn't have to confront the person because it's proven.

Mrs. Wolgamood asked if it would be helpful to change the wording in condition #2 and not use the words "designated area". She said they could utilize the words "...within the wood processing three-sided building as described on this site plan." She understands that everything having to do with this business is within the 80 x 150 building.

Mr. Sloat said he could work with Mr. Harrell regarding that matter.

The public hearing was closed at this time.

Mr. Homan asked if the petitioner is required to have the solid waste permit from the state, then does that by default make this a bigger operation. Mr. Kolbus said no and indicated the Board could set a condition of no expansion without Board of Zoning Appeals approval.

Mrs. Wolgamood pointed out that in the questionnaire, the hours of operation are 8 a.m. to 5 p.m. Monday through Friday, but there may be some exceptions. She asked the Board if that is an issue because they aren't sure what the exceptions would be.

If someone shows up at 6:00 p.m. with a load, Mrs. Wolgamood asked if the petitioner would turn them away. Mr. Sloat said they don't want it sitting there overnight, so Mr. Martin would probably grind it. If it's in the winter time, the petitioner wouldn't be able to do that because there isn't any electricity to provide lighting.

Mr. Homan asked if the representation is that when the scrap hits the ground, the petitioner grinds it immediately because they can't leave it overnight. Mr. Sloat said yes, as much as possible.

Mrs. Wolgamood suggested stating "owner/occupant" in condition #7. She also questioned condition #6 because she never knows what a valid complaint is. Mr. Harrell said if the staff went out and found that the petitioner is in violation of any of the conditions set, then he would be required to come back to the Board.

Mr. Kolbus said he is concerned about the renewal by staff and Mrs. Wolgamood agreed. She feels this is a big operation with lots of supporters, but she feels there should be a one year renewal by the Board.

According to Mr. Kolbus, the Board could bring the request back once or twice to the full board and then grant it indefinitely knowing that if the petitioner violates the conditions of the Zoning Ordinance, then it can be revoked. Mr. Harrell indicated that is fine with the staff.

Mrs. Wolgamood asked if the fire suppressant system is sufficient. Mr. Harrell said something needs to be available to wet the area down if it needs to be. He is currently using a garden hose or something similar, but if he puts a well along the side of the building, then they can hold it until the Fire Department gets there.

Mrs. Wolgamood asked if Mr. Sloat's idea would be sufficient. Mr. Sloat indicated they would put a 1,000 to 1,500 gallon tank of water in a separate building that would be kept heated. Mr. Harrell indicated that would be sufficient. If the Fire Marshall doesn't want permanent sprinklers in the building, then he doesn't have a problem with that, but he would like to see some means of fighting a fire if it were to happen. Mr. Sloat said if there were to be a fire, it would be on the south end.

Mrs. Wolgamood asked if the Board should set a time limit for the petitioner to install the fire suppressant and Mr. Sloat said he could have it done next spring.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agri-business to allow for processing wood fiber waste material into livestock and poultry bedding (Specifications F - #56) be approved with the following conditions imposed:

1. The area of operation must be designated by a certified site plan outlining the staging area for ungrounded material.
2. No stockpiles outside of the designated area.

3. A fire suppressant system to be installed within six (6) months in accordance with the testimony given at today's meeting and the approval by the staff.
4. Hours of operation to be Monday through Friday, 8 a.m. to 5 p.m.
5. All non-bedding material shall be placed in a dumpster and disposed of at the landfill.
6. Special Use granted for a period of three (3) years with renewal before the Board of Zoning Appeals. If valid complaints are received by Code Enforcement or a violation of any of the set conditions occurs, then the request should be brought back before the Board of Zoning Appeals.
7. Approved for the owner/occupant of the residence on site.
8. All operations and storage of ground materials to be restricted to the 150 x 80 ft. building as designated on the site plan with no expansions without Board of Zoning Appeals approval.
9. All local, state and federal permits must be adhered to as well as Health Department regulations.

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

20. The application of **Loren M. Borkholder and AMMF Trustee Corp.** for a Special Use for an indoor/outdoor archery range with retail sales (Specifications F - #11) and for a Developmental Variance to allow the square footage of accessory structures (4,976) to exceed the total square footage in the primary structure (2,250), a difference of 2,726 sq. ft. on property located on the West side of CR 17, 100 ft. North of Kosciusko County Line, common address of 72945 CR 17 in Union Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083217*.

There were 5 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. A packet of information was then submitted to the Board by Mr. Sloat including pictures, a petition in support of this request, and a list of proposed conditions *[attached to file as Petitioner Exhibit #1]*. Mr. Borkholder owns the triangular shaped parcel, which is between Turkey Creek and the road. There have been some mobile homes there in the past, but they have all been removed. The wooded area behind his property is owned by a neighbor and he leases it for an outdoor archery range.

Mr. Borkholder was an RV employee and he currently works at the archery range part time as a hobby. The petitioner would like to have his business grow so he can support his family. Mr. Sloat pointed out the location of his residence and explained what each building on the property is used for. The petitioner would like to put an addition onto the back of the current shop so he can have an indoor archery range. He could then provide an indoor and outdoor bow and arrow target practice area for his customers. He would like the business to be more of a year round operation.

The petitioner has a range set up across the creek and there are different targets for his clients to practice on. Mr. Sloat then described the pictures of the archery range, targets, existing shop building, creek and the bridge which leads to the target area.

Mr. Sloat explained that there would be no outside employees because it's only the petitioner, his wife and young children. The traffic will just be seasonal because when it's

hunting season, there will be more people coming in. This will be strictly for archery and bow hunters and there will be no firearms or guns. Mr. Sloat feels this will provide a great service to those in this area for that type of sport. Overall, he concurs with the Staff's Analysis and recommendations. All of the conditions set by the staff would be appropriate.

In regards to the foot bridge, Mr. Sloat said they haven't talked with the Drainage Board about that yet. He doesn't think that will be a problem, but they will get the clearance from the Drainage Board. If they need to do anything else to protect the integrity of the creek, Mr. Sloat said the petitioner would be willing to do that.

Mr. Hesser questioned whether the parcels were advertised correctly. Mr. Kolbus then clarified that the application indicates all three of the parcels, so it was advertised correctly.

For enforcement purposes, Mr. Hesser asked if the signs on the building are counted as sign limitations. Mr. Harrell said since this is a Special Use for an indoor/outdoor archery range and not a Special Use for a home workshop/business, then he can have total signage of ten square feet. He indicated that Mr. Burrow would need to go over most of the signage. Mr. Hesser asked if that includes the product signs and Mr. Harrell said yes, that is all counted in. Mr. Harrell suggested stating in the conditions "signage as per Elkhart County Zoning Ordinance" and let Mr. Burrow work with him on that.

Mrs. Wolgamood asked if Turkey Creek is considered a designated floodway and Mr. Harrell said it's regulated and he believes its in a floodway.

Mrs. Wolgamood indicated that no parking was indicated on the site plan and Mr. Sloat then pointed out the parking areas on the photo.

Mr. Homan questioned the location of the decoys on the outdoor range. He said with foliage it looks perfectly safe, but without foliage, he wondered about safety issues. Mr. Sloat said all of that has been taken into consideration and was taken care of. The decoys have been placed so there are no shots that will go outside of the property lines

Mr. Harrell said he feels the property is safe and the petitioner has followed all of the safety guidelines.

There were no remonstrators present.

The public hearing was closed at this time.

The flood hazard area was questioned by Mrs. Wolgamood and Mr. Sloat said one of the Drainage Board members is a neighbor in the area and he signed the petition in favor of this request. He indicated they would have the Drainage Board sign off on the request.

Mrs. Wolgamood said if this is in a designated flood area, then the petitioner will need to build it to a certain elevation.

Mrs. Wolgamood pointed out that the Developmental Variance is for retail sales, which she feels is a good sized request.

Mr. Homan said the petitioner has nothing around him and the style of construction wouldn't be inconsistent with what's already on the property. Since it's going behind the existing building, there wouldn't be much impact from the roadside.

Mr. Miller said he doesn't perceive the Developmental Variance to be an issue because it's so far away from everything else.

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 Special Use for an indoor/outdoor archery range with retail sales (Specifications F - #11)

and for a Developmental Variance to allow the square footage of accessory structures (4,976) to exceed the total square footage in the primary structure (2,250), a difference of 2,726 sq. ft. be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. All parking must take place on the owner's property with no parking along CR 17.
3. The Drainage Board is to approve the construction of a footbridge across Turkey Creek prior to the issuance of the building permit for the proposed addition.
4. Hours of operation to be Monday through Thursday, 8:00 a.m. to 2:00 p.m.
5. No employees outside of those who live in the residence on site.
6. Any signage is to be in compliance with the Elkhart County Zoning Ordinance.
7. Approved for a period of three (3) years with renewal before the Board of Zoning Appeals.
8. The parking area is to be as indicated by the petitioner's representative.

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

21. The application of *Chara Corporation* for an Appeal to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance on property located on the North side of Lake Shore Drive, 170 ft. East of Ridge Street, being the south 1/2 of Lot 163 of Hasting Heaton Lake in Osolo Township, zoned R-2, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083205*.

There were 12 neighboring property owners notified of this request.

Everett Lienhart, 22541 Lakeshore Drive, Elkhart, was present on behalf of this request. Mr. Lienhart indicated he is the President of Chara Corporation, which was formed in 1970 to manage the old subdivision known as Hastings Heaton Lake. They take care of the property and sell the lots as people want them. This was plotted in 1928 and some of the lots are 5,000 sq. ft. while others are five acres. He finds it necessary to consolidate some and reduce the size on others to meet with current demands and pricing. In the case of this proposed lot 163, it was approximately 40,000 sq. ft.

In order to make it consistent with the rest of the neighborhood, they chose to split that lot into two lots. The south part would face Lakeshore Drive and would be around 20,000 sq. ft., which someone is looking to purchase. The back part of the property looks like its being trapped, but Chara Corporation owns a 50 ft. lot that adjoins the back end of lot 163 and the south end of lot 148. Whenever that property comes up, they will use the 50 ft. lot for a court or a private drive.

Mr. Leinhart explained that he had the property re-surveyed by Brads-Ko Engineering & Surveying and the new legal description has been written up so they are in compliance with the Elkhart County regulations.

Mrs. Wolgamood asked if this area is in the sewer conservancy district and the petitioner said yes. She also asked about the back portion of the lot and he indicated that the sewer would have to be brought up the 50 ft. lot because it lays back into a problem area.

Mrs. Wolgamood asked if it is mandated that whoever builds in that area has to hook up to the conservancy and Mr. Leinhart said yes. He indicated that the state law says that if you are within 300 ft. of an available sewer, then you must connect.

She questioned if the Board would be guaranteed that the rear portion of the lot would also hook up to the conservancy district and the petitioner said yes.

Mrs. Wolgamood also indicated that if this request is approved, then there are also some other issues with the rear portion of the property including road frontage and a three to one depth to width ratio.

Richard Bachlen, 1700 Connecticut Avenue, Elkhart, was present in favor of this request. He feels this is a good idea because he is the person who would like to purchase the lot. Mr. Homan questioned some of the surrounding lots and asked if they are vacant. Mr. Lienhart then submitted a map showing the property in question in pink and the surrounding parcels that Chara Corporation owns in yellow *[attached to file as Petitioner Exhibit #1]*.

Mr. Hesser asked why it isn't better to do this through a subdivision process and Mr. Kolbus said he wouldn't be able to subdivide the lot. It was clarified that if the Board of Zoning Appeals said no and the petitioner had to go through the subdivision regulations, then he would still have to get a lot width Variance and a three to one depth to width ratio Variance.

The public hearing was closed at this time.

Mr. Harrell said there could be an issue to the rear of the property.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Hesser*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance be approved. After a unanimous roll call vote was taken, the motion was carried.

22. The application of ***Terry Cobbs*** for an Appeal to allow for improvement to an existing accessory building without an established residence on property located on the Northwest corner of CR 40 (Main Street) and Water Street, common address of 19307 CR 40 in Elkhart Township, zoned R-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 #20083078*.

There were 6 neighboring property owners notified of this request.

Terry Cobbs, 2606 Martin Drive, Goshen, was present on behalf of this request. He has electric service on the building now and he needs to change the service from the log cabin to the front structure in order to tear the log house down.

Mrs. Wolgamood asked how long he has owned the property and he indicated 20 years. The building is currently a woodworking shop and the petitioner said he has his personal tools in there.

She asked how long it has been there and he said he added onto the building 15 or 18 years ago. He would like to go from a 100 amp service to a larger service.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for improvement to an existing accessory building without an established residence be approved

provided the building is used for domestic storage or personal shop only. No business is to be run out of this structure. A roll call vote was taken and the motion was unanimously carried.

23. The application of *Michael Lewis* for an Appeal to allow for an addition to an existing accessory building structure on property without a residence on property located on the Northwest corner of Perkins Street and Ne-Ce-Dah Drive, being Lots 71 and 72 of Shore Acres, common address of in Concord Township, zoned R-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 #20083226*.

Mr. Harrell indicated that he received a phone call from the neighbors to the north who indicated they don't have a problem with this request.

There were 7 neighboring property owners notified of this request.

Michael Lewis, 57244 Ne-Ce-Dah Drive, Elkhart, was present on behalf of this request. Mr. Lewis submitted a packet of information including a site plan, aerial photo, and a petition in favor of this request at this time *[attached to file as Petitioner Exhibit #1]*. He pointed out the location of his current residence, which is directly across the street from the proposed property. There is an existing personal storage building on the property, which he would like to add onto. The addition would be 60 ft. by 100 ft. and will be consistent with the building that's currently on the property.

Mr. Lewis said the addition will be for personal storage only because he has a car collection and a lot of toys. He indicated he would not be running a business out of this building. He already has a business in the area located on Perkins Avenue with a 20,000 sq. ft. facility. Mr. Lewis said he took a petition around to the neighbors and there were overwhelmingly no objections to this request.

Mr. Hesser questioned the Appeal that was granted in 2005 and asked the petitioner if he built that building. The petitioner said that had been built by the previous owner because he has only owned the property since 2006.

Steve Rose, 24563 Perkins Avenue, Elkhart, was present in favor of this request. Mr. Rose indicated he lives next door to proposed location. For a long time, no one was able to build on the back half of that property because it's in a floodplain. Mr. Rose explained he has no problem with this request.

Mr. Hesser asked if there are other lots with personal storage buildings in the area. Mr. Rose said Charles Ragland who lives on Ne-Ce-Dah just built a really large steel building for his cars. He indicated there is also a pole building behind his property that he helped build. He would much rather have things setting inside a building rather than outside, because that has been a concern with some of the other neighbors in the area.

Mr. Hesser asked if that whole area floods and Mr. Rose said just to the rear where it curves. He also pointed out the area where the ground sets up higher. The petitioner also has really nice, large pine trees on the property that the previous owner put in.

Present in opposition to this request was Karen Lemon, 24531 Ne-Ce-Dah Drive, Elkhart. Ms. Lemon indicated she lives to the north of the proposed property on the riverside. She feels this building is way too big for a residential area and she feels it will affect the value of her property. Ms. Lemon said she is the one who will have to look at the building and she feels it's too large.

Mr. Homan questioned the location of her property and Ms. Lemon pointed it out on the aerial photo.

Mr. Lewis said he has talked to Ms. Lemon about this before and he understands her concerns. He has no intentions of devaluing the properties. He said the pine trees cover the building and there is a lot of foliage in the area. He would eventually like to put in a garden and some fruit trees.

Mr. Hesser asked if staff has any comments regarding the suitability of the property for anymore building. Mr. Harrell said there have been problems in the past regarding flooding.

Mr. Miller asked if the septic systems in the area are private and the petitioner said yes.

Regarding the questionnaire, Mrs. Wolgamood said he lists a number of items that will be stored in the building under proposed use. She asked where he stores all of those things now and the petitioner said he has four cars sitting on the loading dock at his plant down the road. Mr. Lewis explained that he moved from the Grand Rapids area and has a residence there which he can't sell where he has vehicles and a boat being stored. The RV, one of the speedboats, pontoon boats, and three of the wave runners are in his uncle's pole barn. All of his items are scattered all over the place because he has no place to put everything.

The questionnaire also indicated that the side walls will be 14 ft. high and Mrs. Wolgamood asked if the other out buildings in the area have been constructed with 14 ft. high walls. Mr. Rose indicated there is one other building located behind him with 14 ft. tall walls. Mr. Lewis indicated that Charles Ragland's building has 14 to 16 ft. side walls.

Mrs. Wolgamood asked if any of the buildings are 60 ft. by 100 ft. and the petitioner said yes and indicated Mr. Ragland's may be a little larger than that. She asked how long that building has been there and Mr. Rose said approximately ten years. The location of that property was then pointed out on the aerial photo and Mr. Homan indicated the Board had granted that request.

Mr. Hesser asked if there was any discussion at the hearing in 2005 regarding a residence being added later. He said they are usually pretty reluctant to approve these requests at all. He said they sometimes have exceptions on waterfront properties where they want to put the building on a lot across the street that can't be used for anything else.

Mr. Kolbus clarified that the minutes from 2005 don't state anything regarding the petitioner building a house on the proposed parcel.

The public hearing was closed at this time.

Mrs. Wolgamood said this isn't feasible for an R-1 zone. Although there were two or three other sizable buildings in the area, she doesn't feel it's consistent with what the R-1 zoning classification is all about. The woods area that was talked about are all deciduous trees. Mrs. Wolgamood doesn't feel that she could support this request.

Mr. Hesser said he doesn't have a problem with the use and he wouldn't close the door to any other modification, but he feels this building is too big.

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 with the following Findings that this will be contrary to the public interest because a building of this size would be overwhelming in a neighborhood that is primarily residential and zoned R-1; will adversely affect other properties in the same zone or neighborhood that have single family residences on site with their accessory buildings; and exceptional or extraordinary circumstances and conditions do not apply in this case which are unique in nature and the petitioner has

demonstrated nothing unique about this property that would warrant this Appeal, this request for an Appeal to allow for an addition to an existing accessory building structure on property without a residence be denied. After a unanimous roll call vote was taken, the motion was carried.

24. The application of *Jimmie Schmucker (buyer) and Delbert Schmucker (owner/seller)* for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance on Parcel 'A', and for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel 'B'; on property located on the South side of CR 10, 1,945 ft. West of CR 43, common address of 10862 CR 10 in York Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083214*.

There were 4 neighboring property owners notified of this request.

The petitioner was not present on behalf of this request.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that this request for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance on Parcel 'A', and for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel 'B' be tabled until the December 18, 2008, Board of Zoning Appeals meeting with the following condition imposed:

1. If the petitioner fails to show up at the public hearing, the request will be acted upon in their absence.

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

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

26. There were no audience items.

27. There were no Staff/Board items.

28. The meeting was adjourned at 2:31 P.M.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary